

IN THE MATTER OF

THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT
S.S. 2013, c. C-30.2

AND

1292709 ALBERTA LTD.

MARTIN HAUSNER

NOTICE OF PROPOSED ACTION

I. Introduction

1. The activities and conduct of vehicle dealers are regulated in Saskatchewan under *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 [*Act*] and *The Consumer Protection and Business Practices Regulations*, c C-30.2 Reg 1 [*Regulations*]. As Deputy Director appointed pursuant to section 77 of the *Act*, I have the authority to administer the *Act* and the *Regulations*. As set out in subsection 2(d) of the *Act*, any reference in the *Act* to the director includes the Deputy Director.

2. In order to sell motor vehicles in Saskatchewan, all motor vehicle dealers must be licensed pursuant to the *Act* and the *Regulations*. In order to obtain a license, applicants must satisfy me that they are suitable to hold a license. Once a licence is obtained, a licensee must at all times thereafter remain suitable to hold a license. If, after obtaining a licence, there is a change in circumstance as defined by the *Act* and *Regulations* in respect to a licensee's suitability, it is incumbent upon me to determine in light of the change(s) whether I remain satisfied that the licensee is suitable to hold a license (see e.g. *Act*, s 70; *Regulations*, s 5-2).

3. Whenever the director is inclined to take action¹ in respect to a dealer license, which includes refusing, suspending, or cancelling a licence, the *Act* requires the director to provide written notice to the affected person (*Act*, ss 65(1), 71). This is known as a Notice of Proposed Action or NOPA for short. The NOPA must set out the grounds that justify the proposed action as well as inform the person affected of the right to make representations as to why the action should not be taken (*Act*, ss 71(2)).

¹ "action" is defined in subsection 71(1) of the *Act* to mean taking action to "refuse to issue a licence, to establish terms and conditions for a licence or to suspend or cancel a licence."

4. Martin Hausner (“Mr. Hausner”) is the sole director and shareholder of 1292709 Alberta Ltd. (the “Company”), a body corporate, incorporated pursuant to the laws of Alberta for the purpose of selling motor vehicles and parts. The Company has registered a business name in Saskatchewan titled “SASKATCHEWANAUTOSALES.COM” and carries on the business of a vehicle dealership in Saskatoon, Saskatchewan. The Company is licensed under the *Act* pursuant to Licence Number 335436 (the “Licensee”).

5. Recently, our office received information which reveals that, after the Company became licensed, Mr. Hausner was charged with the indictable offence of extortion and failed to disclose this fact to our office within the five day time frame require by the *Act* (see *Act*, s 70; *Regulations*, 5-2). Moreover, Mr. Hausner repeatedly failed to comply with our office’s demands for details as to the allegations. These failures, coupled with Mr. Hausner’s previous failures to disclose and history of regulatory action taken against him in Alberta, has resulted in the need to revisit whether the Licensee remains suitable to hold a licence.

6. In revisiting suitability for the Licensee, and for the reasons below and based on the circumstances presently known, I am inclined to find that the Licensee’s licence should be suspended until such time as Mr. Hausner provides our office with the details we have requested. In addition, I am inclined to find that Mr. Hausner’s licence should remain suspended until such time that our office is able to and does render a decision on suitability in light of those details.

7. Ultimately then, this constitutes a NOPA to **suspend** the Licensee’s license and also constitutes written notice of the Licensee’s right to make oral or written submissions as to why its license should not be suspended.

II. Background

8. The facts and information in this background section are taken from the evidence contained in the disclosure material that is available to Mr. Hausner. In addition, attached as Appendix A are the various provisions of the *Act* that are applicable to the issues addressed in this NOPA.

9. The Licensee operates as a motor vehicle dealership in Saskatoon, Saskatchewan. Mr. Hausner, on behalf of the Company, applied for a license in respect to this dealership in early January 2016.

10. The initial application contained answers that were false. In particular, Mr. Hausner, who signed the application, represented that the Company never had a licence cancelled under the laws of another province. However, it later came to our attention that on or about October 27, 2015, the Licensee had its Automotive Business Licence cancelled in Alberta pursuant to the laws of that jurisdiction. At the same time, again pursuant to Alberta laws, Mr. Hausner’s Provincial Salesperson Registration was cancelled. Shortly after these actions were taken, Mr. Hausner

applied for a stay of these actions, but on December 31, 2015, the Appeal Board in Alberta denied that application.

11. On appeal, Mr. Hausner and the Alberta regulator entered into an Agreed Statement of Facts where Mr. Hausner admitted to many instances of failing to comply with regulatory requirements in that jurisdiction (see *Re 1292709 Alberta Ltd. o/a Cars on white from the Decision of the Director of Fair Trading*, Appeal Board Decision (September 9, 2016) at 4-6). Shortcomings admitted to included, but were not limited to, failing to renew licenses and pay levies as required, engaging in advertising violations, and failing to pay an administration penalty.

12. In the appeal, Mr. Hausner submitted that Alberta's Director erred in cancelling his licence. He argued that the administrative shortcomings should not be met with a licence cancellation. The Appeal Board, however, disagreed, and upheld the Director's decision to cancel Mr. Hausner's licence, noting that he appeared to have a "callous disregard for the regulatory role" that the regulator played.

13. On December 22, 2016, Mr. Hausner appealed this decision, alleging that the procedure taken to that date had "not been fair, independent or transparent", and that he did not have an opportunity to properly address things like hearsay evidence that was submitted. Mr. Hausner appealed both the cancellation of his business licence and the cancellation of his salesperson registration.

14. In respect to the business licence appeal, Mr. Hausner did not dispute that his company, i.e. the licensed entity in Alberta, repeatedly failed to meet reporting requirements, file licence renewal applications on time, and pay levies, renewal fees, and at least one administrative penalty. However, the Appeal Panel noted that approximately 35% to 40% of licensees in Alberta are late with their renewals as well as payment of fees and levies. As such, the Appeal Panel found that Mr. Hausner and his company were not necessarily acting in any unique way. (see *1292709 Alberta Ltd. v Alberta Motor Vehicle Industry Council*, Appeal Board Decision re License (August 29, 2017) at para 40).

15. In addition, the Appeal Panel found that other allegations made by the regulator relating to more serious issues, like breaching the codes of conduct or that Mr. Hausner was a danger to the public, were not founded. As such, the only legitimate delinquencies found in respect to Mr. Hausner were administrative in nature, which the Appeal Panel found were not sufficient to warrant a licence cancellation in all the circumstances. Instead, the Appeal Panel held that Mr. Hausner was entitled to apply for and be granted a 1 year licence subject to conditions that would help guard against further administrative shortcomings.

16. In respect to the salesperson registration appeal, there were similar findings as in the business licence appeal in respect to administrative delinquencies. That said, this Appeal Panel also overturned Alberta's Director and held that Mr. Hausner should be given a salesperson

registration subject to conditions in light of the long history of administrative delinquencies. (see generally *Martin Hausner v Alberta Motor Vehicle Industry Council*, Appeal Board Decision re Salesperson Registration (April 20, 2017)).

17. While the above matters were being litigated, in January 2016 Mr. Hausner applied for a licence in respect to a motor vehicle dealership he was looking to establish in Saskatoon, Saskatchewan. As a part of the application form for the licence, Mr. Hausner was asked whether him and/or the Licensee had ever had a dealer licence cancelled pursuant to the laws of another jurisdiction. In response to this question, Mr. Hausner answered “No” which, as demonstrated by the above, was not truthful.

18. Unaware that this answer was not truthful, on March 10, 2016, our office issued Mr. Hausner a licence. It was not until September 12, 2016, or over 6 months later, that our office learned from the Alberta regulator that Mr. Hausner’s licence had been cancelled in Alberta prior to his application for a licence in Saskatchewan, thus demonstrating that Mr. Hausner made a false statement on his Saskatchewan application.

19. On the basis of this false statement, our office issued a NOPA to cancel the Licensee’s a licence. In response, Mr. Hausner exercised his right to be heard by making submissions as to the non-disclosure. Mr. Hausner submitted that one of his assistants filled out the form and he simply signed it, suggesting that the non-disclosure was not intentional.

20. In addition, by the time of Mr. Hausner’s opportunity to be heard, the two Appeal Board decisions noted above were released. As such, Mr. Hausner relied on these decisions to show that the licence cancellations were not appropriate and that he remained suitable to be licensed in Alberta.

21. As a result of the submissions, including the fact that the licence cancellation in Alberta was overturned on appeal, I ultimately decided not to cancel the Licensee’s licence. That said, I also made expressly clear to Mr. Hausner that it was critical that he comply with the rules and regulations imposed by the *Act* and the *Regulations* on a go-forward basis.

22. After the decision not to cancel, the Licensee continued to have regulatory issues. On April 30, 2018, our office issued a NOPA to the Licensee due to the fact that the Licensee failed to submit the required annual filings (see *Regulations*, 5-5). The annual filing requires numerous things of the Licensee, including disclosure of any change in circumstances as defined by section 70 of the *Act* and section 5-2 of the *Regulations*. Importantly, a change in circumstances includes whether a director of the Licensee has been charged with a criminal offence.

23. After receiving the NOPA, Mr. Hausner made some efforts to deal with the outstanding annual returns. However, as a part of the filing requirements, Mr. Hausner needed to submit an

updated criminal record check. As such, on April 19, 2018, our office expressly reminded Mr. Hausner by email that he was obligated to provide us with an updated criminal record check.

24. On May 1, 2018, we wrote to Mr. Hausner reminding him that his annual filing had not been completed and submitted. We also asked him when our office might receive this information.

25. On May 3, 2018, Mr. Hausner responded by apologizing for the delay and indicated that he is trying to obtain the record check from AMVIC.

26. On May 17, 2018, we wrote again to Mr. Hausner by email to advise him that if his filing was not submitted by May 23, 2018, which included an updated criminal record check, it was our office's intention to suspend his license.

27. On May 18, 2018, Mr. Hausner wrote to our office to say that his annual filing had been completed subject to the criminal record check. Mr. Hausner further indicated that he tried to obtain the criminal record he submitted to his Alberta regulator, but the Alberta regulator refused to release it. As such, Mr. Hausner said there would be further delay.

28. On May 22, 2018, Mr. Hausner wrote to our office to indicate that he went to the police station to obtain a criminal record check and that his application in this regard was currently being processed. He further indicated that it would take approximately 10 business days.

29. On June 11, 2018, Mr. Hausner forwarded our office his updated criminal record check. This criminal record check showed that Mr. Hausner had an outstanding and serious criminal allegation made against him. The allegation was that on or about August 11, 2017, Mr. Hausner committed the indictable offence of extortion contrary to section 346(1.1)(b) of the *Criminal Code of Canada*, RSC 1985, c C-46. It also showed a court date of May 24, 2018. There is no indication when Mr. Hausner was actually charged, nor is there any indication of the details underlying the allegation.

30. Upon receiving and reviewing the criminal record check, we contacted Mr. Hausner to make further inquiries. By email dated October 25, 2018, I wrote to Mr. Hausner and advised him that his criminal record check showed that he was charged with extortion on August 11, 2017 and that this charge was not disclosed to our office in likely contravention of section 70 of the *Act* and subsection 5-2(h) of the *Regulations*. I then asked Mr. Hausner the following questions:

- (i) Why was the extortion charge not disclosed to our office?
- (ii) What were the details surrounding the extortion charge?
- (iii) What was the result of his most recent court appearance?
- (iv) What is the current status of the charge?

31. On October 29, 2018 I sent Mr. Hausner a second email to advise that our office expected a response to the above inquiries by November 9, 2018.

32. By email dated November 5, 2018, Mr. Hausner responded and indicated:

- He had a lack of knowledge regarding the entire *Act* and *Regulations* as they related to the charges he incurred, suggesting he did not realize he needed to disclose the charges within the five days required by the *Act* and *Regulations*;
- His May 24, 2018 court appearance was adjourned to April 2019 for the purposes of his counsel being able to obtain and review disclosure;
- His counsel had received the disclosure, reviewed it, and based on that review Mr. Hausner was “confident the charges will be withdrawn”;
- Because the criminal proceedings were still before the courts in Alberta, Mr. Hausner did not want to discuss the details of the charges at this time;
- After the criminal proceedings were finalized, he would “be more than happy to let [our office] know the details”; and
- He would keep our office updated on the criminal proceedings as they moved forward.

33. On January 3, 2019, I wrote back to Mr. Hausner to indicate that his November 5, 2018 response answered some, but not all, of my initial inquiries. In particular, the response did not provide the details regarding the extortion charge. I indicated to Mr. Hausner that while it was his preference not to discuss the details of the charges, I needed those details in order to properly administer the *Act* and the *Regulations*. I then cited for Mr. Hausner subsection 78(3)(c)(i) of the *Act* and required him “to provide me in writing an explanation of the details surrounding the extortion charge” by January 17, 2019.

34. On January 22, 2019, Mr. Hausner responded. He indicated that his reply was late because my January 3, 2019 email went to his spam folder. In respect to the demand for details that I made upon him, he indicated that:

- He hoped our office could respect the advice he received from his counsel not to discuss this matter because it was currently before the courts;
- His trial in respect to the extortion charge was scheduled for April 23 – 29, 2019;
- After the trial, he would be able to provide more information regarding the extortion charge;

- He appreciates we have a duty to protect the public, but he wanted to first discuss our office's demand with his counsel and had left a message with his counsel to call him;
- To the best of his understanding, our demand for details was equivalent to a request for him to waive his rights guaranteed to the *Canadian Charter of Rights and Freedoms* [*Charter*]; and
- He was not willing to waive his *Charter* rights until he spoke with this counsel about our office's demand for details.

35. By email dated February 7, 2019, I responded to Mr. Hausner's January 22, 2019 email. Out of an abundance of caution to ensure that Mr. Hausner's *Charter* rights would not be detrimentally impacted, and to ensure that my regulatory responsibilities under the *Act* and the *Regulations* could still be met, I clarified for Mr. Hausner that the demand for details into the extortion charge was only made for regulatory purposes to assist me in determining whether the Licensee was still suitable to hold a licence. In addition, I noted that the details were not being sought for the purposes of determining whether any penal proceedings were to be taken under the *Act*.

36. Moreover, and again out of an abundance of caution, I assured Mr. Hausner that our office would not voluntarily disclose the details we obtained to the Crown Prosecutor in Alberta or Alberta's Ministry of Justice and Solicitor General. I then once again advised Mr. Hausner that the details were only being sought for regulatory purposes. I closed by asking again that the details be provided to our office, this time by February 13, 2019, and that if he failed to do so, we would proceed with sending him a NOPA.

37. Our office has not received any response to date from Mr. Hausner or his counsel. To be clear, Mr. Hausner has refused to provide the details regarding the extortion charge.

III. Issues

32. The background facts give rise to the following issues:

- (i) Is Mr. Hausner in apparent breach of the *Act* and *Regulations*?
- (ii) If yes, what action should be taken to appropriately protect the public?

IV. Applicable Legislative Provisions

38. The *Act* and the *Regulations* constitute public welfare legislation. It is clear that the overarching and fundamental purpose of this legislation is to protect the public and provide

safeguards to consumers. In respect to vehicle dealers, the legislation sets out the expectations to be met with a view towards protecting consumers that purchase motor vehicles.

39. Section 70 of the *Act* requires an applicant or licensee to notify the director of a prescribed change in circumstances **within five** business days after it occurs.

40. Section 5-2 of the *Regulations* is a detailed list of prescribed situations that constitute a change in circumstances for the purposes of section 70 of the *Act*. Subsection 5-2(h) states that “the instituting of proceedings against, or conviction of, the applicant or licensee or any director, officer or partner of the applicant or licensee with respect to a criminal offence or any other offence under the laws of any other jurisdiction, excluding traffic offences” is a change in circumstances.

41. Subsection 65(1)(a) gives the director the authority to suspend or cancel a licence for the same reasons that the director would have refused to grant a licence upon an initial application as set out in section 61. In addition, subsection 65(1)(c) gives the director the authority to suspend or cancel a licence when there has been a prescribed change in circumstance.

42. Subsection 61(b) of the *Act* permits the director to refuse to issue a licence to an applicant if the requirements set out in clause 61(a) are not met. Subsection 61(a)(iii) requires the director to be “satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable” in order to issue a licence to an applicant.

V. Preliminary Findings

43. On the somewhat less serious, though still important, side of things, I am inclined to find that, much like his history of regulatory issues in Alberta, Mr. Hausner continues to show a sizeable lack of respect for motor vehicle regulatory regimes, including the laws applicable to him and the Licensee and the important role that the director plays in administering those laws. Mr. Hausner repeatedly pleads ignorance to understanding the requirements of the *Act* and *Regulations*; however, in all the circumstances, I am inclined to find that this is feigned ignorance that does not provide any legitimate excuse or justification.

44. My preliminary finding of feigned ignorance is supported by the fact that in ultimately deciding to provide the Licensee with a Licence, Mr. Hausner was already strictly warned by our office of his need to comply with the *Act* and the *Regulations*. This warning resulted from Mr. Hausner providing our office with false information as a result of, what in his submissions were, a failure to give due attention to the licence application form. Amongst this context, I am inclined to find that the current further failure to familiarize himself with the *Act* and *Regulations* shows that Mr. Hausner cannot be trusted to respect and follow the *Act* and *Regulations* on a go-forward basis.

45. On the more serious side of things, I am inclined to find that Mr. Hausner failed to disclose the fact that he was charged with extortion within five days of being charged and that this failure

was intentional. Indeed, I am inclined to find that Mr. Hausner never voluntarily disclosed the charge to our office. Instead, it was our inquiries that led to the charge being discovered.

46. Moreover, I am inclined to find that by the time our office learned about the extortion charge in October 2018, the charge had been outstanding for well over a year. I am inclined to find that the complete lack of voluntary disclosure coupled with the length of time the non-disclosure remained outstanding is a particularly aggravating factor that has placed the public at unnecessary risk.

47. I am also inclined to find that the charge of extortion is a serious charge involving violence and manipulative intent. This is not a criminal charge based in negligence, but instead requires intentional conduct. The offence is straight indictable and has the following elements:

- The accused induced or attempted to induce someone to do something or cause something to be done;
- In doing so, the accused used threats, accusations, menaces or violence;
- The accused acted with the intent of obtaining something by the use of threats; and
- The use of the threats or the making of the demand for the thing sought to be obtained was done without reasonable justification or excuse.

(R v Barros, 2011 SCC 51, [2011] 3 SCR 358 per Binnie J.)

48. I am inclined to find that the elements of the offence involve behaviours that our office needs to protect consumers from experiencing. At this point, because Mr. Hausner has chosen not to provide us with details regarding the situation leading to the charge, I am inclined to draw an adverse inference against him in respect to these charges to ensure the public is protected.

49. In addition, based on the fact that a trial has been scheduled, I am inclined to find that the Crown is not willing, at least at this time, to withdraw the charges. Instead, I am inclined to find that the Crown believes on the evidence it has in its possession that there is a reasonable likelihood of conviction and that prosecuting Mr. Hausner is in the public interest.

50. Furthermore, I am inclined to find that Mr. Hausner's refusal to provide details regarding the charges has effectively frustrated our office's ability to assess the Licensee's continued suitability to hold a licence. In addition, I am inclined to find that the refusal to provide details has placed the public at risk in a way that requires action to be taken.

VI. Analysis of Suitability

51. Mr. Hausner was charged with a serious criminal offence and failed to advise our office of within five days of those charges being laid as required by the *Act* and *Regulations*. Mr. Hausner never voluntarily disclosed the charge and the charge only came to light as a result of our office pressing Mr. Hausner to supply us with an updated criminal record check. The elements of the offence of extortion include violence and other troubling behaviour.

52. The only explanation offered for the non-disclosure is ignorance of the *Act* and *Regulations*. It is trite, however, that ignorance of the law is no excuse. Moreover, for Mr. Hausner in particular considering his long history of regulatory non-compliance issues, his continued attempts to suggest his non-compliance is the result of ignorance is incapable of belief. Mr. Hausner has displayed in the past, and continues to display, a complete lack of respect for motor vehicle regulators and motor vehicle regulatory regimes.

53. Based on our powers under the *Act*, we have repeatedly asked Mr. Hausner to provide details as to the extortion allegations. He has repeatedly refused, relying on the *Charter*. We have respected Mr. Hausner's *Charter* rights by providing numerous safeguards that should have allayed the concerns he expressed. However, our assurances, and ultimately our demands for details, were met with silence. This is unacceptable.

54. Without knowing the details surrounding the extortion charge, our office cannot undertake a full suitability analysis. This undermines our regulatory role, undermines the regulatory regime, and ultimately places the public at risk.

55. Based on the information we do have, there is a serious concern that Mr. Hausner has engaged in a particular type of troubling violent conduct. I am mindful that when assessing suitability, regard must be had to context and whether the impugned behaviour relates to the sphere of regulation at issue and raises public welfare concerns (see e.g. *Macnamara v Saskatchewan (Acting Registrar, Motor Dealers Act)*, 2009 SKQB 37, 34 Sask R 148). In this case, without further details, there is a criminal allegation of potentially violent conduct used by Mr. Hausner to induce someone to act without having any reasonable excuse or justification. This type of troubling conduct is a public welfare concern as it impacts public safety.

56. There is case law in Ontario that has considered violent conduct in the context of motor vehicle transactions. Not surprisingly, the cases state that consumers should not be at risk of becoming subject to violent conduct. For example, in *7992 v Registrar, Motor Dealers*, 2013 CanLII 45553 (ON LAT), the Ontario License Appeal Tribunal quoted the unreported decision of Vice Chair Israel in *O'Connor v Registrar of Motor Vehicles* as follows:

...The statute is directed to the protection and safeguarding of the public in their dealing with motor vehicle dealers and salespersons...Members of the public should not be at risk of having a violent act committed against them when, in dealings with a salesperson, the latter becomes violent due to some act or omission, perceived or otherwise, of the customer that offends the salesperson and produces a violent reaction from such salesperson who is unable to manage his anger.

57. I am in agreement with this reasoning. The *Act* and *Regulations* in Saskatchewan are similarly designed to protect and safeguard consumers. Allegations of violent, menacing, and/or threatening behaviours provide grounds to reconsider a licensee's suitability to be licensed or to find continued licensing to be objectionable.

58. As the sole director of the Licensee, Mr. Hausner is the Licensee's only directing mind. The disclosure information and background facts suggest that Mr. Hausner has engaged in violent, menacing, accusatory, and/or threatening conduct to induce a victim to act in a certain way and to obtain something from the victim. This raises public safety concerns and is behaviour that is not suitable for a motor vehicle dealer.

59. It therefore appears that Mr. Hausner's alleged behaviour provides the requisite grounds to take action. In my view, while I do not think that cancelling the Licensee's licence would be inappropriate in the circumstances, at a minimum the Licensee's licence should be suspended until Mr. Hausner provides our office with the details surrounding the charge and our office has an opportunity to consider how those details impact the Licensee's suitability to hold a licence.

VII. Preliminary Conclusion Regarding Suitability

60. In my role as Deputy Director, it is incumbent on me to ensure that all vehicle dealers are suitable to be licensed. A licensee's suitability is evaluated based on their ability to meet the expectations set out for vehicle dealers in the *Act* and the *Regulations*.

61. The behaviour that Mr. Hausner is alleged to have exhibited alongside his apparent lack of respect for motor vehicle regulators simply does not meet the standards of suitability expected and required of licensees under the *Act*. In *Fryer v Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279, Sharma J. of the British Columbia Supreme Court noted the importance of honesty, integrity, and ensuring public safety when considering past conduct in relation to an application for a licence:

23 The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to

give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

62. The regulatory framework in British Columbia is similar to the framework established by the *Act* and *Regulations*. Sharma J.'s comments, as a result, are equally applicable to the regulation of vehicle dealers in Saskatchewan. Indeed, an established and continuing pattern of non-disclosures in the regulatory context impacts considerably upon suitability as it demonstrates a serious lack of honesty, integrity, and good faith (see e.g. *Ernest Huckerby, Re* (2004), 27 OSCB 5654; *CDN Financial and Mortgages Inc. v Ontario (Superintendent Financial Services)*, 2014 ONFST 10).

63. I am also in agreement with the reasoning *Couto, Re* (2002), 35 OSCB 4105, where the then Acting Director of the Ontario Securities Commission noted the key concerns that failures to disclose, including failures to disclose past criminal proceedings, raise and how this all impacts upon suitability:

14 In *Re Thomas* (1972), O.S.C.B. 118 the Commission wrote at page 120: "The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put." Given the importance of the application form in our registration system, the OSC rightfully expects that applicants will exercise a reasonable degree of care and due diligence in completing the document. In *John Doe, Re* (2010), 33 O.S.C.B. 1371 (Ont. Securities Comm.), a case which also involved the non-disclosure of a criminal record in an application for registration, I wrote at 1377:

Moreover, even if the Applicant somehow was honestly mistaken in the chain of inaccurate disclosure he provided to OSC staff (which I doubt) I agree with the statement in *Re Doe* [(2007), ABASC 296] that integrity is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his registration, including his initial application for registration. In my view, he did not meet this duty.

15 The OSC's expectations regarding the accurate completion of the application form, as articulated in my decision in *John Doe* (which was based on the Alberta Securities Commission decision of the same name to which I referred in *John Doe*) are important for the following reasons. First, the application form is designed to provide the OSC with the information it needs to assess the applicant's suitability for registration. Sometimes the information sought by the application form may reflect negatively on an applicant's suitability. The effectiveness of the application process would be significantly diminished if applicants could avoid disclosing detrimental information on the basis of unreasonable assumptions, forgetfulness, or misunderstandings. Second, the OSC must be reasonably confident that the

individuals to whom it grants the privilege of registration will discharge their professional obligations to their clients honestly and diligently. The application process is the seminal event in an applicant's career as a capital markets professional, and a lack of care and diligence in this process may be a worrisome signal about how they will approach the interests of their clients.

16 The *John Doe* standard calls for due diligence, not perfection. Minor inaccuracies may be excused, but significant errors that reflect a failure to exercise a reasonable degree of care in the completion of the application will not be.

64. In my respectful view, the alleged failures by the Licensee in this case to provide prescribed information to me in an accurate and timely fashion appear to show a serious disregard for the importance this information has to the regulatory system set up by the *Act* and the *Regulations*. The disclosures at this point cannot be classified as minor, but instead appear to be both significant and intentional. Fundamentally, the non-disclosures are undermining the integrity of the regulatory system and should be met with action.

65. Most significantly, and on its own notwithstanding the other issues mentioned above, the alleged violent, threatening, accusatory, or menacing behaviour alleged of Mr. Hausner cannot be condoned. This behaviour is directly linked to concerns for public safety and requires action to protect the public.

66. Accordingly, I am inclined to find that the Licensee is unsuitable to carry on business as a licensed vehicle dealer and that its continued licensing, without further details demonstrating otherwise, is objectionable.

VIII. Proposed Actions and Right to Make Representations

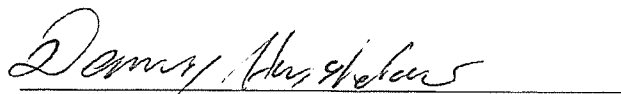
67. In summary, based on the evidence currently available to me and the analysis above, I am inclined to **suspend** the Licensee's licence until such time as Mr. Hausner provides our office with details surrounding the extortion charge and we have had the opportunity to reassess how those details impact suitability.

68. In addition, I am proposing to impose a costs order pursuant to section 84 of the *Act*, the details of which are included in the disclosure.

69. It bears repeating that these proposed actions are not final decisions. Pursuant to section 71 of the *Act*, the Licensee has the right to make written or oral submissions to me, including presenting additional evidence, in order to persuade me that the proposed action should not be taken. If the Licensee believes any of the facts set out herein are incorrect, that I have misinterpreted the law, or that I should consider additional evidence or law, it can make use of its right to be heard so I can consider these submissions prior to rendering a final decision.

70. I remind Mr. Hausner and the Licensee that pursuant to subsection 71(3) of the *Act*, the Licensee has 10 business days from the date of receiving this notice to request an oral hearing or to advise me that it wishes to make written submissions respecting the actions I am inclined to take.

Dated at the City of Regina in the Province of Saskatchewan this 9th day of April, p 2019.

A handwritten signature in cursive script, appearing to read "Denny Huyghebaert", is written over a horizontal line.

Denny Huyghebaert
Deputy Director, Consumer Protection Division
Financial and Consumer Affairs Authority of Saskatchewan

Appendix A – Legislative Provisions

The Consumer Protection and Business Practices Act, SS 2013, c. C-30.2

Issuance

61 The director may:

- (a) issue a licence to an applicant if the director:
 - (i) receives an application pursuant to section 58;
 - (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
 - (iii) is satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable; or
- (b) subject to section 71, refuse to issue a licence if the requirements set out in clause (a) are not met.

Suspension or cancellation of licence

65(1) Subject to section 71, the director may suspend or cancel a licence:

- (a) for the same reasons that the director might have refused to issue the licence pursuant to section 61;
- (b) if the licensee has failed to comply with this Act or the regulations; or
- (c) if there has been a prescribed change in the licensee's circumstances.

(2) If the director considers it appropriate to do so, and on receipt of any prescribed reinstatement fee, the director may reinstate a licence that has been suspended.

Licensee to notify director if circumstances change

70 Within five business days after a prescribed change in circumstances, an applicant or licensee shall notify the director in writing.

Opportunity to be Heard

71 (1) In this section, "action" means an action that the director may take to refuse to issue a licence, to establish terms and conditions for a licence or to suspend or cancel a licence.

(2) Before taking an action, the director shall give the person who is the subject of the proposed action a written notice:

- (a) setting out the action proposed to be taken by the director and the grounds that, in the director's opinion, justify the action; and
- (b) informing the person of the person's right to make representations to the director as to why the action should not be taken.

(3) A person to whom a notice is sent pursuant to subsection (2) may, within 10 business days after receiving that notice, advise the director that:

- (a) the person requests an oral hearing; or
- (b) the person wishes to make written representations to the director respecting why the action should not be taken.

(4) Nothing in this section requires the director to give an oral hearing to any person who has given notice pursuant to clause (3)(b).

(5) A person who requests an oral hearing pursuant to clause (3)(a) must, within five business days after requesting the hearing, contact the director and arrange a date, time and place for the hearing.

(6) Written representations pursuant to clause (3)(b) must be received by the director within 20 business days after the person receives the notice pursuant to subsection (2).

(7) The director may take the action stated in the notice without considering any representations of the person if the person fails to:

- (a) advise the director in accordance with subsection (3);
- (b) meet the requirements of subsection (5) or (6) within the required time; or
- (c) appear on the date and at the time and place arranged for the hearing without the prior approval of the director.

(8) The director may extend the periods mentioned in subsection (3), (5) or (6) if, in the director's opinion, it is appropriate to do so.

(9) Notwithstanding subsection (2), if the director considers that it is necessary and in the public interest to take immediate action, the director may immediately take any action without giving the person an opportunity to be heard, but the director shall give the person an opportunity to make written representations or attend a hearing before the director within 10 business days after the date on which the director takes the action.

(10) On holding a hearing or receiving a person's written representations pursuant to this section, the director shall, within a reasonable period:

- (a) consider the submissions and make a decision;
- (b) notify the person, in writing, of the director's decision;
- (c) provide written reasons for the director's decision; and
- (d) provide the person with information respecting the right of appeal pursuant to section 85.

- (11) Subsection (12) applies if:
- (a) a licensee holds more than one licence; and
 - (b) the director is satisfied that the same grounds for taking action apply to more than one of the licensee's licences.
- (12) In the circumstances mentioned in subsection (11), the director may provide the licensee:
- (a) with one written notice pursuant to subsection (2) that references all of the licensee's licences that are to be the subject of the action; and
 - (b) with one oral hearing pursuant to this section that deals with all of the licensee's licences that are to be the subject of the action.

The Consumer Protection and Business Practices Regulations, C- 30.2, Reg 1

Change in circumstances

- 5□2 For the purposes of section 70 of the Act, a change in circumstances consists of:
- (a) a change in any of the following information previously provided to the director in an application for a licence, a renewal of a licence or the reinstatement of a licence:
 - (i) an address, including an address for service, or a telephone number;
 - (ii) the name of the applicant or the licensee;
 - (iii) if the applicant or licensee is a partnership or a corporation, the fiscal year;
 - (iv) if the applicant or licensee is a corporation, an officer or director of the corporation;
 - (v) if the applicant or licensee is a partnership, a partner of the partnership;
 - (vi) the location at which the licensee retains, or the applicant will retain, records required to be kept by the Act;
 - (vii) any other material change;
 - (b) if the licence is for a specific location, the licensee ceasing to carry on business at that location;
 - (c) the commencement of bankruptcy, receivership or winding-up proceedings with respect to the applicant or licensee;
 - (d) the suspension, cancellation, surrendering or amendment in any other jurisdiction of the applicant's or licensee's authority to carry on business relating to the activities for which the licence has been applied for and granted;
 - (e) the imposition of any terms, conditions or restrictions on, or the variation or modification of any terms, conditions or restrictions imposed on, the applicant's or licensee's authority to carry on business as a designated business in any other jurisdiction;
 - (f) a civil action or a regulatory proceeding being brought against the applicant or licensee or any director, officer or partner of the applicant or licensee, in relation to:
 - (i) fraud;
 - (ii) breach of trust;

- (iii) deceit;
 - (iv) misrepresentation; or
 - (v) the actions of the applicant or licensee in the activities for which the licence has been applied for and granted;
- (g) the issuing of a judgment or decision by a court or other adjudicator against the applicant or licensee or any director, officer or partner of the applicant or licensee, in relation to:
- (i) fraud;
 - (ii) breach of trust;
 - (iii) deceit;
 - (iv) misrepresentation; or
 - (v) the actions of the applicant or licensee in the activities for which the licence has been applied for and granted;
- (h) the instituting of proceedings against, or conviction of, the applicant or licensee or any director, officer or partner of the applicant or licensee with respect to a criminal offence, or any other offence under the laws of any other jurisdiction, excluding traffic offences; or
- (i) any change in circumstances that provides reasonable grounds to believe that the financial security required by the director pursuant to section 59 of the Act may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the director.
- (h) the instituting of proceedings against, or conviction of, the applicant or licensee or any director, officer or partner of the applicant or licensee with respect to a criminal offence, or any other offence under the laws of any other jurisdiction, excluding traffic offences; or
- (i) any change in circumstances that provides reasonable grounds to believe that the financial security required by the director pursuant to section 59 of the Act may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the director.