

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an application by Construx Engineering Corporation for an order pursuant to section 103.1 granting leave to make application under sections 75 and 77 of the *Competition Act*;

**AND IN THE MATTER OF** an application by Construx Engineering Corporation for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

**CONSTRUX ENGINEERING CORPORATION**

Applicant

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT April 25, 2005 CT-2005-004	
Chantal Fortin for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 0001b

**GENERAL MOTORS OF CANADA LIMITED**

Respondent

**AFFIDAVIT OF GEOFFREY LEIGH ZALDIN**  
Affirmed April 11, 2005

**I, GEOFFREY LEIGH ZALDIN**, of the City of Vaughan, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. I am the President of the Applicant, Construx Engineering Corporation (“Construx”), and as such have knowledge of the matters hereinafter deposed to, except where such matters are stated to be based on information and belief, and where so stated, I verily believe those matters to be true.

2. I make this Affidavit in support of an application by Construx for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "*Act*") granting leave to Construx to make an application pursuant to sections 75 and 77 of the *Act* and in support of an application by Construx for an interim order pursuant to section 104 of the *Act* against the Respondent General Motors of Canada Limited ("GM").

## **The Parties**

### **GM**

3. GM is a corporation incorporated under the laws of Canada with its head office in Oshawa, Ontario. GM is a wholly owned subsidiary of General Motors Corporation, a manufacturer of transportation products, including automobiles, with headquarters in Detroit, United States of America.

4. GM manufactures transportation products, including automobiles, ("GM motor vehicles") in Canada for sale in Canada and for export to the United States. GM has established a distribution system through which dealers authorized by it sell new GM motor vehicles and motor vehicles manufactured outside Canada by an entity related to GM to customers throughout Canada.

### **CONSTRUX**

5. Construx, a corporation incorporated under the laws of Ontario, is a wholesale dealer and broker of transportation products, including automobiles. It has carried on business as a purchaser of such transportation products, including GM motor vehicles. It purchased those motor vehicles primarily from authorized GM dealers within the Province of Ontario or acquired them from other entities who, to the best of my information and belief, purchased them from authorized GM dealers in Ontario.

6. GM has refused to sell GM motor vehicles directly to Construx.
7. Once Construx purchases a transportation product it either exports it to a buyer outside Canada or resells it to a buyer located in Canada. To the best of my knowledge and belief such buyers in Canada generally export those products.

### **GM's Refusal to Deal and Market Restriction**

8. Construx has been carrying on the business of purchasing new transportation products for export from and resale in Canada since 1995. It has been exporting and reselling new transportation products for approximately 10 years.
9. During the period Construx has been exporting and reselling new transportation products, it has acquired a significant quantity of new GM motor vehicles from authorized GM dealers.
10. Construx's ability to purchase new GM motor vehicles directly or indirectly from authorized GM dealers has now been terminated.
11. In an attempt to prevent its authorized dealers from selling new GM motor vehicles to parties such as Construx, GM and all other major Canadian manufacturers and distributors of transportation products have established a uniform policy of preventing the export and resale of new transportation products offered for sale in Canada as well as preventing the import of new transportation products into Canada by such parties.
12. In order to become and remain an authorized GM dealer in Canada, it is necessary for a dealer to execute a number of written agreements with GM. Certain of these agreements are referred to in paragraph 13 hereof.

13. GM has vigorously sought to thwart the export from, resale in and import into Canada of new GM motor vehicles or new motor vehicles manufactured outside Canada by any entity related to GM. It has curtailed the viability of Construx in the following, amongst other, ways:

- (1) GM includes the following Vehicle Export provision in Article 5.1.2(a) of its Dealer Sales and Service Agreement (“Dealer Agreement”):

It is the policy of General Motors not to sell or allocate new Motor Vehicles to Dealers for sale or use outside Canada. ...Therefore, Dealer agrees that this Agreement authorizes Dealer to purchase new Motor Vehicles only for resale to customers located and resident in Canada for personal use or for a primary business use other than resale and that Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles for resale or primary use outside Canada;

*Attached hereto and marked as Exhibit “A” to this my Affidavit is a GM Home Office Letter dated February 18, 2003, containing the aforesaid provision.*

- (2) GM includes the following Sale for Resale provision in Article 5.1.2(b) of its Dealer Agreement:

It is the policy of General Motors not to sell or allocate new Motor Vehicles to Dealers for resale to persons or parties engaged in the business of reselling, brokering (including professional auto buying services) or wholesaling. ...Therefore, Dealer agrees that this Agreement authorizes Dealer to purchase Motor Vehicles only for resale to customers for personal use or for primary business use other than resale and that Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles for resale to wholesalers, brokers (including professional auto buying services) or agents. ....;

*The aforesaid provision is contained in the GM Home Office Letter marked as Exhibit “A” hereto.*

- (3) GM includes the following Penalty Provision in Article 5.1.2(d) of its Dealer Agreement:

General Motors may, from time to time, issue a policy regarding reasonable charges to be paid by Dealer to General Motors in relation to the sale or lease of vehicles in contravention of this Article 5.1.2 and Dealer agrees to pay the charges set out in such policy;

*The aforesaid provision is contained in the GM Home Office Letter marked as Exhibit "A" hereto.*

- (4) GM debits back to its authorized dealer any rebate, refund, credit, incentive, allowance, discount or payment of any kind paid to the authorized dealer by GM on the sale of new GM motor vehicles if the authorized dealer has not complied with GM's policy of Vehicle Exports or Sale for Resale;

*The aforesaid statement is contained in the GM Home Office Letter marked as Exhibit "A" hereto.*

- (5) GM compiles and maintains an updated list of individuals and parties who are "suspected" of purchasing new GM motor vehicles for use outside Canada or for the purpose of reselling vehicles in Canada. The list, known as the List of Suspected Exporter/Reseller, is continually updated and is available on the GMinfoNET website ([www.gminfonet.com](http://www.gminfonet.com)) in order to alert and prohibit authorized GM dealers from selling new GM motor vehicles to persons or companies on the list. To the best of my knowledge and belief, Construx and related entities are currently on this list;

*Attached hereto and marked as Exhibit "B" to this my Affidavit is a web-page print out of the GM List of Suspected Exporter/Reseller dated November 8, 2002.*

- (6) GM refuses to supply an authorized dealer with new GM motor vehicles if the purchaser is a known or "suspected" exporter or reseller of new GM motor vehicles, whether or not a purchase agreement has been entered into between a prospective purchaser and an authorized GM dealer;

- (7) GM threatens to, and does, curtail an authorized dealer's new GM motor vehicle allocation if it has not complied with GM's policy of Vehicle Exports or Sale for Resale;

*The aforesaid statement is contained in the GM Home Office Letter marked as Exhibit "A" hereto.*

- (8) GM refuses warranty coverage outside of Canada for new GM motor vehicles sold in Canada and put into service on or after September 1, 2002 unless,
  - (a) the motor vehicle has been in service for at least 6 months and has traveled more than 12,000 kilometers, or
  - (b) the motor vehicle is owned by a Canadian who is outside of Canada as a tourist or by reason of relocation and can provide proof of the same;

*The aforesaid statements are contained in the GM Home Office Letter marked as Exhibit "A" hereto.*

- (9) GM includes in its Competitive Assistance Program agreements, which concern the sale of new GM motor vehicles at volume discounts, restrictions and prohibitions against the export from and resale in Canada of such vehicles;

*Attached hereto and marked as Exhibit "C" to this my Affidavit is a web-page print-out, dated September 24, 2004, containing information on the GM Competitive Assistance Program.*

- (10) GM includes in its Enrollment Form for Fleet Customers the following provisions regarding the export from and resale in Canada of new GM motor vehicles:

New Motor Vehicles ordered under fleet programs must be delivered, registered and retained in service in Canada by the first Qualified Fleet Customer for a minimum of six (6) months and 12,000 kilometers for Lease, Commercial and Daily Rental operation from the date of delivery, or as otherwise defined by GM Canada. By executing this enrollment form, the Fleet Customer certifies that no motor vehicles ordered under the Fleet Program, are being or will be purchased or leased, directly or indirectly, for export, sale or use outside Canada, or for resale in Canada. Fleet Customer is hereby notified that the agreement between GM Canada and Dealer prohibits sales by Dealer to persons who export or resell the motor vehicles within Canada.

...The Qualified Fleet Customer agrees to provide, upon request from GM Canada or selling Dealer, business records and registration information confirming that vehicles purchased and registered solely for use in its Canadian operation and transferred only in accordance with GM Canada program requirements. In the event that the Fleet Customer orders new motor vehicles from a Dealer and identifies them as fleet units eligible for GM Canada fleet programs and the vehicles are not used by the Fleet Customer in accordance with program requirements, as determined by the Fleet Customer's business records or registration information, GM Canada will take appropriate action. This may include, but is not limited to, the Fleet Customer or Dealer being disqualified from future participation in fleet programs and Fleet Customer or the Dealer being charged by GM Canada for the amount of any special allowances, incentives, special option packages or other promotional programs which GM Canada paid or credited the Dealer or the Fleet Customer as a result of the Fleet Customer's inaccurate representations;

*Attached hereto and marked as Exhibit "D" to this my Affidavit is a GM Enrollment Form for Fleet Customers containing the aforesaid provisions.*

- (11) GM includes in its Upfitters Program agreements, which concern the sale of incomplete new GM motor vehicles to customers who perform specialized completions, restrictions and prohibitions against the export from and resale in Canada of such GM motor vehicles;

*The aforesaid statement is contained in the GM Home Office Letter marked as Exhibit "A" hereto.*

- (12) GM prohibits the import into Canada of new GM motor vehicles or new vehicles manufactured outside Canada by any entity related to GM that were not originally manufactured for distribution, sale, registration and

primary use in Canada. In addition, GM refuses to pay for warranty repairs on such motor vehicles. Construx is accordingly prevented from importing motor vehicles manufactured outside Canada by an entity related to GM for sale in Canada or for export;

*Attached hereto and marked as Exhibit "E" to this my Affidavit is a GM Home Office Letter dated November 26, 2003, containing the aforesaid statement.*

- (13) If an authorized GM dealer participates in the purchase or sale of motor vehicles manufactured outside Canada by an entity related to GM and not intended for sale in Canada, GM threatens to, and does:
- a) reduce new GM motor vehicle allocations to the authorized dealer;
  - b) restrict or discontinue the authorized dealer's opportunity to receive high demand models of new GM motor vehicles; and
  - c) charge back to the authorized dealer any payments made on the sale of such motor vehicles.

*The aforesaid statements are contained in the GM Home Office Letter marked as Exhibit "E" hereto.*

### **Effect on Construx**

14. GM's refusal to allow any of its authorized dealers to supply Construx with new GM motor vehicles and its prohibition against the import into Canada of motor vehicles manufactured outside Canada by an entity related to GM has had a devastating effect on Construx. Construx has suffered and continues to suffer substantial diminution of its business.



15. Between 1997 and 2003, Construx's sales of new GM motor vehicles was \$6,869,817.93 representing some 38% of Construx's total sales. In 2004, however, Construx was unable to acquire and sell any new GM motor vehicles.

16. As a result of GM's efforts to prevent the export from and resale in Canada of new GM motor vehicles, Construx has been unable to fulfil purchase orders from its customers. For example, in 2003, Construx was unable to satisfy orders for 120 sport utility vehicles and other similar vehicles of which sales would have represented a profit of approximately \$2,000.00 each and 200 Chevrolet Avalanche and heavy duty diesel pickup trucks at an approximate profit of \$1,250.00 each, for a total loss of \$490,000.00.

17. As a result of GM's efforts to prevent the import into Canada of new motor vehicles manufactured outside Canada by an entity related to GM, Construx has also been unable fulfil purchase orders from its customers. For example, in 2003, Construx was unable to satisfy orders for 15 Chevrolet SSRs of which sales would have represented a profit of approximately \$5,000.00 each, for a total loss of \$75,000.00. Chevrolet SSRs are manufactured in the United States by General Motors Corporation.

18. In the year 2003 Construx sold some 53 new GM motor vehicles to customers. Those new GM motor vehicles represented some 67% of all new motor vehicles sold to customers by Construx in 2003. In the year 2004 the number of new GM motor vehicles sold by Construx had dwindled to zero.

19. Construx has always met and is able to continue to meet the usual trade terms of purchasing new GM motor vehicles. The usual trade terms of purchasing a new GM motor vehicle from GM dealers include a small deposit upon placement of a factory order and a subsequent payment by certified funds prior to the release of the motor vehicle. However, provisions regarding vehicle exports or sale for resale in purchase agreements between authorized GM dealers and their customers are not part of the usual trade terms.

20. To the best of my knowledge and belief there is an ample supply of new GM motor vehicles in the market. Authorized GM dealers are more than willing to supply Construx with new GM motor vehicles especially at a time when customer sales are declining and there are too many vehicles in their inventory. Those dealers are restrained from doing so by the restrictions described in paragraph numbered 13 above. One of the reasons why authorized GM dealers face an oversupply of new GM motor vehicles is because of GM's refusal to allow its authorized dealers to sell new GM motor vehicles to parties such as Construx.

21. Customers and potential customers of Construx located in Canada and outside Canada have requested Construx to supply them with new GM motor vehicles. The measures instituted by GM as described above and, in particular, in paragraph numbered 13 have prevented Construx from doing so. Construx is no longer able to compete in reselling new GM motor vehicles in Canada or in exporting new GM motor vehicles to destinations outside Canada.

22. Customers and potential customers of Construx that are located either in Canada or outside Canada must deal with the Export Division and/or Global Fleet Division or a local entity related to General Motors Corporation in order to acquire new transportation products. To the best of my knowledge and belief such customers no longer have any practicable choice of alternative suppliers of new motor vehicles manufactured by GM, General Motors Corporation or any related entity.

23. It is not possible for Construx to purchase new GM motor vehicles from any sources other than through authorized GM dealers. GM does not supply motor vehicles directly, it supplies new motor vehicles to customers such as Construx through its authorized dealers. In addition, the substantial number of Construx's customers who would place orders for new motor vehicles manufactured outside Canada by an entity related to GM and imported into Canada are authorized GM dealers. If authorized GM dealers are not allowed to sell new GM motor vehicles to Construx or purchase new motor vehicles imported by Construx, Construx will continue to suffer irreparable harm.

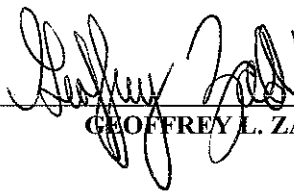
24. To remain viable, Construx urgently needs to be able to purchase new GM motor vehicles for export from and resale in Canada. It also needs to be able to import into Canada motor vehicles manufactured outside Canada by entities related to GM.

25. If interim relief is not granted to Construx in the form of an order that GM take no action to prevent or sanction its authorized dealers from selling new GM motor vehicles to Construx on usual trade terms or from purchasing motor vehicles manufactured outside Canada by an entity related to GM, Construx will lose its remaining customers who still want to place orders for new GM motor vehicles. Construx cannot continue in business and lose more customers.

26. Should an interim order be granted, Construx is prepared to give an undertaking in damages.

AFFIRMED BEFORE ME  
at the City of Toronto,  
in the Province of Ontario,  
this 11<sup>th</sup> day of April, 2005.

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits*

  
\_\_\_\_\_  
GEOFFREY L. ZALDIN

This is Exhibit.....A.....referred to in the  
affidavit of Geoffrey Leigh Zaldin  
sworn before me, this 11<sup>th</sup>  
day of April.....20.05.....

Arzule Ydlw  
A COMMISSIONER FOR TAKING AFFIDAVITS



## **HOME OFFICE LETTER**

**Number: 2003-028R**

**Date: 02-18-2003**

**Subject: VEHICLE EXPORT AND SALE FOR RESALE**

**To: ALL GENERAL MOTORS OF CANADA DEALERS/ SSI RETAILERS**

Please attach a copy of this letter to your copy of HOL 02-050 and revisions. A few minor revisions have been made to the original HOL. Please replace your entire copy of 2003-028 with this revision.

### **WHAT'S NEW (Subject to Program Template Guidelines):**

GMCL is consolidating HOL's 2002-050R, 2002-102 and 2002-124 into this HOL, containing all information pertinent to vehicle export activity under the following sections which are set out below:

**"VEHICLE EXPORT AND SALE FOR RESALE", "VEHICLE ALLOCATION CURTAILMENT", "WARRANTY AND ODOMETER POLICY ON CANADIAN VEHICLES EXPORTED TO THE U.S."**

### **1. VEHICLE EXPORT AND SALE FOR RESALE**

We have communicated to you on several occasions, both verbally and in writing, expressing our serious concern regarding new vehicles that are sold for the purpose of export or resale. Despite the fact that our policy with respect to these unauthorized sales has been clearly articulated over the years, some dealers seem to have disregard for these policies and their contractual obligations under our Dealer Sales and Service Agreement ("Dealer Agreement"). It is timely, therefore, that we restate our policies with respect to new vehicle exporting and new vehicle sale for resale. This letter will now **supersede** all previous Home Office Letters and related correspondence on these subjects and will be updated as required.

Like many dealers, General Motors of Canada Limited ("GMCL") is working hard to address the export problem. To this end, we have recently arranged to receive export data (U.S. registration data, name of Canadian buyer and name of selling Canadian Dealer) on a **monthly** basis. This will improve our efforts with respect to the Suspected Exporter List and the Dealer Audit Process.

## VEHICLE EXPORT

On several occasions, GMCL has advised its Dealers of its concerns respecting the export of new General Motors vehicles to the United States and abroad. Vehicles built by General Motors for sale in Canada are certified in accordance with safety, labeling, and emission standards. The exporting of these vehicles may result in the contravention of various foreign laws.

As you are aware, the Dealer Agreement authorizes dealers to sell General Motors vehicles only to customers located in Canada. Article 5.1.2(a) of the Dealer Agreement, set out below, expressly prohibits dealers from selling new motor vehicles for principal use outside Canada.

*It is the policy of General Motors not to sell or allocate new Motor Vehicles to Dealers for sale or use outside Canada. General Motors Corporation has various United States and overseas distribution organizations which are best suited to distribute Motor Vehicles outside Canada, to meet the approval and operational requirements of the area of the world in which they will be operated, and are in the best position to arrange for proper performance of Motor Vehicle warranty repairs, safety campaign inspections and adjustments and to meet local government requirements. Therefore, Dealer agrees that this Agreement authorizes Dealer to purchase new Motor Vehicles only for resale to customers located and resident in Canada for personal use or for a primary business use other than resale and that Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles for resale or primary use outside Canada.*

Vehicles must be registered in Canada and retained for principal use in Canada for a period of at least 6 months and at least 12,000 kilometers. This 6-month and 12,000 kilometer retention period in Canada is applicable to all GM vehicles regardless of their source. In other words, this retention applies not only to vehicles purchased new from GMCL, but vehicles purchased at auctions, purchased from other dealers, buybacks and vehicles taken in on trade (including, for example, trade-ins by participants in the GMCL Employee Purchase Program and the GMCL Supplier New Vehicle Purchase Program Plus). Furthermore, GMCL's Fleet and Daily rental programs may have additional restrictions and rules and they must also be followed.

In October 1997, dealers/retailers were sent the first list of those individuals or organizations who were suspected of purchasing new General Motors vehicles for use outside of Canada or for the purpose of reselling vehicles in Canada. Selling to these types of customers causes dealers to be in breach of the Dealer Agreement, under Article 5. This list has been continually updated and now is available on the GMInfoNET site under Owner Operator, New Car Sales and Fleet. Please see Attachment A for important information.

In order to protect the viability and integrity of General Motors' worldwide distribution and dealer organizations, to protect its reputation with its customers, and to generally protect itself from the damage caused to its customers and dealers from exported vehicles, GMCL, when it has been determined that a new motor vehicle has been purchased from a dealer for resale or primary use outside of Canada, will debit back to the Dealer any rebate, refund, credit, incentive, allowance, discount or payment of any kind paid by GMCL with respect to any such motor vehicle. Furthermore, GMCL continues to reserve the right to curtail a dealer's vehicle allocation in response to unauthorized

vehicle exports. Affected dealers will be notified of the scope and duration of this curtailment by their Zone Office. In addition, such activity may amount to a breach of the Dealer Agreement and GMCL may take action accordingly. Finally, as stated in Article 5.1.2 (d):

*General Motors may, from time to time, issue a policy regarding reasonable charges to be paid by Dealer to General Motors in relation to the sale or lease of vehicles in contravention of this Article 5.1.2 and Dealer agrees to pay the charges set out in such policy.*

Please refer to Attachment A for important guidelines that Dealer should use to help identify purchasers who may be resellers or exporters.

### **SALE FOR RESALE**

As with Export, Sale for Resale is strictly prohibited by the Dealer Agreement. Article 5.1.2(b), set out below, clearly states GMCL's position with respect to sale for resale.

*It is the policy of General Motors not to sell or allocate new Motor Vehicles to Dealers for resale to persons or parties engaged in the business of reselling, brokering (including professional auto buying services) or wholesaling. General Motors has established a Canadian Motor Vehicle distribution organization which is best suited to distribute Motor Vehicles in Canada, and which is in the best position to arrange for the proper performance of Motor Vehicle warranty repairs, safety campaign inspections and adjustments, pre-delivery inspections, on-going maintenance and compliance with government requirements. Therefore, Dealer agrees that this Agreement authorizes Dealer to purchase Motor Vehicles only for resale to customers for personal use or for primary business use other than resale and that Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles for resale to wholesalers, brokers (including professional auto buying services) or agents. Nothing in this Article 5.1.2 is intended to restrict Dealer from selling Motor Vehicles to other General Motors dealers.*

When it has been determined that a dealer has not complied with GMCL's policy on Sale for Resale, GMCL will debit back to the Dealer any rebate, refund, credit, incentive, allowance, discount or payment of any kind paid by GMCL with respect to any such motor vehicle. In addition, such activity may amount to a breach of the Dealer Agreement and GMCL may take action accordingly. Furthermore, GMCL continues to reserve the right to curtail a dealer's vehicle allocation in response to unauthorized sale for resale. Affected dealers will be notified of the scope and duration of this curtailment by their Zone Office.

Finally, as stated in Article 5.1.2 (d):

*General Motors may, from time to time, issue a policy regarding reasonable charges to be paid by Dealer to General Motors in relation to the sale or lease of vehicles in contravention of this Article 5.1.2 and Dealer agrees to pay the charges set out in such policy.*

### **Special Rules for Vehicles sold to Second Stage Manufacturers**

A Second Stage Manufacturer is a manufacturer and/or distributor of equipment that is installed on a GM vehicle that results in a COMPLETED vehicle that is designed for a specific application. (Examples: tow trucks, ambulances, motorhomes, fire trucks, mobility conversions, cranes, limousines.)

There are 2 categories of second stage manufacturers:

- a) Upfitters who have a valid Recreational and Commercial Vehicle Sales Agreement with GMCL and GMAC (Tri-Party Agreement) to place orders directly with GMCL. Dealers will be provided with an updated list of these upfitters on GMinfoNET in the coming weeks.
- b) Upfitters who have not executed a Tri-Party Agreement with GMCL and GMAC. These upfitters will be required to add a minimum of \$4,000 in parts (excluding all labour and taxes) upgrades. These manufacturers must be approved by the GMCL Commercial Truck Organization and will be recognized by their own Fleet Account Number (FAN). This sale must be reported as a Fleet Sale using the upfitter's FAN. Dealers must take all reasonable steps to ensure that the upfitter is bona fide and that the minimum level of upgrades are being performed (including a statement in the sales agreement with the upfitter specifying the upgrade amounts).

While sale for resale is permitted in the specific circumstances noted above, the export of these converted vehicles from Canada is strictly prohibited pursuant to the Dealer Agreement. Due diligence as described in the Vehicle Export section of this Home Office Letter should likewise be followed. For example, the end user must register and retain the upfitted vehicle in Canada for at least 6 months and at least 12,000 kilometers. Please note that the sale of converted vehicles must also comply with the Fleet and/or Daily Rental Programs as described in other Home Office Letters. Please refer to Attachment A for important guidelines that Dealer should use to help identify purchasers who may be resellers or exporters.

### **GENERAL**

It should be noted that there may be certain situations where a customer, who has bought, paid for and registered a vehicle in Canada, moves to the United States. In this situation the customer may be required to obtain a Certificate of Compliance to move the vehicle to the United States. In these situations, GMCL will consider the customer/dealership request for the certificate. The Vintage Services Department of GMCL should be contacted at 905-644-3387 in these situations.



www.canada411.ca), does the name/address match?

**II. Things to note about the future vehicle pick up arrangements by companies:**

1. Who will come to the dealership and what is their employment status?
2. Will they have proper documentation/identification?
3. Are you being asked to deliver the vehicles to a business location?
4. Is it the same address as the purchaser's address?
5. What type of business operates at the drop location? Is it a "fit"?
6. Have you recorded the name of the person picking up the vehicle?

Addressing all of these questions is a critical part of the due diligence process. The authorized dealer management representative who accepts the deal by signing on behalf of the dealership also needs to verify the legitimacy of the information presented on the buyer's order **before** accepting the deal on behalf of the dealership.

**Dealers need to ensure two critical business steps are in place in their sales operations:**

1. Adequate management review of each vehicle purchase agreement occurs before signing. The customer name should be readable, numbered companies should also have their operating name shown, fleet deals should be scrutinized at least as much as retail deals within the dealership.
2. Dealer employment contracts, especially those for Sales and Fleet department personnel, should contain a clause that references the Dealer Agreement and allows for disciplinary action by the Dealer up to and including dismissal for sales to exporters and resellers.

**2. VEHICLE ALLOCATION CURTAILMENT**

The details of Vehicle Allocation Curtailment were reviewed with your Dealer Communications Team on August 21, 2002 as noted below.

General Motors of Canada Limited's ("GMCL") Zone staff will review export data to determine which dealers will be subject to an audit of their sales files. Selection will be based on various criteria such as the total number of exports, the number of exports by vehicle line, exports as a percent of total sales and by vehicle line. Following the Audit and after Senior Management review in Oshawa, a dealer's allocation will be curtailed when warranted for 90 days. The dealer will be given one week's advance written notice in order to allow the dealer to complete transactions that are currently in process.

The 90-day curtailment will be determined on a vehicle line basis and as such could result in more than one vehicle line allocation being curtailed at any point in time. GMCL will reinstate the allocation after the 90-day period if, in the opinion of GMCL, the dealer has demonstrated to GMCL that he or she has taken corrective actions to prevent further export policy violations and there have been no further occurrences warranting ongoing curtailment. Additionally a dealer's allocation index may be reduced to reflect

market demand within the dealer's Area of Primary Responsibility.

As indicated in Home Office Letter 2002-050R, this allocation curtailment policy is part of a larger plan which is designed to address the export problem and protect the viability and integrity of General Motors and its dealer networks in Canada and abroad. It is important to note that this policy may be amended from time to time and GMCL reserves the right to take actions instead of or in addition to those set out in this policy, up to and including termination of the Dealer Sales and Service Agreement where warranted.

### 3. WARRANTY AND ODOMETER POLICY ON CANADIAN VEHICLES EXPORTED TO THE U.S.

The policy is as follows:

- New vehicles originally sold in Canada with an in-service date on or after September 1, 2002 must have been in service in Canada for at least six months and must have at least 12,000 kilometers (7,500 miles) before a GM Dealer/Retailer in the U.S. is authorized to perform warranty work. Exceptions apply to Canadian owners touring in the U.S., Canadians legitimately relocating to the U.S., and work required by a GM Product Recall.
- GM's Policy and Procedure Manuals, both in Canada and the U.S., have long stated in Article 1.2.2 that Warranty "coverages do not apply if the odometer has been disconnected, its reading has been altered, or the mileage/kilometrage cannot be determined". Each warranty and owner assistance manual in both Canada and U.S. contains the same language.
- If the odometer needs to be repaired, replaced or converted from kilometers to miles (or vice versa), it is critical that such work be performed properly and only when necessary. Therefore, unless otherwise specifically authorized in writing by GM/GMCL, the customer must go to an authorized GM/GMCL Dealer/Retailer who in turn will arrange to have such odometer replacement, repairs or conversion performed by a GM authorized Electronic Service Center in the U.S. or Electronic Instrument Cluster Service Centre in Canada. If the odometer has not been repaired, replaced, or converted according to GM/GMCL's approved process the vehicle warranty will be denied on an ongoing basis.
- When odometers are repaired, replaced or converted using the approved process the vehicle's history file will be updated with a claim code. It will be the responsibility of Dealers/Retailers to check each vehicle's history using GMVIS to determine the original country of sale, the in-service date, and if the odometer conversion was authorized. If the vehicle is not eligible for warranty, the Dealer/Retailer must advise the customer accordingly. GM/GMCL reserves the right to debit Dealers/Retailers for any warranty claims submitted on ineligible vehicles.
- New vehicles originally sold in Canada with an in-service date before September 1, 2002 will not have the warranty restricted in the U.S. solely because (a) the vehicle has less than 12,000 kilometers (7,500 miles) and less than six months of service in Canada or (b) the odometer replacement, repair, or conversion is not completed by an approved GM/GMCL source, provided the replacement, repair or conversion is completed properly.
- It is important to note that neither GM nor GMCL are responsible to determine

whether an odometer conversion is required by any applicable law in Canada or the U.S., or if conversions performed in Canada are acceptable to U.S. authorities or vice versa.

- For vehicles with an in-service date of September 1, 2002 or later, General Motors Protection Plan vehicle service contracts will not be honoured if the odometer has not been converted according to this policy.
- The list of twenty-five (25) GM authorized Electronic Service Centers in the U.S. and three (3) Electronic Instrument Cluster Service Centres in Canada are attached for your reference.

Please note that GM dealers in the U.S. were advised of the policy on warranty and odometers on September 23, 2002. Furthermore, both GM and GMCL want to emphasize that these actions are not meant to encourage exportation of new vehicles from Canada into the U.S. for resale. Such actions remain contrary to GM and GMCL policies.

Contact your Zone representative regarding the interpretation of any HOL. Exceptions to any HOL or policy are only effective if made in writing and signed by the Vice President - Sales, Service & Marketing or the General Director - Sales.

General Motors of Canada Limited reserves the right to amend or revoke this policy at any time without prior notice. General Motors of Canada Limited reserves the right to take actions instead of or in addition to those set out in this Home Office Letter.

Final decisions on all matters relating to the interpretation of any rule or aspect of this activity rest solely with General Motors of Canada Limited.

M.J. Comeau  
Vice President - Sales, Service & Marketing

This is Exhibit.....B.....referred to in the  
affidavit of Geoffrey Leigh Zaldin  
sworn before me, this.....11<sup>th</sup>.....  
day of.....April.....2005.....

.....Arzule Yelms.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

# LIST OF SUSPECTED EXPORTERS/RESELLER

TO: ALL GENERAL MOTORS OF CANADA DEALERS/RETAILERS

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## STRICTLY CONFIDENTIAL

This notice and its contents are to be maintained as strictly confidential and must not be disclosed, released, or distributed to anyone who is not directly employed by the dealership/retailer.

In October 1997, dealers/retailers were sent the first list of those individuals or organizations that were suspected of purchasing new General Motors vehicles for use outside of Canada or for the purpose of reselling vehicles in Canada. Selling to these types of customers causes dealers to be in breach of the Dealer Sales and Service Agreement, under Article 5.

As dealer personnel have been making an increasing number of inquiries about names on the subject list and/or what action should be taken when these individuals or organizations are attempting to purchase new General Motors vehicles, the following due diligence guidelines are offered, in addition to the guidelines set out in previous Home Office Letters ( see your Zone representative if you need copies):

- The List of Suspected Exporters/Resellers is strictly confidential and not to be disclosed in any way to suspected Exporters/Resellers as the reason not to sell. The list is not a prohibition to sell, but a warning to be particularly wary of certain customers who may be involved in exporting and/or reselling.
- General Motors cannot divulge the source of information concerning the subject list.
- The Fleet Command Centre can assist you in setting up a FAN and determining whether a customer has a valid FAN. The existence of a valid FAN does not imply in any way that a particular transaction is automatically approved or is in compliance with all export or sale for resale policies.
- Given the due diligence required by the Dealer at the point of sale, the authorization for any particular sale lies with the Dealer.

The issue of vehicles being exported or sold for resale continues to be a serious concern to General Motors and Dealers alike. Your understanding and use of the above guidelines and other related policies and procedures is critical.

To confirm your understanding of the above and view the "List", click **OK**.

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 1 2 3 4 5 6 7 8 9 A B C D E F G H I J K L M N O P Q R S T U V W Y  
 Z (

Organization Name ↕	Address	City ↕	Province ↕	Postal Code	Date
<u>CENTRAL AMERICAN LABOUR P.</u>	700 MCLEOD	NIAGARA FALLS	ON	L2G 7K3	07/2002
<u>CENTRAL CRANE SYSTEMS</u>	1131 FAIRWAY INDUSTRIAL PARK	NISKU	AB	*	9/2000
<u>CENTRAL DRILLING</u>	12029 49 ST.	EDMONTON	AB	T5L 2J2	8/2001
<u>CENTRAL PROPERTY MNGMT/861410 RR#1 ONT.</u>		PUSLINCH	*	N0B 2J0	*
<u>CENTRE AUTO REGAL</u>	4226 BOUL. SAINT-JEAN, BUREAU 206	DOLLARD-DES- / ORME	PQ	H9G 1X5	*
<u>CENTRE DE RENOVATION COMMERCIAL</u>	2941 LAPOINTE	MONTREAL	PQ	H1L 5M3	07/2002
<u>CENTRE EQUESTRE STE-GENEVIEVE</u>	16852 GOUIN OUEST, #301	STE. GENEVIEVE	PQ	*	11/2001
<u>CENTRE EQUESTRE STE GENEVIEVE</u>	16852 GOVIN	ST GENEVIEVE	PQ	H9H 2E4	07/2002
<u>CENTRE RECREATIF D./S. DRIVER INC.</u>	935, BOUL. ST- LUC	ST-LUC	PQ	J2W 1B6	*
<u>CENTREX INTERNATIONAL (CAN.) LTD.</u>	750 DARLENE CRT., UNIT 2	BURLINGTON	ON	*	*
<u>CENTREX INT. CANADA INC</u>	750 DARLENE	BURLINGTON	ON	L7L 5V1	07/2002
<u>CENTURY AUTO SALES</u>	71 CLARKE RD.	LONDON	ON	N5W 5L6	12/99
<u>CENTURY CONCRETE INC.</u>	3500 STEELES AVE.	TORONTO	ON	*	07/2002
<u>CENTURY DRYWALLING LTD.</u>	9509 84 ST.	FORT SASKATCHEWAN	AB	*	9/2000
<u>CFM GROUPE FINANCE</u>	205 BADDERWOOD RD., APT. 415	DOLLARD DES ORMEAUX	PQ	H9G 1G8	04/2002
<u>CFM GROUPE FINANCIER</u>	201 BADDERWOOD	DOLLARD DES OURMEAUX	PQ	H9A 1P9	07/2002
<u>CGI</u>	2895 ST-DONAT	MONTREAL	PQ	H1L 5K9	04/2002

<u>CHAD ENTERPRISE INC.</u>	1900 LOGAN AVE	WINNIPEG	MB	R2R 0H5	09/2002
<u>CHADWORTH A. KENWOOD</u>	*	WINNIPEG	MB	R3C 2E7	07/2002
<u>CHAINE AUTO LOC (JACQUES VINCENT, LOCATION EL</u>	*	GRAND-MERE	PQ	*	*
<u>CHANCELOR LEASING</u>	3473 FRASER ST.	VANCOUVER	BC	V5V 4C3	*
<u>CHAREST &amp; FRERES</u>	4510 BELANGER	TROIS RIVIERES	PQ	G9A 4L5	07/2002
<u>CHAREST &amp; FRERES</u>	2250 ROYALE	TROIS RIVIERES	PQ	G9A 1L5	07/2002
<u>CHARIOTS OF FIRE</u>	*	*	*	*	02/2002
<u>CHARIOTS OF HIRE RENTALS</u>	3218 DANFORTH AVENUE	TORONTO	ONTARIO	M1L 1C1	01/2002
<u>CHARIOTS OF HIRE</u>	3218 DANFORTH AVENUE	SCARBOROUGH	ON	*	02/2002
<u>CHECKMATE REALITY</u>	152 GOLF LINKS	BADEN	ON	N0B 1G0	07/2002
<u>CHEMPOSITE</u>	*	DELTA	*	V4G 1E4	*
<u>CHERELLE ENTERPRISES</u>	2213 CAPISTRANO KELOWNA DR.		BC	V1V 2A2	04/2002
<u>CHERELLE ENT. INT. LTD.</u>	2213 CAPISTRANO KELOWNA		BC	V1V 2A2	07/2002
<u>CHERRY GROVE EXCAVATIONS</u>	P.O. 148	CHERRY GROVE	AB	T0A 0T0	01/2002
<u>CHERRY LANE DEVELOPMENTS</u>	52131 RR 210	SHERWOOD PARK	AB	*	9/2000
<u>CHESTER BLATZ</u>	DELIVERY	KELSEY	AB	T0B 2K0	09/2002
<u>CHEVALIER LEASING</u>	4334 KINGSTON	SCARBOROUGH	ON	M1E 2M8	07/2002
<u>CHEVROLAKE MOTORCARS INC./WAYNE DARBY HOLDING</u>	8540 RIVER ROAD	RICHMOND	BC	V6X 1T4	3/2001
<u>CHEVROLANE MOTOR CARS LTD.</u>	102-58TH AVE. S.W.	CALGARY	AB	T2H 0A2	*
<u>CHEYENNE AERO LTD.</u>	575 PALMER RD. NE, APT. 15	CALGARY	AB	T2E 7G4	04/2002
<u>CHEZ DIANE LTD.</u>	9040 GLENTHORNE	RICHMOND	BC	*	*



	COURT				
<u>CHIEF MOUNTAIN ADVENTURE TOURS</u>	*	CARDSTON	*	T0K 0K0	*
<u>CHILCOTIN RENTALS</u>	R.R. #3 KINGLET RD.	WILLIAMS LAKE	BC	*	3/2001
<u>CHINOOK ENVIRONMENTAL</u>	2209 33 STREET	CALGARY	AB	T3E 2S9	04/2002
<u>CHIP'S PIPELINE SERVICES LTD.</u>	7 MONTCALM AVENUE	CAMROSE	AB	*	05/2002
<u>CHIP'S PIPELINE SERVICES LTD.</u>	7 MONTCALM	CAMROSE	AB	T4V 2K9	07/2002
<u>CHRYSIS CONSTRUCTION/GROVE RENTALS AND LEASIN</u>	3040 MCNALLY RD.	VICTORIA	BC	V8N 1T4	10/2000
<u>CICOM EXPRESS</u>	6059 MAIN	MARKHAM	ON	L6P 4C9	07/2002
<u>CIE SYSTEMS SEC S.O.</u>	187 BEDFORD	ST LAMBERT	PQ	J4R 1Z9	07/2002
<u>CISERO ENTERPRISE LTD</u>	50 MIDLAND	VERNON	BC	V1B 3B7	07/2002
<u>CITY FISH</u>	3515 27 STREET	CALGARY	AB	T1Y 5E4	07/2002
<u>CITY RENT A CAR OR 2235582 N.S. LTD.</u>	265 PRINCE ST., BOX 132	SYDNEY	*	B1P 5K9	*
<u>CLAIREVIEW LEASING</u>	5500 ROYAL MOUNT ST., APT. 210	MONTREAL	PQ	H4P 1H7	04/2002
<u>CLARIANT CANADA INC.</u>	4600 COUSENS	VILLE ST-LAURENT	PQ	H4S 1X3	07/2002
<u>CLARK BROS. ENT.</u>	*	CZAR	AB	T0B 0Z0	10/2002
<u>CLARK DRILLING LTD.</u>	*	CAMROSE	AB	T4V 1X3	09/2002
<u>CLARK DRILLING LTD</u>	*	NEW NORWAY	AB	T0B 3L0	09/2002
<u>CLASSIC CAR STORE</u>	149 DOLOMITE DR.	TORONTO	ON	*	09/2002
<u>CLASSIC SBDC INVESTMENTS LTD.</u>	385 ONTARIO ST.	MILTON	ON	L9T 2N2	11/99
<u>CLASSIC TILE CONTRACTORS</u>	1143 INVICTA DR 4	OAKVILLE	ON	L6H 4C1	09/2002
<u>CLASSIC TOURS LTD.</u>	1136 FALMOUTH BACK RD.	FALMOUTH	NS	*	*

CLASSY CAR LEASING	27 STATION STREET, P.O. BOX 12	ESSEX	ON	N8M 2Y1	1/2000
CLEAN SWEEP MAINTENANCE	4963 YONGE	NORTH YORK	ON	M2N 5N6	07/2002
CLEGG CONTRACTING	1306 KOOTNEY	KAMLOOPS	BC	V2C 5N7	07/2002
CLIMATISATION KLA-DOU	1859 ST-LOUIS	ST LAURENT	PQ	H4M 1N5	09/2002
CLOCKTOWER FARM INC./G.W. SMITH	6781 LEFEUVRE ROAD	ABBOTSFORD	BC	V4X 2C1	8/2001
CLOCKTOWER FARM INC.	6781 LEFEVURE	ABBOTSFORD	BC	V4X 2C1	07/2002
CLUB FITTERS CUSTOM GOLF	11440 142	EDMONTON	AB	T5M 1V1	07/2002
CLUB STUDIO 3388361 CDA INC.	2109 ST. LAURENT	MONTREAL	PQ	H2X 2T5	8/2001
CLUBFITTERS CUSTOM GOLF	11440 142 ST.	EDMONTON	AB	T5M 1V1	06/2002
CM CARPET SERVICE	10941 133 ST.	EDMONTON	AB	T5M 1G9	11/2000
CMA ENTREPRISE INC	156 TIMBERLIA	KIRKLAND	PQ	H9J 2N5	07/2002
COACH WEST/ABTRAN LTD.	20814 4A STREET NE	CALGARY	AB	T2E 3W4	*
COALDALE PHARMACY/513108 ALTA	1418 ASPEN PLACE S.	LETHBRIDGE	AB	*	09/2002
COASTAL ENTERPRISE	593767 HWY 59	HOLBROOK	ON	N0J 1C0	07/2002
CODASH OILFIELD SERVICES LTD.	*	ONOWAY	AB	T0E 1V0	07/2002
COFFRAGE D.R.	197 BOUL. LABELLE	ROSEMERE	PQ	*	*
COLONES LTD.	116 EDGEBANK PL. NW	CALGARY	AB	T3A 4L4	04/2002
COMEAU & SAVOIE CONSTRUCTION	138 ST. PIERRE	CARAQUET	NB	E1W 1B6	07/2002
COMET IMPORT EXPORT	42 MARSHALL ST.	WATERLOO	ON	N2J 2T3	*
COMFORT CONVERSIONS	33010 - 3919 RICHMOND RD.	CALGARY	AB	T3E 7G2	11/99
COMMERCE ELECTRIC CO INC	94 KENHAR DR 19	WESTON	ON	M9L 1N2	09/2002

<u>COMMERCE NEWPORT NP</u>	3232 CYNTHIA	LAVAL	PQ	H7P 4C2	07/2002
<u>COMMERCIAL REALTY INC</u>	2313 EARLTON	CALGARY	AB	T2S 2Z3	07/2002
<u>COMMON SENSE CONSULTING</u>	2422 ERLTON ST. SW, APT. 105	CALGARY	AB	T2S 3B6	04/2002
<u>COMMUNICATIONS IMAGE</u>	201 DUNBAR	TMR	PQ	H3P 2H4	07/2002
<u>COMPUSHIRE</u>	179 CAMPBELL AVENUE	THORNHILL	ON	*	01/2002
<u>COMPUTERIZED ALIGNMENT/793068 ALTA LTD.</u>	9010 58 AVE.	EDMONTON	AB	*	8/2001
<u>COMPUTOR ALIGNMENT</u>	9010 58 AVE.	EDMONTON	AB	T6E 6A9	04/2002
<u>CONCEPT RAN INC.</u>	3178 HONORE DE BALZAC	LAVAL	PQ	H7P 5T3	07/2002
<u>CONCEPT RAN</u>	3178 HONORE DE BALZAC	ST. ELZEAR/CHOMEDEY LAVAL	PQ	H7P 5Y3	01/2002
<u>CONCORD LEASING</u>	2951 HWY WEST	CONCORD	ON	L4K 1W3	*
<u>CONCUT SERVICES</u>	120-3051 KING GEORGE HWY	SURREY	BC	V4P 1A3	*
<u>CONDOR COURIER</u>	420 34515 DIXIE RD.	MISSISSAUGA	ON	L4Y 4J6	2/2001
<u>CONGDON ENTERPRISES LTD.</u>	18303 107 AVE./18404 61 AVE.	EDMONTON	AB	*	11/2000
<u>CONKLIN OUTFITTERS AND EXPEDITIONS INC.</u>	8-51 BIGHILL WAY	AIRDRIE	AB	T2A 1M8	6/2001
<u>CONKLIN ROAD MAINTENANCE</u>	GENERAL DELIVERY	CONKLIN	AB	*	9/2000
<u>CONST PATRICK SEVIGNY INC</u>	94 DES RIVIERES	ST CAMILLE	PQ	J0A 1G0	07/2002
<u>CONSTRUCTION A &amp; D</u>	1 RUE ALFRED CRESEND	MONTREAL	PQ	H3X 3H9	07/2002
<u>CONSTRUCTION B.N.C. INC</u>	315 LABELLE	LAVAL	PQ	H7P 2P2	07/2002
<u>CONSTRUCTION DUCOR</u>	1830 LOUIS BELANGER	LAVAL	PQ	H7W 5K6	02/2002

<u>CONSTRUCTION D.B.</u>	2121 PIERRE HAMEL	CANTON DE MAGOG	PQ	J1X 5T9	07/2002
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<u>CONSTRUCTION GIANINNI</u>	4650 CLANRANALD	MONTREAL	PQ	H3X 2R9	07/2002
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Individuals

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This is Exhibit.....C.....referred to in the  
affidavit of Geoffrey Leigh Zaldin  
sworn before me, this.....11<sup>th</sup>  
day of.....April.....2005

Angela Yslaw  
A COMMISSIONER FOR TAKING AFFIDAVITS

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BROWSE > GM Fleet Fleet Programs

GOVERNMENT ELIGIBLE FLEET NATIONAL GOVERNMENT COMMERCIAL REGULATED UTILITIES

## FLEET PROGRAMS

### The 2005 GM Online Fleet eBrochure

Download The 2005 GM Online Fleet eBrochure

## Commercial Accounts

General Motors of Canada Limited ("GMCL") is pleased to announce the 2005 Model Year GMCL Competitive Assistance Program. The program is designed to provide Dealers with Competitive Fleet Allowance, to be totally passed on to Fleet customers, which will allow us to be competitive in the commercial fleet segment and Government and Regulated Utility business.

A qualified Fleet customer is defined as any business entity (Lease or Commercial), that has five (5) or more registered vehicles ten years old or newer (cars and/or trucks of all makes), licensed, titled, insured and retained in company service or that will operate five (5) or more vehicles after its present acquisition which are used exclusively for commercial purposes. In addition, any business entity that places an order and subsequently takes delivery, of three (3) or more new and unused General Motors vehicles at one time to be used for commercial purposes shall be considered a qualified Fleet customer.

Competitive Assistance is no longer stackable with other Fleet incentives or programs.

Competitive Assistance (CA) is a competitive allowance, which GMCL may make available on specific vehicle lines for Dealers to pass on to eligible Fleet customers. Eligible Fleet customers are those who have been assigned their own FAN that remains in good standing at time of vehicle delivery and who otherwise comply with all rules and guidelines.

Specific amounts are authorized for individual customers only when a competitive need is apparent, and are generally based on volume, product availability, competitive offerings and market conditions at the time of application. Amounts may vary by customer. CA may be provided in certain cases only on the basis that the customer first purchases the minimum number of units required to be eligible. CA allowances are provided at the sole discretion of GMCL.

### Eligibility:

A Customer that is assigned a Fleet Account Number or would qualify for a Fleet Account Number is considered Fleet.

To initiate a request for Competitive Assistance, Fleet customers may contact a GM Dealer, a GMCL Fleet Account Manager or Commercial Truck Sales Manager, or they may inquire through an Independent Leasing or National Fleet Management Company. All applications will be processed through our Fleet Financial Services Group. Fleet Program Coordinators can be reached at 1-800-567-2437.

## FLEET CUSTOMERS

Vehicle Order  
Vehicle Order  
Fleet Warranty  
Contact Fleet

## DISCOVER

Find Vehicle  
Goodwrench

## PROGRAMS

SMARTLE

GM TOTAL

Roadside

Goodwrench

SATURN

SAAB SE

**Eligible Vehicles:**

All new and unused 2005 model year Chevrolet (except Chevrolet Corvette), Pontiac, Buick, Cadillac (except Cadillac XLR,) passenger cars and Chevrolet (except Chevrolet SSR), Pontiac, Buick and GMC vans and light duty trucks (except HUMMER).

**Program Time Period:**

Following authorization of a CA Allowance for a specific Fleet customer, the CA will remain in effect for orders placed throughout the balance of the 2005 model year, unless notified otherwise. For early or late product announcements, Dealers should contact Fleet Financial Services to determine availability of incentives.

**In-Service Requirements:**

All eligible vehicles delivered under this program must be licensed, titled and retained for use in Canada for at least six (6) months and 12,000 kilometres by the first eligible Fleet customer who takes delivery of the vehicle.

Vehicles that do not meet all program requirements are ineligible.

*General Motors of Canada Limited reserves the right to amend or revoke this program at any time without prior notice.*

*GM Canada reserves the right to audit Dealers records and disqualify any amounts paid which do not qualify under the eligible Program Guidelines listed previously. GM Canada will charge back to the Dealer any amounts paid on ineligible units. General Motors of Canada Limited reserves the right to take actions instead of or in addition to those set out in this paragraph.*

*Final decisions on all matters relating to the interpretation of any rule or aspect of this activity rest solely with General Motors of Canada Limited.*

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[Fleet > Fleet Programs](#)

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[Overview](#) | [Basic Fleet](#) | [Rental](#) | [Government](#) | [Commercial](#) | [Service Vehicles](#)

This is Exhibit.....D.....referred to in the  
affidavit of Geoffrey Leigh Zaldin  
sworn before me, this.....11<sup>th</sup>.....  
day of.....April.....2005.....

Angelika  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS



**GENERAL MOTORS OF CANADA LIMITED**  
 Enrollment Form for Fleet Customers  
 (Not required for Political Subdivisions and Public Utilities)

**FOR GM USE ONLY**  
 FAN ASSIGNED \_\_\_\_\_

General Motors of Canada Limited ("GM Canada") makes available to General Motors Dealers, from time to time, fleet allocations, fleet incentives and other fleet programs in conjunction with the sale or lease of new motor vehicles by Dealers to Qualified Fleet Customers for certain uses in Canada.

A Qualified Fleet Customer is defined as any business entity (Daily Rental, Lease or Commercial) that has 5 or more registered vehicles (cars and/or trucks of all makes), licensed, titled and retained currently in company service or that will operate 5 or more vehicles after its present acquisition which are used for commercial purposes. In addition, any business entity that places an order (and subsequently takes delivery) for 3 or more new and unused General Motors vehicles at one time to be used for commercial purposes shall be considered a Qualified Fleet Customer.

New motor vehicles ordered under fleet programs must be delivered, registered and retained in service in Canada by the first Qualified Fleet Customer for a minimum of six (6) months and 12,000 kilometers for Lease, Commercial and Daily Rental operation from the date of delivery, or as otherwise defined by GM Canada. By executing this enrollment form, the Fleet Customer certifies that no motor vehicles ordered under the fleet program, are being or will be purchased or leased, directly or indirectly, for export, sale or use outside of Canada, or for resale within Canada. Fleet Customer is hereby notified that the agreement between GM Canada and Dealer prohibits sales by Dealer to persons who export or resell the motor vehicles within Canada.

By executing this enrollment form, the Fleet Customer certifies that they are a Qualified Fleet Customer, acknowledges the fleet program eligibility requirements specified herein and agrees to comply with them. Additional eligibility requirements for specific fleet programs, as issued by GM Canada to Dealers from time to time, will be made available to Qualified Fleet Customers by the selling Dealer.

The Qualified Fleet Customer agrees to provide, upon request from GM Canada or selling Dealer, business records and registration information confirming that vehicles were purchased and registered solely for use in its Canadian operation and transferred only in accordance with GM Canada program requirements. In the event that the Fleet Customer orders new motor vehicles from a Dealer and identifies them as fleet units eligible for GM Canada fleet programs, and the vehicles are not used by the Fleet Customer in accordance with program requirements, as determined by the Fleet Customer's business records or registration information, GM Canada will take appropriate action. This may include, but is not limited to, the Fleet Customer or Dealer being disqualified from future participation in fleet programs and the Fleet Customer or the Dealer being charged by GM Canada for the amount of any special allowances, incentives, special option packages or other promotional programs which GM Canada paid or credited to the Dealer or the Fleet Customer as a result of the Fleet Customer's inaccurate representations.

GM Canada reserves the right, acting at its sole discretion, to amend or revoke this program in whole or in part and to amend or revoke any or all of the privileges or rights of Fleet Customer indicated below.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ YEAR \_\_\_\_\_

FLEET CUSTOMER COMPANY NAME (please type or print) \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ PROV \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

( ) PHONE NO. ( ) FAX NO. \_\_\_\_\_ E-MAIL ADDRESS \_\_\_\_\_  SIGNATURE & TITLE OF OFFICER OF COMPANY \_\_\_\_\_

LANGUAGE PREFERENCE: \_\_\_\_\_ ENGLISH \_\_\_\_\_ FRENCH

FLEET CUSTOMER CONTACT NAME (please print) \_\_\_\_\_ FLEET CUSTOMER CONTACT TITLE (please print) \_\_\_\_\_

FLEET CUSTOMER BUSINESS TYPE: (please circle one only) i) Commercial ii) Government iii) Daily Rental Company iv) Leasing Company v) Taxi/Limo  
 j) Utility vi) GM Franchised Dealership/Dealer Owned Leasing Co.

TOTAL FLEET SIZE: _____	Total Passenger _____	Total Light Duty Truck _____	Total Medium Duty Truck _____
	Number of GM _____	Number of GM _____	Number of GM _____

ACQUISITION SOURCE: BUY \_\_\_\_\_ LEASE \_\_\_\_\_ FROM \_\_\_\_\_

SUBMITTED BY (GM DEALERSHIP): \_\_\_\_\_ DEALER CODE \_\_\_\_\_

SIGNATURE OF GM CANADA DEALERSHIP FLEET MGR. \_\_\_\_\_ SEND OR FAX TO: GM Fleet Command Centre  
 PO Box 130, Station A  
 Oshawa, ON L1H 7L1

PLEASE PRINT NAME: \_\_\_\_\_ SIGNATURE OF DEALER OPERATOR/GENERAL MANAGER: \_\_\_\_\_ FAX 1-800-269-9118

This is Exhibit..... E ..... referred to in the  
affidavit of Geoffrey Leigh Zaldin  
sworn before me, this..... 11<sup>th</sup> .....  
day of..... April ..... 2005.....

..... Angela Yahn .....  
A COMMISSIONER FOR TAKING AFFIDAVITS



**HOME OFFICE LETTER**

**Number: 2003-176**

**Date: 11/26/2003**

**Subject: US EXPORTS INTO CANADA**

**To: ALL GENERAL MOTORS OF CANADA DEALERS**



03-176.doc

Home Office Letter ("HOL") 2003-028 dated February 6, 2003 provided you with General Motors of Canada Limited's ("GMCL") policy with respect to Vehicle Exports and Sale for Resale. While the contents of that HOL focused on exports from Canada to the United States, reference was made to the need to protect the viability and integrity of General Motors' worldwide distribution and dealer organizations. Recently, GMCL has been made aware that certain New Motor Vehicles originally intended for distribution, sale, registration, and primary use in the United States have been exported into Canada. For purposes of this HOL, New Motor Vehicles are defined as having been in service, in the United States, for less than six months and having less than 7,500 miles (12,000 kilometers) on the odometer. Vehicles built by General Motors for sale in other countries, such as the United States, are certified to comply with applicable safety, labeling and emissions requirements in those countries and the importing of such vehicles into Canada may result in the contravention of various laws. As a reminder, it is contrary to the terms of the Dealer Sales and Service Agreement ("DSSA"), specifically Article 13.1 (h), (i) and (m), for a Dealer not to comply with applicable laws and regulations. As a result, GMCL is issuing the following policy, consistent with our concerns stated both above and below:

Dealers located in Canada are not permitted to sell New Motor Vehicles that were not originally manufactured for distribution, sale, registration, and primary use in Canada. Furthermore, Dealers who participate in the purchase or sale of such vehicles will have their new vehicle allocation reduced and the opportunity to receive high demand models will be restricted or discontinued. Any payments made by GMCL to the Dealer with respect to the sale and/or service of these vehicles will be charged back to the Dealer. GMCL will not pay for warranty repairs on these New Motor Vehicles. Exceptions apply to United States owners touring in Canada, individuals legitimately relocating to Canada, and work required by a General Motors' Product Recall notice.

For vehicles originally sold in the U.S. that were in service in the United States for more than six months and where the mileage exceeds 7,500 miles (12,000 kilometers), Dealers are reminded to refer to GMCL's Policies and Procedures Manual, Article 1.1.1. This article states in part that Warranty "coverages do not apply if the odometer has been disconnected, its reading altered or the mileage/kilometrage cannot be determined". Warranty and owner assistance manuals in both Canada and the United States contain the same language.

If the odometer needs to be repaired, replaced or converted from miles to kilometers (or vice versa), it is critical that such work be performed properly and only when necessary. Therefore, unless otherwise specifically authorized in writing by GM/GMCL, the customer must go to an authorized GM/GMCL Dealer/Retailer who in turn will arrange to have such odometer replacement, repairs or conversion performed by a GM authorized Electronic Service Center in the United States or Electronic Instrument Cluster Service Centre in Canada. As a reminder, a list of these locations was provide to you in HOL 2003-028. If the odometer has not been repaired, replaced or converted according to GM/GMCL's approved process the vehicle warranty will be denied on an ongoing basis.

When odometers are repaired, replaced or converted using the approved process the vehicle's history file will be updated with a claim code. It will be the responsibility of Dealers/Retailers to check each vehicle's history using GMV/S to determine the original country of sale, the in-service date and if the odometer conversion was authorized. If the vehicle is not eligible for warranty, the Dealer/Retailer must advise the customer accordingly. GM/GMCL reserves the right to debit Dealers/Retailers for any warranty claims submitted on ineligible vehicles.

It is important to note that neither General Motors Corporation nor GMCL are responsible to determine whether an odometer conversion is required by any applicable law in Canada or the United States, nor will General Motors Corporation or GMCL confirm that conversions of odometers be accepted by the respective government authorities.

Similar to GMCL's HOL 2003-028, General Motors Dealers in the United States are prohibited from selling New Motor Vehicles for use outside of the United States pursuant to their DSSA. Inducement to breach the contract between General Motors and its Dealers in the United States may expose Dealers and other individuals to liability and other potential legal claims.

GMCL is working with General Motors Corporation to identify and track such vehicles so they can take appropriate action with their Dealers. If you become aware of any possible violation of these policies, please provide the specific information to your Zone Office.

M.J. Comeau  
Vice President - Sales, Service & Marketing