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# **Canadian Vehicle Manufacturers' Association**

**Submission to the 2005**

**Pre-Budget Consultation Process**

March 2005

## **INTRODUCTION**

The Government of Ontario and the citizens of this province are increasingly aware of the need to make choices in the types of public services that are offered to Ontarians. There is a growing awareness that the government cannot be all things to all people against the backdrop of eliminating the \$6.2 billion deficit by 2007-08, and in recognition that the government has committed not to increase taxes with this budget. At the same time, the government is facing increased funding demands from health care to education to infrastructure with only modest opportunities for revenue growth. Thus, choices become necessary.

The government has chosen not to increase taxes in this 2005-06 budget and the member companies of the Canadian Vehicle Manufacturers' Association strongly support that choice. The government has rightly recognized that cultivating economic climate that is growth oriented and conducive to investment is essential to provide the revenue streams that will support the public services that Ontarians desire.

## **BACKGROUND**

The Canadian Vehicle Manufacturers' Association (CVMA) is the national association for Canada's leading manufacturers of light and heavy duty vehicles. Our membership includes DaimlerChrysler Canada Inc., Ford Motor Company of Canada, Limited, General Motors of Canada Limited, International Truck & Engine Corporation, and Volvo Cars of Canada Ltd. Our member companies are the leaders in an industry that employs over 330,000 Ontarians and accounts for nearly 20% of Ontario's manufacturing GDP. In 2004, these companies produced roughly 1.86 million of the over 2.54 million (73%) light duty vehicles built in Ontario and sold 881,662 of the 1,534,076 (57%) of the light duty vehicles sold in Canada. Over the past decade, our members have invested over \$20 billion in new technology and facilities into Ontario. Indeed, with the help of the Ontario government Ford secured \$1 Billion investment in a new flexible manufacturing complex in Oakville as part of its Centennial project and General Motors also recently announced the largest single automotive investment in Canadian history, a \$2.5 Billion investment in Oshawa, St. Catharines and Ingersoll. These two significant investments bode well for the future of the automotive industry in the province and secure employment and research and development throughout the next product mandate.

To ensure that Canada remains a competitive location for automotive production and investment we have been working with the Government of Ontario, the federal government, the Government of Quebec, as well as labour, academia, and other automotive industry

stakeholders through the Canadian Automotive Partnership Council (CAPC), to create and implement a strategic automotive policy. In October 2004, CAPC released its "Call for Action: A Canadian Auto Strategy" which was intended to act as an impetus for the creation of a comprehensive automotive strategy for Canada. That report contains specific metrics with respect to levels of vehicle production, components shipments, employment and trade surplus that are viewed as being necessary in order to sustain and grow the automotive industry in Canada over the course of the next 10 years. We anticipate a formal automotive strategy being announced later this spring.

While some of CAPC's specific recommendations contained in the Call to Action report have begun to be implemented, such as the elimination of the Large Corporations Tax (LCT) announced in the 2003 Canadian federal budget and the phased elimination of the Ontario capital tax by 2012 announced in last year's provincial budget, it is the intent of CAPC to utilize a "red light/green light" report card mechanism to ensure that the priorities identified by the various CAPC subcommittees continue to be assessed and addressed by industry and the federal and provincial governments.

In this submission, we have focused on key initiatives that we believe must be addressed by the provincial government in order to provide public policy consistency with its very welcomed and very public support of the automotive industry in recognition of our industry's role as one of the key wealth generators in the Province. Only one of our initiatives would require a nominal expenditure of public resources, however that expenditure is entirely consistent with the government's desire to have cleaner environment as outlined in the Liberal Strong Communities election platform.

## **RECOMMENDATIONS**

### **ALTERNATIVE FUEL VEHICLE REBATE**

Traditional gasoline internal combustion engine vehicles (ICEs) have evolved significantly over the last number of decades and have made significant advances in both fuel efficiency improvement and emissions reductions. Improvements of this nature are expected to continue and therefore, ICEs are expected to dominate the Canadian fleet for the foreseeable future. Concurrently, vehicle manufacturers have spent billions of dollars developing and bringing to market traditional alternative fuel vehicles (AFVs) and advanced technology vehicles (ATVs), such as hybrid electric and fuel cell vehicles. Although they have been available for many years, alternative fuel vehicles, and more recently advanced technology vehicles, have not been significantly adopted by the Canadian marketplace. This is primarily because consumers

are very familiar with gasoline ICEs, which are efficient, reliable, durable and relatively low cost compared with AFV and ATV vehicles that have a significant cost premium and limited refueling infrastructure.

Cleaner, more fuel efficient advance technology vehicles have a role to play in achieving Canada's air quality goals and will contribute to reducing vehicle-related greenhouse gas emissions. The magnitude and speed of the contribution is largely related to how quickly these technologies are adopted by consumers. Due to the associated advanced vehicle technologies involved, the costs to manufacture these vehicles is many thousands of dollars higher than a comparable ICE vehicle. This premium is significant because for every \$100 increase in the cost of a new vehicle there is a corresponding .8% reduction in demand. Surveys show that consumers indeed want 'greener-cleaner' products including cars, but their enthusiasm quickly dissipates when it is evident they might have to pay more to obtain those products.

The CVMA recognizes that the Province of Ontario has been a leader in introducing sales tax rebates for AFV's to assist consumers with these price premiums. As we did last year, we encourage the government to proceed with the measure which was announced in the 2003 Ontario budget by the former government, to double the retail sales tax rebate up to \$2,000 for qualifying alternative fuel vehicles purchased after that date. Additionally the province should partner with the federal government to ensure that both levels of government are providing creative options to boost consumer purchases of these vehicles. This could include direct consumer rebates, additional sales tax rebates, or perhaps income tax credits that would allow consumers to effectively offset the higher costs associated with these vehicles. The level of incentive should reflect the cost premium and level of benefit offered by the vehicle. As a result, the CVMA recommends that:

- **The provincial government should fully implement consumer incentives announced by former government for the purchase of AFVs and ATVs.**
- **The provincial government should partner with the federal government on a complete consumer strategy to create market pull and assist early consumer adoption of these vehicle technologies.**

#### **TAX FOR FUEL CONSERVATION**

The CVMA has been a long time proponent for the repeal of the Tax For Fuel Conservation (TFFC) which was introduced in 1989 as a tax on large vehicles. In 1991, the TFFC was modified to include a broader spectrum of cars and sport utility vehicles (SUVs). The

fundamental problem with the TFFC is that it taxes the wrong segment of the on-road vehicle fleet. New vehicles represent only about 8% of the vehicles on the road. However these new vehicles are also the cleanest and safest vehicles on the road equipped with the most technologically-advanced safety and emissions control systems. By comparison, the oldest 20% of the vehicles on the road are responsible for more than 80% of vehicular pollution.

The TFFC essentially provides consumers with less incentive to replace their older, less fuel efficient, higher polluting vehicles by increasing the cost of new vehicles. As a result, the TFFC is essentially a tax that delays air quality improvements by slowing the replacement of older and less environmentally friendly vehicles. A more significant air quality benefit could be achieved by encouraging consumers to replace their old vehicles with new (or newer) vehicles as opposed to adding to the already significant tax burden associated with the purchase of a new vehicle.

The TFFC is effectively a tax of at least \$75 on nearly all new vehicles sold in Ontario. The CVMA continues to affirm that the tax is an inappropriate policy measure and should be eliminated.

It is even more imperative that the provincial government take leadership on the elimination of the TFFC in the 2005-06 budget because this tax has unfortunately provided the federal government with a precedent mechanism in an attempt to try and bluntly modify the motor vehicle purchasing decisions of Canadian consumers as part of its commitment to greenhouse gas reductions. The notion of potentially pursuing such “feebate” tax- type mechanisms was raised in the February 23<sup>rd</sup> federal budget, even though the federal government had previously assessed such “feebate” tax mechanisms and determined that they were amongst the “least promising” tools to help it achieve its climate change goals.

- **The Government of Ontario should acknowledge that the Tax For Fuel Conservation is not supporting environmental policies.**

#### **VICARIOUS LIABILITY**

The affiliated finance companies of the CVMA member companies (i.e. DaimlerChrysler Services, Ford Credit and GMAC) are amongst the largest vehicle lessors in the Province of Ontario. Vehicle leasing is an increasingly popular financing option for consumers and businesses that are looking for a cost effective means of purchasing a new vehicle. Because a lease is essentially a long term “rental”, the lessor is still the owner of the vehicle. For the purchaser, a lease transaction is generally less expensive than a comparable vehicle

purchased utilizing a traditional bank loan or a similar financing instrument. This is the case because with a lease the consumer is only paying for the portion of the vehicle's useful life that they use (i.e. the first three or four years) as opposed to financing the entire purchase price of the vehicle.

While the lessor maintains ownership of the leased vehicle on paper, the "owner" has absolutely no control over the use or operation of the vehicle. Unfortunately, a historical anomaly arising from a law that was introduced well before the advent of any vehicle leasing in this province, holds the "owner" of a vehicle liable for its negligent use. Today, over 1 million vehicles in Ontario are leased. Under the law, the lessor/conditional seller, the "owner" of the vehicle financed, is potentially liable for injuries and damages caused by that vehicle notwithstanding that the "owner" - as noted above - has absolutely no control over its use or operation. This law establishes a troubling principle of "liability without fault" and has the potential to seriously undermine the automotive financing sector in Ontario which in turn directly negatively impacts the province's automotive industry generally.

The current vicarious liability provisions are in direct contradiction to this government's strong commitment to the future of the automotive industry in Ontario and is a situation that needs to be rectified immediately to avoid a scenario where vehicle leasing - and thus, consumer financing options - are curtailed in the Province of Ontario, or increased insurance requirements - and thus increased consumer insurance premium costs - will be required to offset the significant exposure of lessors to multi-million dollar vicarious liability lawsuits.

For Ontario consumers and SMEs, approximately 40% of all new passenger and light truck vehicle sales are financed by non-bank financing companies by way of lease or by way of conditional sale. For Ontario business, a high proportion of commercial vehicle fleets are also financed in this way. A significant percentage of out-of-province vehicles, notably the large trucks on which Ontario's export industries depend, are similarly financed. Every one of these segments of our members' businesses see themselves now operating at a much higher level of risk that in most cases cannot currently be insured against or sustained in the long-term.

**Ontario is the only jurisdiction in the U.S. and Canada with significant auto manufacturing where such a legal liability exists.**

The serious consequence of this Ontario law was highlighted in mid-November when a \$13 million out-of-court settlement was reached following a serious accident. The negligent driver

leased a vehicle from Primus Canada, a division of Ford Credit Canada. Because the lessee driver was liable for the accident, the law of Ontario held the lessor as “owner” also liable. The lessee driver contributed his \$1 million of insurance coverage and the balance had to be paid by the vehicle lessor and its insurer.

Failure to resolve this situation will put at risk the ongoing viability of vehicle leasing in Ontario which would consequently: limit consumer and business customer financing options, increase the cost of those financing options and potentially reduce sales of vehicles in the province with the subsequent negative impact on Ontario’s vehicle manufacturing sector.

- **The Government of Ontario should act expeditiously to end vicarious liability for leased and rented vehicles in the Province of Ontario**

#### **DETROIT/WINDSOR GATEWAY INFRASTRUCTURE**

While it is recognized that trans-border crossings are not the responsibility of the provincial government, it is absolutely imperative that the Provincial government exercise a leadership role in bringing together the federal and municipal governments and relevant authorities in the United States to ensure that the Detroit/Windsor Gateway and associated transportation corridors are modernized – including an additional crossing. Coordinated, focused action is needed now to not only accommodate the exponential growth in trade that has occurred since the signing of NAFTA, but to prepare the foundation for the expected future growth in continental trade.

From a security and economic perspective it is equally imperative that an additional crossing is expedited to build in redundancy and avoid economic chaos should the current Detroit/Windsor infrastructure become the target of a terrorist attack.

- **The Government of Ontario should take a leadership role with federal , municipal and international governments to ensure that existing roadbed and cross-border throughput are optimized in the short term – through initiatives such as the Schwartz Report. Further leadership is required to ensure that an additional border crossing is constructed as quickly as possible through an expedited Bi-National Process.**

## **BILL 133 – AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT AND THE ONTARIO WATER RESOURCES ACT**

While apparently consistent with the Liberal party's Strong Communities platform to protect the water supply from stream to tap, Bill 133 establishes an unclear test for regulated discharges, raises some fundamental legal issues and ultimately will not support the Government's stated goals.

Many of the current provisions of the Environmental Protection Act (the "Act") regulate discharges that "cause" or are "likely to cause" an adverse effect. The amendments to the provisions of the Act which propose regulating discharges that "may" cause an adverse effect introduce a fundamental change to the balance in the current environmental regime in Ontario and will create great uncertainty as to permissible discharges. The proposed amendment to the definition of "deemed impairment" in the Ontario Water Resources Act (OWRA) which extends potential liability to discharges which "may enter the water" would have a similar effect. Uncertainty in the thresholds for emissions, reporting and remediation would make it extremely difficult for organizations to manage their operations to meet all legal requirements. For business, having certainty is an operational imperative and anything that contributes to a lack of certainty acts as a drag on investment.

In addition, the Bill proposes broad discretionary powers for Directors and Provincial Officers. The proposed powers to issue orders, including those to reduce the amount of contaminant discharged, appear to exist notwithstanding any certificate of approval permitting the discharge. It is not clear how or on what basis a Director or Provincial Officer would determine what "may" injure, damage or endanger land, water, property, animal life, plant life or human health or safety or what "may" cause an adverse effect. Again the result of the proposed amendments is increased regulatory uncertainty.

Further, there are a number of proposed amendments to the provisions governing the Environmental Tribunal in both the Act and the OWRA which will impact the ability of persons to appeal Tribunal decisions to the courts and may affect the fairness of the hearing both before the Tribunal and before the Court. The proposals provide for a reverse onus on the person who required the hearing with respect to certain proceedings that relate to discharges, including orders for environmental penalties, discharges of contaminants, and certificate of approval provisions relating to discharge limits. The reverse onus would generally require the person to prove that the material discharged was not a contaminant for

the purposes of the Act or is not a material that may impair the quality of waters in the case of the OWRA. It would be extremely difficult to meet this reverse onus.

The Bill also includes a reverse onus provision for officer and director liability which reissues issues with respect to natural justice. In addition to the reverse onus on duty of care the offence for officers and directors has been broadened beyond what is reasonable. The offence applies to any contravention of the Act or the OWRA – no matter how minor – which is not appropriate given the level of officer and director responsibilities. These two amendments combined would make the officer and director roles less attractive making it even more difficult to get the best people for the job.

Further, the environmental penalty provisions in both the proposed amendments to the Act and the OWRA may raise constitutional issues under the Charter although the provisions refer to regulations which are not yet available for review. Environmental penalties may be issued by the Director for certain contraventions subject to the regulations. However, there appears to be a reversal of the burden of proof as to the elements of the offence at the Tribunal for certain orders relating to discharges and there is only appeal to the courts on questions of law. This reversal of the burden of proof and limited appeal rights may contravene the rights to fundamental justice under section 11 of the Charter.

The environmental penalty provisions specifically provide that the penalties are absolute liability offences, applying even where a person has taken all reasonable steps to prevent the contravention and would therefore be innocent in the event of a prosecution. The concept of "due diligence" was initially introduced by the judiciary to provide fairness in the area of regulatory offences. Due diligence also provides an incentive to implement effective environmental management systems to ensure compliance with environmental laws. There does not appear to be any basis to conclude that an "absolute liability" regime would improve environmental performance. Such a regime would be extremely unfair, penalizing companies and individuals even though they have done everything reasonable in the circumstances. In general, absolute liability offences should be limited to minor regulatory offences. Both environmental penalties and a prosecution may occur for the same offence thus raising the potential for legal double jeopardy.

With respect to fines and penalties, while we acknowledge the "polluter pay" principle and that penalties can be an effective deterrent to contraventions of the Act or the OWRA, the proposed amendments have the potential to deter innovation and growth in Ontario by prohibiting discharges that "may" cause an adverse effect by imposing fines of up to \$6,000,000 per day for a first offence for corporations. Again, corporations require certainty

as to the legal requirements in order to ensure compliance. The test for discharges which "may" cause an adverse effect or "may" enter waters is unclear and, thus, problematic for business in Ontario.

Ultimately, the changes proposed in Bill 133 erode the principles of risk assessment and risk management and raise serious legal issues that could lead to unfortunate and unintended consequences for Ontario. While the government has indicated that Bill 133 was intended to encourage compliance, level the playing field, and improve accountability, this Bill does not meet those objectives. Bill 133 if implemented would impose an unnecessary burden on environmentally responsible companies with no associated environmental improvement while at the same time negatively impacting Ontario's attractiveness as a jurisdiction for investment and innovation.

- **The Government of Ontario should ensure that a thorough and inclusive consultation process is undertaken to evaluate the Bill's full implications for the environment and economy of the Province of Ontario before proceeding. The CVMA and its member companies are willing to work with the Government to develop legislation that will ensure that the environment is protected while at the same time ensuring that Ontario remains open for investment.**

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## **SUMMARY OF CVMA RECOMMENDATIONS:**

### **Alternative Fuel Vehicle Rebate:**

- Fully implement announced consumer incentives for the purchase of AFVs and ATVs.
- Partner with the federal government on a complete consumer strategy to create market pull and assist early consumer adoption of these vehicle technologies.

### **Repeal of the Tax for Fuel Conservation:**

- Announce intention to eliminate the Tax For Fuel Conservation (TFFC).

### **Elimination of Vicarious Liability:**

- The Government of Ontario should expeditiously act to end vicarious liability responsibility for owners of leased and rented vehicles in the Province of Ontario.

### **Detroit/Windsor Gateway Infrastructure:**

- The Government of Ontario should take a leadership role with federal, municipal and international governments to ensure that existing roadbed and cross-border throughput are optimized in the short term – through initiatives such as the Schwartz Report. Further leadership is required to ensure that an additional border crossing is constructed as quickly as possible through an expedited Bi-National Process.

### **Bill 133:**

- The Government of Ontario should undertake an inclusive and comprehensive analysis of the environmental and economic impacts of this Bill prior to proceeding any further with its implementation.