IN THE MATTER OF

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

AND

DAN LEONARD AUTO SALES LTD.

DECISION
(re Notice of Proposed Action dated March 15, 2019)

I. Introduction

1. This is the decision in respect to the Notice of Proposed Action ("NOPA") dated March 15, 2019 that was issued in respect to Dan Leonard Auto Sales Ltd. (the "Licensee"). Dan Leonard is the sole shareholder and director of the Licensee.

2. The NOPA stated that the Deputy Director was inclined to cancel the Licensee's licence due to allegations that Mr. Leonard assaulted a consumer with an imitation firearm during a dispute over a motor vehicle transaction made between the Licensee and the consumer. As a result of this incident, Mr. Leonard was charged with, amongst other criminal offences, assault with a weapon. On August 20, 2019, Mr. Leonard pleaded guilty to the assault with a weapon charge, was convicted of the same offence, and was sentenced to 6 months' imprisonment with a conditional sentence order ("CSO") allowing him to serve that sentence in the community under conditions. He also received 12 months' probation in addition to the 6 month CSO. The conditions include a curfew and a requirement that he attend anger management treatment.

3. Over approximately the last year, Mr. Leonard found himself being charged with numerous criminal offences, including mischief, fraud, and assault with a weapon. The NOPA only concerned the mischief charges as well as the assault with a weapon and related charges, and the fact that Mr. Leonard failed to disclose those charges to our office as required by *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 [*Act*] and *The Consumer Protection and Business Practices Regulations*, SR 2014, c C-30.2 Reg 1 [*Regulations*]. The NOPA did not concern the fraud charge, which was laid after the NOPA was already issued.

4. On June 18, 2019, our office initiated separate proceedings against Mr. Leonard by way of a Notice of Immediate Action ("NOIA") after we learned that Mr. Leonard had been charged with fraud that allegedly involved a motor vehicle transaction and a consumer. This decision does not concern the allegations in the NOIA as the investigation in this regard is still outstanding. Instead, this decision is focused on the NOPA, the evidence gathered and that underlies the NOPA, and the submissions of Mr. Leonard made in respect to the NOPA when he exercised his opportunity to be heard.

5. After a NOPA is issued and any opportunity to be heard is exercised, the director (which includes myself as Deputy Director) must, amongst other things, consider any submissions, make a decision, and provide written reasons for that decision (*Act*, s 71(10)). Mr. Leonard opted to exercise his opportunity to be heard by way of written submissions and an oral hearing. At his oral hearing, Mr. Leonard indicated that he would simply rely on his written submissions.

6. Mr. Leonard's written submissions, filed on June 7, 2019, raise and focus almost exclusively on a specific constitutional issue. Mr. Leonard argues that the within regulatory proceedings are *ultra vires* because they constitute a substitute police investigation in respect to the criminal law. As a result, Mr. Leonard argues that I do not have jurisdiction to cancel the Licensee's licence and these proceedings must be dismissed.

7. With great respect and for the reasons that follow, after considering Mr. Leonard's submissions, I have decided they are without merit. In addition, based on the evidence gathered in these regulatory proceedings for regulatory purposes, I have decided that the Licensee is no longer suitable to hold a licence. The Licensee's licence is accordingly cancelled.

II. Background

8. The background facts to these NOPA proceedings were canvassed in the NOPA. These facts were grounded in the disclosure materials provided to Mr. Leonard. For convenience, the central components of these facts will be repeated in this decision. In addition, the facts outlined in the NOPA will include information this office obtained from the public record showing that Mr. Leonard was ultimately convicted of the criminal offence of assault with a weapon.

a. Background to the FCAA's Regulatory Investigation

9. The Licensee has been licensed as a vehicle dealer in Saskatchewan since July 24, 1984.

10. On or about January 8, 2018, FCAA Staff discovered a news release which indicated that Mr. Leonard was facing "12 criminal charges including assault with a weapon, uttering threats, firearm offences, possessing a weapon and numerous breaches of court-imposed conditions" (the "News Release").

11. On or about February 21, 2018, FCAA Staff emailed Mr. Leonard, provided him with a link to the News Release, and asked him for his comments in respect to the News Release. FCAA Staff also reminded Mr. Leonard of the Licensee's obligation to disclose in writing any prescribed changes in circumstances to our office within five business days as set out in the *Act* and *Regulations*. Mr. Leonard did not respond.

12. On or about June 14, 2018, FCAA Staff spoke with staff from the Regina Provincial Court and confirmed that Mr. Leonard had been charged with the following serious criminal offences:

- four counts of assault with a weapon, contrary to subsection 267(a) of the *Criminal Code of Canada*, RSC 1985, c C-46 [*Criminal Code*];
- three counts of possession of a firearm, contrary to subsection 88(2) of the *Criminal Code*;
- three counts of using an imitation firearm while committing an indictable offence, contrary to subsection 85(2) of the *Criminal Code*; and
- four counts of uttering threats, contrary to subsection 264.1(1) of the *Criminal Code*.

13. In addition, FCAA Staff confirmed that Mr. Leonard had been charged with the following less serious, though still criminal offences:

- Five counts of breach of an undertaking, contrary to subsection 145(5.1) of the *Criminal Code*; and
- One count of mischief, contrary to subsection 434(4) of the *Criminal Code*.

14. Prior to June 14, 2018 when FCAA Staff contacted the Regina Provincial Court, our office was not aware of the breaches of undertakings charges and one of the uttering threats charges. Mr. Leonard did not disclose any of these charges to our office within five business days as required by the *Act* and *Regulations*.

15. At the time the NOPA was issued, there were two Informations before the Provincial Court: 1) Information 90131821 that contained 12 counts; and 2) Information 90145026 that contained one count of mischief. The former was scheduled for a preliminary inquiry on April 2, 2019 (eventually adjourned to August 20, 2019) with the latter scheduled for trial on May 21, 2019.

16. The mischief charge and the Information relating thereto was stayed by the Crown on June 3, 2019. Mr. Leonard did not provide any evidence as to why the charges were stayed, nor did he provide any evidence as to why he was charged with mischief. The only evidence this office obtained as to the situation that led to the charges came from FCAA Staff's interviews with the complainants. The complainants stated

that their house was located beside the Licensee's lot in McLean and that Mr. Leonard, without being given permission and without any notice, trespassed onto their property and cut down a number of their trees after a storm.

17. In respect to the assault with a weapon and related allegations against Mr. Leonard, FCAA Staff conducted a deeper investigation to determine if those allegations related to the Licensee's operation as a vehicle dealer. The investigation involved a review of the news articles, in-person interviews of the 3 individuals who were involved in the incidents which led to the charges against Mr. Leonard, and an interview of Mr. Leonard himself. The three individuals interviewed will be referred to in this decision as the Consumer, Witness 1, and Witness 2.

b. Background to the Motor Vehicle Transaction with the Consumer that resulted in the Assault with a Weapon Charge

18. Before outlining the details regarding the transaction between the Licensee, Mr. Leonard, and the Consumer, it is important to note that after the NOPA was issued and when given his opportunities to be heard, Mr. Leonard chose not to provide or file any evidence that challenged the evidence of the Consumer, Witness 1, and/or Witness 2. The only evidence from Mr. Leonard that formed part of the record for the NOPA proceedings is the statement he gave to an Investigator which, as stated in the NOPA and further stated below, I did not find to be credible in light of the other evidence on the record. Moreover, as noted below, Mr. Leonard ultimately pleaded guilty to assault with a weapon in respect to the incident involving the Consumer.

19. In all the circumstances then, as I indicated in the NOPA I was inclined to do, I accept the evidence of the Consumer, Witness 1, and Witness 2 as credible, and where Mr. Leonard's evidence conflicts with their evidence, I reject the evidence of Mr. Leonard.

20. On or about September 4, 2014, the Consumer and Witness 1 attended at the premises of the Licensee as the Consumer was looking to purchase a vehicle from the Licensee. Mr. Leonard showed the Consumer a 2007 Chevrolet Yukon, VIN 1GKFK13077J190586 (the "Yukon") and the Consumer ended up agreeing to purchase the Yukon that same day from the Licensee for $8,400.00 including taxes. The Consumer states that Mr. Leonard advised him that the Yukon came with a warranty.

21. The Consumer paid $1,000.00 as a deposit to the Licensee with the remaining amount being financed by the Licensee. As a term of the financing, the Consumer was expected to pay $500.00 at the end of every month.

22. At the time of purchase, Mr. Leonard represented to the Consumer that the motor had been replaced in the Yukon and that the replacement motor had approximately 100,000 kilometers recorded on it. When the Consumer took possession of the Yukon, the odometer showed 290,000 kilometers recorded

on it. The vehicle contract lists the Yukon's "mileage" as "unknown". The Consumer took the Yukon to another mechanic who advised him that the VIN numbers on the motor matched the VIN numbers on the rest of the vehicle, which suggests that the motor had not been replaced as Mr. Leonard represented.

23. Following the execution of the contract, but before the Consumer and Witness 1 left the Licensee's premises on September 4, 2014, Mr. Leonard pulled out what the Consumer and Witness 1 thought was a pistol (I am satisfied based on all the evidence that it was likely an imitation firearm), slammed it on the table and then threatened that "this is how I deal with people who don't pay their bills".

24. Immediately following the purchase and on the way back to the Consumer's home, the Yukon broke down. The Consumer advised Mr. Leonard that the Yukon broke down and the Licensee, through Mr. Leonard, agreed to take the Yukon back to conduct repairs.

25. Each of the Consumer, Witness 1, and Witness 2 explained that the $500.00 monthly payments for the Yukon were usually dropped off at the Licensee's premises by either Witness 1 or Witness 2. Witness 1 explained that the Licensee refused to accept cheques as payment and would only accept cash. Both Witness 1 and Witness 2 indicated that when payments were delivered, Mr. Leonard refused to issue receipts because, in his view, they were "not needed".

26. Witness 1 also indicated that on some occasions, Mr. Leonard would either call the Consumer to demand immediate payment or attend at the home of Witness 1 and Witness 2 seeking immediate payment.

27. When the Yukon was eventually returned to the Consumer, it still did not run properly. In addition, and despite the promise of a warranty, when the Consumer picked up the Yukon from the Licensee, Mr. Leonard presented the Consumer with a bill for repairs that the Consumer believed was excessive. After receiving this bill, the Consumer decided to stop making payments altogether. (It was not explained by the Consumer exactly how much the bill was for, nor was the bill provided to our Office, though Mr. Leonard did admit to issuing a bill to the Consumer. In the end, whether the bill was excessive or not does not weigh on my decision one way or the other).

28. With payments no longer being made, Witness 1 stated that Mr. Leonard would "harass" her by calling her and stating "you said you would pay if [the Consumer] didn't pay", referring to the outstanding car payments. In addition, Witness 1 stated that Mr. Leonard would attend at her home to ask if the Consumer was there and then demand that the Consumer pay him. Eventually, Witness 1 decided to ignore Mr. Leonard's calls altogether.

29. In December of 2017, the Yukon was vandalized while parked in front of Witness 1's house. As a result of the vandalism, SGI deemed the vehicle to be a total loss. Thereafter, the Consumer received a cheque in the amount of $7,900.00, which was made payable to the Consumer and the Licensee jointly

(the "SGI Cheque"). A joint cheque was issued due to the fact that the Licensee registered a lien against the Yukon shortly before the Yukon was vandalized.

30. The Consumer decided to attend at the Licensee's premises on or about January 2 or 3 of 2018 with hopes that an agreement could be reached that allowed the SGI Cheque to be cashed and that resolved all outstanding issues between the parties in respect to the Yukon. However, after the Consumer arrived, Mr. Leonard told the Consumer that the Consumer owed him half of the SGI Cheque, in part as repayment for attempts that the Licensee had allegedly made to have the Yukon repossessed by the Sheriff. (That said, the Consumer contacted the Sheriff's Office and was advised that the Sheriff had no file regarding the Consumer).

31. The Consumer refused to pay the Licensee half of the amount of the SGI Cheque. After so refusing, Mr. Leonard became visibly upset, pulled what the Consumer believed was a pistol out of his desk drawer (again, I am satisfied on all the evidence that the pistol was actually an imitation firearm), slammed it on the desk, and then pointed it toward the Consumer. At this point, the Consumer told Mr. Leonard that the conversation was over and left the Licensee's premises.

32. The Consumer had brought a work partner with him to the Licensee's premises on this occasion; however, the Consumer entered the building alone while his partner waited outside. As such, there was no other witness to what occurred between the Consumer and Mr. Leonard on this occasion. However, for the reasons already noted above, I accept the Consumer's evidence as credible.

33. After this second incident with an imitation firearm, Witness 2 called Mr. Leonard and told him that both Witness 2 and the Consumer would attend at the Licensee's premises in McLean to settle the matter. Witness 2 also advised Mr. Leonard that the Consumer was prepared to give the Licensee $1,400.00, an amount the Consumer believed remained outstanding on the loan for the Yukon.

34. After hanging up with Mr. Leonard, the Consumer and Witness 2 proceeded to the Licensee's premises. The Consumer brought Witness 2 with him because, as a result of the last interaction with Mr. Leonard, the Consumer "was concerned for his life".

35. When the Consumer and Witness 2 arrived at the Licensee's premises, they found Mr. Leonard sitting at a desk with one of his employees standing behind him. The Consumer offered to pay the Licensee the $1,400.00 that he believed was owed on the Yukon from the SGI Cheque. However, Mr. Leonard continued to insist that the Licensee be paid $4,500.00.

36. After so insisting, Mr. Leonard stood up while a few other people gathered behind him and his desk. Mr. Leonard then, for a third time in respect to the Consumer, reached into his desk drawer and pulled out what Witness 1 and the Consumer believed was a pistol (again, I am satisfied it was an imitation firearm). Witness 2 then grabbed the imitation firearm from Mr. Leonard's hand. Witness 2 and the Consumer then

left the building and took the pistol to Witness 2's vehicle which was parked outside. Witness 2 threw the imitation firearm into his back seat and then called the RCMP.

37. As Witness 2 and the Consumer left the building and got into their vehicle, they were followed by various employees of the Licensee. These employees were alleged to have been carrying bats and bars. There is no evidence that any of these employees were charged with any criminal offence.

38. The Consumer and Witness 2 then met with the RCMP at a separate location from the Licensee's premises in McLean to explain what had just transpired. Thereafter, they attended the RCMP detachment in Indian Head to provide statements. After an investigation, Mr. Leonard was charged with various criminal offences including assault with a weapon.

39. On or about February 28, 2018, Ms. Tkachuk interviewed Mr. Leonard in respect to the allegations leading to the criminal charges. Mr. Leonard admitted that the Licensee sold a vehicle to the Consumer and that he financed it. He stated that the Consumer was late with payments and then stopped making payments altogether which resulted in him placing a lien on the vehicle.

40. Mr. Leonard also admitted to having knowledge of the SGI Cheque and stated that the fact it was a joint cheque angered the Consumer. He further admitted to providing a bill to the Consumer for repairs the Licensee made to the vehicle. However, he did not provide any evidence as to whether the Licensee provided a warranty on the vehicle.

41. In respect to altercations with the Consumer and Witness 2, Mr. Leonard claimed that both attended the Licensee's premises and threatened him on more than one occasion. He states the first time they attended, they told him they would not pay for the Yukon and that if Mr. Leonard did not sign over the SGI Cheque to them they would "blow him away".

42. Mr. Leonard also claimed that after this initial incident, his lawyer called the Consumer and Witness 2 and told them that they were to directly deal with him from now on as it was a civil matter. There is evidence of some contact from Mr. Leonard's lawyer through a letter that was attached as an exhibit to an affidavit used in civil proceedings between the parties.

43. Mr. Leonard claims that about 6-8 days after his lawyer contacted the Consumer, the Consumer and Witness 2 attended the Licensee's premises again and told him they had a gun located in their bag. Mr. Leonard states that the Consumer and Witness 2 threatened him a second time saying if he did not hand over the SGI Cheque they would "blow him away". He also states in support of his position that he felt threatened that the Consumer and Witness 2 are very large individuals, between 450 and 500 pounds.

44. Mr. Leonard admits that after these alleged threats from the Consumer and Witness 2, he opened his desk drawer to reveal to the Consumer and Witness 2 that he was in possession of an imitation firearm.

He claims that thereafter he did not touch the imitation firearm, but instead that the Consumer and Witness 2 pushed him and grabbed the imitation firearm. He also claims that he was the one that called 911 which ultimately led to his arrest.

45. Mr. Leonard also claimed that there were pictures of both the Consumer and Witness 2 on Facebook with guns. Moreover, he claimed that he had video footage of the Consumer and Witness 2 showing the gun they allegedly brought to the Licensee's premise to Mr. Leonard. However, Mr. Leonard never provided any Facebook pictures to our office, nor did he provide any video evidence.

46. So it is clear, I should state again that I do not accept Mr. Leonard's version of events where they differ from the Consumer and the other witnesses. Mr. Leonard had an opportunity to be heard and could have easily provided the photo evidence he claimed existed and/or the video evidence he claimed existed and was in his possession. He chose not to. I therefore after careful consideration draw an adverse inference against Mr. Leonard and the Licensee in respect to that evidence.

47. In addition, on August 20, 2019, Mr. Leonard pleaded guilty to assault with a weapon in respect to the incident, which was the most serious charge of the numerous charges brought against him in respect to the incident. As a part of negotiations, the Crown stayed the other charges. Mr. Leonard was thereafter sentenced to 6 months' imprisonment to be served in the community with conditions that included a curfew and anger management treatment. He also received 12 months' probation. Fundamentally, Mr. Leonard admitted he engaged in criminal behaviour in respect to an incident involving the Consumer. As already noted, neither the Consumer or Witness 2 were arrested or charged in respect to the incident. In my respectful view, Mr. Leonard's claims in light of all the other evidence (and the lack of evidence he is responsible for as already noted above) result in him having serious credibility issues. In short, I do not believe his version of events.

48. One other thing is important to highlight at this time. After the NOPA was served on Mr. Leonard and he provided written submissions, Mr. Leonard attempted to have these proceedings adjourned *sine die* until sometime after his criminal charges were dealt with. It was made clear to Mr. Leonard that due to the seriousness of the allegations in these proceedings, these proceedings would continue as scheduled. Mr. Leonard thereafter chose not to make any submissions as to the merits of the allegations in these proceedings. Mr. Leonard was warned at his oral hearing on June 14, 2019 that the hearing constituted his opportunity to make submissions and provide evidence, but still he chose not to make submissions beyond the written submissions he filed with our office on June 7, 2019. This was a strategic choice Mr. Leonard made in consultation with his counsel.

49. Having already had his opportunity to be heard, on August 23, 2019, three days after he pleaded guilty, Mr. Leonard attempted to supplement the record by filing additional written submissions. Generally, this is inappropriate as it can be seen as constituting litigation by instalments, which is an abuse of process

(see e.g. *Bear v Merck Frosst Canada & Co.*, 2011 SKCA 152 at paras 36-43 and the authorities cited therein, 385 Sask R 76, *Strand v Gilewich*, 2007 SKCA 44, 293 Sask R 148). That said, there is something especially troubling about the submissions that must be addressed. Nowhere in those submissions did Mr. Leonard disclose the fact that he pleaded guilty to and was convicted of assault with a weapon. Disclosure of convictions for criminal offences are required by section 70 of the *Act* and subsection 5-2(h) of the *Regulations*. One of the reasons the NOPA was issued was because Mr. Leonard failed to disclose the fact that he had been charged with criminal offences. Mr. Leonard has been repeatedly advised that he needs to make such disclosures, yet he continues to refuse to disclose.

50. Adding to the troubling nature of the submissions is the fact that Mr. Leonard states that he acted "appropriately" in his dealings with the Consumer and Witness 2, that he continues to blame these victims, and that the submissions overall show that Mr. Leonard has no remorse whatsoever for the incidents at issue. The submissions go so far as to state that the "allegations against Mr. Leonard for the most part have proved to be meritless and not even worthy of pursuing." How this could be the case when Mr. Leonard was convicted of a serious and violent criminal offence involving a consumer and a motor vehicle transaction, and has been sentenced to a period of imprisonment to be served in the community plus 12 months' probation as a result, is not explained. Nor do I think could such a submission could be explained or reconciled on the law and the facts.

51. In addition, while Mr. Leonard was quick in his August 23, 2019 submissions to provide evidence of the stays of proceedings that were directed by the Crown in respect to certain offences, he did not at all provide evidence of his conviction or sentence. In other words, Mr. Leonard only disclosed evidence that appeared helpful to him while withholding evidence that was unhelpful, even though that evidence was required by legislation to be disclosed. In my respectful view, Mr. Leonard's submissions were misleading to this office and demonstrate that Mr. Leonard fails to appreciate the gravity of this situation. In the end, this all lends further support to why I find Mr. Leonard to not be credible and also supports the ultimate decision reached below on the merits that the Licensee's licence should be cancelled.

c. Disclosure of Fraud Charges Prior to the Oral Hearing on the NOPA

52. On or about March 15, 2019, Mr. Leonard was served with the NOPA. Shortly thereafter, Mr. Leonard retained counsel who communicated with our office that Mr. Leonard wished to exercise his opportunity to be heard by way of written submissions and an oral hearing. The deadline for filing the written submissions was April 30, 2019 with the oral hearing to take place on May 14, 2019. However, Mr. Leonard ended up switching counsel which led to an adjournment being granted so that his new counsel could review the disclosure and respond. After consultation with counsel, written submissions were made due by June 7, 2014, with the oral hearing being set for June 14, 2019.

53. On June 11, 2019, I contacted counsel for Mr. Leonard by phone for case management purposes in light of the June 14, 2019 hearing. Counsel requested an adjournment, but I advised counsel that since the matter had already been delayed and there was not any legitimate basis to request an adjournment, the matter would be proceeding as scheduled. I also reminded counsel that Mr. Leonard could submit any evidence or further legal submissions at the oral hearing.

54. On June 13, 2019 at 4:52pm, counsel for Mr. Leonard sent me a letter indicating that he was not in a position to proceed because his client was charged with fraud, he had not received disclosure from the Crown regarding the fraud allegations, and that he needed this disclosure to respond to the NOPA. This was the first time our office learned that Mr. Leonard had been charged with fraud. The NOPA in no way was based on any fraud allegations and was not concerned with those allegations.

55. As such, on June 14, 2019, Mr. Leonard was advised that his oral hearing would proceed as scheduled. He was also expressly advised of his need to properly disclose the fraud charge to our office in accordance with the section 70 of the *Act* and subsection 5-2(h) of the *Regulations*. Further investigation by FCAA Staff revealed that Mr. Leonard was charged with criminal fraud approximately two weeks after the NOPA was issued, on April 1, 2019. Our office only learned of the existence of a fraud charge through Mr. Leonard's counsel on June 13, 2019, which appeared well over five business days from when Mr. Leonard was charged. As such, Mr. Leonard appeared to have again withheld from this office the fact that he was charged with a serious criminal offence in violation of the *Act* and *Regulations*.

56. As a result of a preliminary evidence gathered in respect to the background to the fraud charge which seemed to link the matter to a motor vehicle transaction between Mr. Leonard and a consumer, our office issued a NOIA that suspended the Licensee's licence pending the outcome of our investigation. Importantly, the NOPA proceedings, and this decision, do not concern the background to the criminal fraud proceedings or the NOIA. That said, since existence of the fraud charge was inadvertently disclosed in the context of the NOPA proceedings, and since the non-disclosure was put to Mr. Leonard in the context of the NOPA proceedings, Mr. Leonard's failure to voluntarily disclose the fraud charge within five business days as required by the *Act* and *Regulations* will be dealt with in this decision.

IV. Issues

57. This matter gives rise to the following issues:

(i) Under what circumstances are licensees susceptible to action being taken?

(ii) Are these regulatory proceedings a substitute police investigation thereby rendering them *ultra vires* the *Act* and *Regulations*?

(iii) Do the present proceedings violate the principle against self-incrimination enshrined in section 7 of the *Charter*?

(iv) Should action be taken against the Licensee and, if so, what action should be taken?

V. Analysis

a. Under what circumstances are licensees susceptible to action being taken?

57. While not directly submitted by Mr. Leonard, there are overtones in his submissions that the Director or Deputy Director can only take action against a licensee if the licensee is convicted of a criminal offence. There is a suggestion and general attitude that while the *Regulations* require disclosure of the institution of criminal proceedings, failure to comply with this is minor and that, once they are disclosed, no action can or should be taken until there is a conviction. As a corollary, there is also a suggestion that if the criminal proceedings are stayed or withdrawn, this results in there being no reason or authority for any action to be taken against a licensee. As a result, the suggestion is that when charges are stayed or withdrawn, all regulatory proceedings must end and the licensee should be permitted to conduct business as usual without any action being taken.

58. These overtones, suggestions, and/or attitudes are incorrect and misguided in law. The ability to hold a licence to engage in a designated business is a privilege, not a right. To obtain a licence, ot is a requirement of the *Act* that the Director or Deputy Director be satisfied that a licensee is suitable to hold a licence and *at all times thereafter remain* suitable to hold a licence (ss 61, 65). Suitability is a core component of the licensing framework in the *Act* and is a key part of ensuring consumers are adequately protected. Action can be taken against a licensee when the Director or Deputy Director receives information that calls into question a licensee's suitability to hold a licence.

59. The authority to take action against a licensee in respect to concerns surrounding suitability flows from subsection 65(1)(a) of the *Act*. That provision states that subject to providing the licensee with its

opportunity to be heard, "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". Subsection 61(a)(iii) states that the Director or Deputy Director may issue a licence if "satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable". Read together, these provisions state that if the Director or Deputy Director is satisfied that a licensee is no longer suitable to hold a license or licensing the licensee would be otherwise objectionable, the Director (or Deputy Director) can suspend or cancel the licensee's licence.

60. There are other situations where action may be taken, such as when there has been a prescribed change in the licensee's circumstances (*Act*, s 65(1)(c)), which includes the licensee or one of its directors having criminal proceedings instituted against them or being convicted of an offence (*Regulations*, s 5-2(h)). But, the *Act* makes clear that existence of a prescribed change in circumstance is an *additional* basis to ground action being taken against a licensee. It does not override or replace the more general authority of the Director or Deputy Director to take action when she or he is satisfied that information received demonstrates that the licensee is no longer suitable to hold a licence.

61. To be clear then, after obtaining a licence under the *Act* to engage in a designated business, licensees must at all times thereafter remain suitable to hold a licence. If our office is provided with, or otherwise obtains, information that results in a licensee no longer being suitable to hold a licence, the Director or Deputy Director has the authority to take action by suspending or cancelling that licensee's licence. This authority remains irrespective of whether the Crown in any criminal proceedings (should they exist) decides to stay or withdraw those criminal proceedings, though the reasons as to why that decision is made by the Crown may well be factored into whether any action, as well as what type of action, ought to be taken in any one case.

b. Are these regulatory proceedings a substitute police investigation thereby rendering them *ultra vires* the *Act* and *Regulations*?

62. As noted above, Mr. Leonard exercised his opportunity to be heard by filing written submissions. The submissions focus almost exclusively on a constitutional issue, arguing that these proceedings constitute a substitute police investigation into a criminal offence and are therefore unconstitutional. Mr. Leonard submits that since investigations of criminal offences fall within the exclusive jurisdiction of the federal government (pursuant to section 91(27) of *The Constitution Act, 1867*, 30 & 31 Vict, c 3 [*Constitution Act, 1867*]), FCAA Staffs' investigation into the background that led to Mr. Leonard being charged criminally was impermissible constitutionally.

63. Mr. Leonard relies on two main authorities in support of his position: *Starr v Houlden*, [1990] 1 SCR 1366 (WL) [*Starr*] and *Stromberg v Law Society of Saskatchewan* (1996), 139 Sask R 182 [*Stromberg*]. Both of these decisions are binding upon me and require careful consideration.

64. I begin with *Starr*. This case concerned whether a public inquiry ordered pursuant to provincial legislation that delved into allegations of specific criminal wrongdoing with respect to specific individuals was unconstitutional. In the case, the president of a charitable organization in Ontario was accused in a news article of paying money from the charitable organization to political parties. As the allegations gained notoriety, the then Premier of Ontario ordered a public inquiry into the situation to try and determine whether the president diverted the funds in order to help get certain politicians elected. The public inquiry was established by an Order-in-Council which was permitted by provincial legislation.

65. The president of the charitable organization challenged the public inquiry by arguing that it encroached on the exclusive jurisdiction of the federal government to investigate criminal offences as found in section 91(27) of the *Constitution Act, 1867* and based on *Charter* grounds (ss 7, 8, 11 and 13). The majority decision in *Starr* only considered the former division of powers based arguments because in the majority's view resolving this issue was sufficient to fully dispose of the matter.

66. The majority opinion began by noting that the Court had consistently upheld the constitutionality of provincial commissions of inquiry, including when they had incidental impact on federal criminal law and criminal procedure powers (at para 23). However, the majority also noted that the investigatory powers of provincial commissions are not unlimited.

67. The majority went on to state that when a legal proceeding is impugned on division of powers grounds, a court must ascertain the dominant purpose or "pith and substance" of that proceeding to determine whether it was grounded in a provincial head of power or a federal head of power. In analyzing the Court's prior jurisprudence regarding public inquiries, the majority suggested that when the inquiry is for a more general purpose that is not focused on specific individuals and potential criminal liability, then that inquiry will be constitutional. However, when the dominant purpose of the inquiry is to delve into specific individuals and specific alleged criminal wrongdoings, then the inquiry will be *ultra vires* provincial authority. As the majority reasoned:

> 28 This leads me to a consideration of the decision of this Court in *Attorney General (Que.) and Keable v. Attorney General (Can.), supra*. That case dealt with a commission of inquiry empowered to investigate and report on various illegal acts allegedly committed by police forces, including the R.C.M.P. It is significant that the Commission was mandated to deal with, not only the general issue of R.C.M.P. wrongdoing, but also with specific acts including illegal entry, setting a fire and theft. No names were mentioned in the terms of reference. The Court upheld the constitutionality of the commission of inquiry, with Pigeon J. delivering the judgment of the majority. Much of the judgment concerned the question of whether a provincial commission could investigate the administration of the R.C.M.P. The answer of the majority was that it could not. The judgment also dealt with the more general question of the constitutional limits of the inquiry. In that regard, Pigeon J. held at p. 241 that

> On the other hand, it appears to me that the majority opinion in *Di Iorio v. Warden of the Montreal Jail*, is conclusive of the validity of the Commission's mandate to the extent that it is for an inquiry into specific criminal activities. I can see no basis for a distinction between such an inquiry and an inquiry into "organized crime" as in *Di Iorio*, or a coroner's inquiry into a criminal homicide as in *Faber v. The Queen* ...

In my view, having regard for my interpretation of *Faber* and *Di Iorio*, this passage from the decision of Pigeon J. should not be taken to mean that it is within provincial jurisdiction to directly investigate particular individuals in respect of their alleged commission of specific criminal offences. I repeat that in *Faber* the *ratio* was that a coroner's inquest had purposes and functions that were not related to the investigation of crimes. In *Di Iorio*, the majority position of Dickson J. stands for the view that the Commission was not investigating specific criminal acts by specific individuals; it was mandated to investigate the general issue of organized crime in Quebec. While *Keable* dealt with specific allegations of illegal acts by members of the R.C.M.P., there were no individuals named in the terms of reference and nor was the inquiry empowered to examine one specific crime allegedly committed by particular persons. I also note that in *Keable* the terms of reference of the Commission empowered it to investigate certain specific "illegal or reprehensible acts" so that it could make recommendations to ensure that those acts would not be repeated by the R.C.M.P. in the future. In that light, while the Commission no doubt was empowered to inquire into certain potentially illegal activity, the inquiry's focus was on the more general issue of R.C.M.P. methods of investigation and wrongdoing in that context, a matter within provincial jurisdiction.

29 I cannot leave the discussion of *Keable* without referring to the concurring reasons of Estey J. with whom Spence J. agreed. His reasons are important since they, in my view, place the discussion of division of powers as it relates to provincial inquiries into a useful analytical framework, and are somewhat reflective of the position taken by Dickson J. in *Di Iorio*. Estey J. begins with the proposition that *Di Iorio* did not go so far as to permit the invasion by provincial action of the sanctity of the right to remain silent during what is in effect a criminal investigation. At pages 254-55 he states:

> The investigation of the incidence of crime or the profile and characteristics of crime in a province, or the investigation of the operation of provincial agencies in the field of law enforcement, are quite different things from the investigation of a precisely defined event or series of events with a view to criminal prosecution. The first category may involve the investigation of crime generally and may be undertaken by the invocation of the provincial enquiry statutes. The second category entails the investigation of specific crime, the procedure for which has been established by Parliament and may not be circumvented by provincial action under the general enquiry legislation any more than the substantive principles of criminal law may be so circumvented.

The key, according to Estey J., was where to draw the line. <u>While the province is within its jurisdiction to investigate allegations or suspicions of specific crime with a view to enforcement of the criminal law by prosecution of particular individuals</u>, it must do so in accordance with federally prescribed criminal procedure and not otherwise, as for example, by the inquiry process. Estey J. fleshed out this position in the following way, at p. 258:

> Where the object is in substance a circumvention of the prescribed criminal procedure by the use of the enquiry technique with all the aforementioned serious consequences to the individuals affected, the provincial action will be invalid as being in violation of either the criminal procedure validly enacted by authority of s. 91(27), or the substantive criminal law, or both. **Where**, as I believe the case to be here, **the substance of the provincial action is predominantly and essentially an enquiry into some aspects of the criminal law and the operations of provincial and municipal police forces in the Province, and not a mere prelude to prosecution by the Province of specific criminal activities, the provincial action is authorized under s. 92(14).**

[emphasis added]

68. The majority went on to hold that because the public inquiry in *Starr* targeted specific individuals in respect to specific allegations of wrongdoing, it was in pith and substance a substitute police investigation and preliminary inquiry into a specific criminal offence, which rendered it unconstitutional (at para 34). The majority noted that the combined effect of naming specific individuals in a terms of reference for a public inquiry and also incorporating language in a terms of reference that is nearly indistinguishable from a specific offence set out in the *Criminal Code*, as occurred in *Starr*, would distinguish the situation from the long line of cases that found provincial inquiries to be *intra vires* the powers of the provinces when those inquiries were more general in nature (at para 34). This is because the combined effect of these two things would actually result in those involved in the inquiry investigating and making findings of fact that would, in effect, establish a *prima facie* criminal case against those targeted by the inquiry. This would all result in the public inquiry being *ultra vires*.

69. With that said, in my respectful view, the present situation is distinguishable for a number of reasons. First, these proceedings are not an *ad hoc* public inquiry that has been ordered by a provincial government to target and investigate a specific person in respect to potential criminal wrongdoing. Instead, these proceedings are regulatory proceedings brought in respect to a licensee pursuant to the *Act* and *Regulations* which establish a licensing framework for designated businesses. The Licensee and Mr. Leonard made the choice to obtain a licence to sell motor vehicles in Saskatchewan and, in so doing, agreed to subject themselves to the laws applicable thereto. Those laws include compliance initiatives and, when appropriate, the taking of action against licensees.

70. Second, unlike in *Starr*, the present proceedings are not focused on determining whether Mr. Leonard should be charged with any criminal offence and/or whether he is guilty or even *prima facie* guilty of any criminal offence. The separate criminal investigations and criminal proceedings were focused on those things, not the present regulatory proceedings. Indeed, the present regulatory proceedings are concerned with whether the Licensee continues to be **suitable** to hold a licence in light of the background facts that led to the criminal charges against Mr. Leonard. While the existence of criminal charges has triggered a regulatory investigation, that investigation was not concerned with establishing criminal

wrongdoing. Using the words of the majority in *Starr*, the present regulatory proceedings were **not** commenced "with a view to enforcement of the criminal law by prosecution of particular individuals..." (at para 29).

71. While not a division of powers case (but instead a case concerning section 11 of the *Charter* and issues of double jeopardy that are not at issue here), *R v Wigglesworth*, [1987] 2 SCR 541 is instructive as it helpfully draws the important distinction between criminal or quasi-criminal proceedings that attract true penal consequences and regulatory proceedings that include licensing and/or disciplinary decisions. Wilson J. stated as follows in respect to the distinction:

> 32 In my view, if a particular matter is of a public nature, intended to promote public order and welfare within a public sphere of activity, then that matter is the kind of matter which falls within s. 11 [of the *Charter*]. It falls within the section because of the kind of matter it is. **This is to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity**: see, for example, *Law Soc. of Man. v. Savino*, at p. 292; *Malartic Hygrade Gold Mines (Can.) Ltd. v. Ont. Securities Comm.* (1986), 54 O.R. (2d) 544 at 549, 9 O.S.C.B. 2286, 19 Admin. L.R. 21, 27 D.L.R. (4th) 112, 24 C.R.R. 1, 15 O.A.C. 124 (Div. Ct.); and *Re Barry and Alta. Securities Comm., supra*, at p. 736, per Stevenson J.A. **There is also a fundamental distinction between proceedings undertaken to promote public order and welfare within a public sphere of activity and proceedings undertaken to determine fitness to obtain or maintain a licence.** Where disqualifications are imposed as part of a scheme for regulating an activity in order to protect the public, disqualification proceedings are not the sort of "offence" proceedings to which s. 11 is applicable. Proceedings of an administrative nature instituted for the protection of the public in accordance with the policy of a statute are also not the sort of "offence" proceedings to which s. 11 is applicable. But all prosecutions for criminal offences under the *Criminal Code* and for quasi-criminal offences under provincial legislation are automatically subject to s. 11. They are the very kind of offences to which s. 11 was intended to apply.
>
> [emphasis added]

72. The regulation of trades/professions and private spheres of activity within a province, as well as the ability of provincial regulatory bodies to discipline members and licensees, have been repeatedly held to fall constitutionally within the jurisdiction of provincial legislatures to legislate in respect to property and civil rights under subsection 92(13) of the *Constitution Act* (see e.g. *Canada (Attorney General) v Law Society (British Columbia)*, [1982] 2 SCR 307 (WL)[1], *Global Securities Corp. v British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 SCR 494, *Law Society (British Columbia) v Mangat*, 2001 SCC 67, [2001] 3 SCR 113 (provincial regulation of lawyers also grounded in subsection 92(14)), and *Underwood,*

[1] Estey J. for a unanimous Supreme Court of Canada stated at para 107 that "It can hardly be contended that the province by proper legislation could not regulate the ethical, moral and financial aspects of a trade or profession within its boundaries."

McLellan & Associates Ltd. v Assn. of Professional Engineers (Saskatchewan) (1979), 1 Sask R 25 (CA)). Likewise, and in my respectful view, the present proceedings are *intra vires* the *Act* and *Regulations* because the dominant purpose or "pith and substance" of these proceedings is the regulation of a specific industry within Saskatchewan and the determination of suitability of a licensee to hold a licence within a private sphere of activity (motor vehicle dealing under the *Act* and *Regulations*).

73. To hold otherwise would stifle this office's ability to conduct an investigation into a licensee's suitability whenever it comes to our attention that a licensee has been charged with a criminal offence. Mr. Leonard's position would prohibit this office from embarking in its own investigation pursuant to powers granted by the *Act* and *Regulations* simply because there are allegations of criminal wrongdoing outstanding. This would be a dangerous precedent to set and one that on my reading of the cases has not been set. In fact, my understanding of the cases is that parallel criminal and regulatory proceedings are proper and permissible (see e.g. *R v Jarvis*, 2002 SCC 73, [2002] 3 SCR 757 [*Jarvis*] at para 97).

74. In my view, section 91(27) of the *Constitution Act, 1867* does not restrict provincial regulators from regulating industries within their provincial boundaries, including by gathering evidence and information regarding a criminal allegation when the purpose is to determine suitability to hold a licence. Furthermore, and in my view, neither *Starr* or any other case cited by Mr. Leonard holds otherwise.

75. In fact, my conclusion regarding the constitutionality of these proceedings is actually strengthened by the other main decision cited by Mr. Leonard, that case being *Stromberg*. This case demonstrates the type of behaviour that a provincial regulatory body might engage in, which has not taken place here, that will stray too far into the federal government's jurisdiction over the criminal law thereby rendering the proceedings unconstitutional. *Stromberg* concerned a disciplinary proceeding brought against a lawyer by the Law Society of Saskatchewan. The Law Society received a complaint that the lawyer and 21 other lawyers in the firm set up a scheme to take money from a company and then funnel those monies to a senator with the intention of hiding the contributions from public knowledge. The complaint also alleged this activity was a breach of section 121 of the *Criminal Code*.

76. The Law Society ended up bringing disciplinary proceedings against the lawyer and the other 21 members of the firm, with those proceedings including an investigation. In addition, the RCMP decided to conduct an investigation into the matter. Eventually, the RCMP wrote to the Law Society to advise that there was likely a criminal offence that took place and that, in the RCMP's view, the evidence gathered by the Law Society in its investigation would be helpful to the RCMP's investigation as well. As such, the RCMP suggested that the RCMP and the Law Society work alongside one another in their investigations to the mutual benefit of both.

77. Importantly, the disciplinary charges brought against the lawyer **expressly** alleged that he was guilty of conduct unbecoming **because**, *inter alia*, he entered into a scheme whereby his conduct was a possible breach of section 121 of the *Criminal Code* and/or he assisted another in breaching section 121

of the *Criminal Code.* In other words, the disciplinary proceedings were **directly linked to and dependent upon** the Law Society investigating and establishing whether a criminal offence took place. This ultimately led the Court to decide that the disciplinary proceedings were *ultra vires* and unconstitutional in line with the reasoning in *Starr.* After a very thorough and thoughtful decision, the Court in *Stromberg* concluded by stating:

> 125 The Law Society clearly has the power and obligation to charge lawyers with disciplinary offences that are primarily breaches of professional conduct. It must obviously name the lawyer charged, and in some instances other individuals or entities who are not lawyers in order to particularize the complaint.
>
> 126 But a disciplinary proceeding begins to go off the rails when it approaches the matter on the basis that the conduct is unprofessional **because** it constitutes a criminal offence **not yet determined by the criminal courts**. **It goes completely off the rails when its net effect is to investigate and determine whether the lawyer has engaged in conduct which is directly or indirectly characterized as a specific criminal offence. It has by then usurped the exclusive domain of the federal government and the criminal courts over criminal law and procedure, a head of power clearly assigned pursuant to the division of powers in the Constitution to the federal government.** If the allegations of criminal conduct involve named entities or individuals who are not lawyers, the unconstitutionality of such disciplinary proceedings is all the more evident.
>
> 127 For the reasons given, the disciplinary proceedings before me are *ultra vires.* ...
>
> [emphasis added]

78. By contrast, the present proceedings against the Licensee were not instituted to determine whether any specific criminal offence could be established against Mr. Leonard, nor is any action taken by this office dependent on the existence of any criminal offence being established. In addition, and unlike in *Stromberg*, this office's investigation was conducted separately from the RCMP's investigation. Furthermore, this office's investigation into the background facts that led to the criminal charges against Mr. Leonard was not to determine whether the evidence established that Mr. Leonard committed the criminal offences alleged, but instead whether the evidence established that the Licensee remained suitable to hold a Licence. These are all, in my view, critical distinctions that separate the present proceedings from the constitutionally problematic nature of the proceedings in *Stromberg*.

79. Ultimately, these regulatory proceedings, though their origin involves allegations of criminal wrongdoing, are not focused on whether a criminal offence is or can be established. Instead, these proceedings are and always have been concerned with whether the Licensee remains suitable to hold a licence in light of the background facts that led to the criminal charges. While it is now true that Mr. Leonard has been convicted of a serious criminal offence (which on its own may support action being taken), there nevertheless would still have been suitability concerns based on the evidence gathered by this office had he not been convicted to a criminal standard.

80. To conclude then, each of the proceedings at issue here serve different purposes and are in pith and substance of a different nature. While the criminal proceedings fall within a federal head of power (*Constitution Act*, s 91(27), the present regulatory proceedings are focused on suitability and the regulation of an industry within the Province of Saskatchewan and therefore fall within at least one provincial head of power (*Constitution Act*, s 92(13)). Therefore, and with great respect to Mr. Leonard's constitutional submissions, his division of powers submissions are without merit.

c. Do the present proceedings violate the principle against self-incrimination enshrined in section 7 of the *Charter*?

81. In his written submissions, Mr. Leonard raised a *Charter* issue. While the submission is not developed, Mr. Leonard states that his opportunity to be heard in respect to the NOPA amounted to him being compelled to provide information which in turn violated his right against self-incrimination protected by section 7 of the *Charter*.

82. In my respectful view, there are two reasons why Mr. Leonard's submission in respect to the *Charter* is without merit. First, there was no compulsion. The opportunity to be heard provided for in subsection 71(3) is not compulsory in nature. Nothing in section 71 forces a licensee to provide submissions in response to a proposed action. Instead, subsection 71(3) provides an opportunity to a licensee to make submissions, either in writing or through an oral hearing, should the licensee so choose. It is up to that licensee to decide whether to exercise the opportunity to be heard. The *Act* does not require the licensee to do so. Therefore, because there is not any state compulsion, section 7 is not engaged.

83. Second, even if it could be said that there is some sort of state compulsion here, a number of important Supreme Court of Canada authorities demonstrate that Mr. Leonard is not able to rely on the *Charter*, and particularly the section 7 principle against self-incrimination, in regulatory proceedings such as this one (see e.g. *R v Jarvis*, *R v Fitzpatrick*, [1995] 4 SCR 154 [*Fitzpatrick*], *British Columbia (Securities Commission) v Branch*, [1995] 2 SCR 3, and *Thomson Newspapers Ltd. v Canada (Director of Investigation & Research)*, [1990] 1 SCR 425).

84. The Supreme Court of Canada's decision in *Jarvis* is particularly helpful. *Jarvis* was a tax audit case where the evidence revealed by an audit eventually led to a decision by Canada Revenue Agency to engage in an investigation for penal liability, which in turn led to charges being laid pursuant to the *Income Tax Act*. The Court was tasked with considering when during the course of the audit the matter turned from an administrative matter into an investigation for penal liability and whether this distinction had any implication on the nature of protections afforded by the *Charter*.

85. The Court, within the context of the provisions of the *Income Tax Act* at issue, held that the principle against self-incrimination flowing from section 7 of the *Charter* is only engaged once the predominant

purpose of the state's inquiries is to determine penal liability (*Jarvis* at para 88). It is at this time that the state is said to "cross the Rubicon" from a regulatory relationship with an individual or entity to one that is adversarial in nature.

86. In the present case, the NOPA proceedings are regulatory in nature. No penal liability is being determined here, nor (as explained above) was the predominant purpose of FCAA Staff's investigation focused on determining penal liability. Instead, these proceedings and the investigation leading to these proceedings has been focused on whether the background facts resulting in Mr. Leonard being charged criminally result in the Licensee no longer being suitable to hold a licence. The regulatory nature of these proceedings render section 7 of the *Charter* not engaged.

87. In addition, as I noted recently in *Hausner v Financial and Consumer Affairs Authority*, unreported (October 1, 2019), the present proceedings are not secondary to the criminal proceedings that Mr. Leonard was facing. Instead, as explained in *Jarvis* at para 97, they are legally permissible parallel proceedings. If the present proceedings caused constitutional issues or caused prejudice in respect to his criminal proceedings, then Mr. Leonard could have applied for relief within the context of his criminal proceedings where the *Charter* was engaged or within the context of these proceedings to the Court of Queen's Bench for a stay of these proceedings pending the outcome of the criminal proceedings. No such applications were made. For our purposes, in the context of these regulatory proceedings, the *Charter* is not engaged. Consequently, and with respect, Mr. Leonard's submission in respect to section 7 of the *Charter* is also without merit.

d. What action should be taken against the Licensee?

88. In my respectful view, the state of affairs for Mr. Leonard and the Licensee are worse than they were at the time the NOPA was issued. I say this for a variety of reasons.

89. First, as noted above, when provided the opportunity to respond to the evidence brought against him on the merits of the issues in the NOPA, Mr. Leonard refused to provide any such response. As such, the proposed findings in the NOPA are unchallenged.

90. Second, and for the reasons already stated above, I accept the evidence of the Consumer and the Consumer's witnesses as credible, and I reject the evidence provided by Mr. Leonard to FCAA Staff as not being credible where it conflicts or attempts to minimize the seriousness of the events. This provides an extra layer of legitimacy to the proposed findings in the NOPA.

91. Third, Mr. Leonard has now been convicted of a serious criminal offence involving violence against a consumer in the context of a motor vehicle transaction. Mr. Leonard has also been sentenced to a period of imprisonment to be served in the community under conditions that include a curfew and anger

management treatment. This all reinforces many of the core proposed findings in the NOPA that lead to the proposed action of licence cancellation.

92. In my respectful view, the evidence taken as a whole demonstrates that Mr. Leonard has some serious judgment issues that render the Licensee no longer suitable to hold a licence. Mr. Leonard's willingness to resort to threats and violence, and to possess and use a firearm (imitation or not), in his business dealings, is entirely unacceptable behaviour.

93. Consumers should never be treated the way Mr. Leonard chose to treat the Consumer and the witnesses in this case. Consumers should never have to be concerned that a licensed motor vehicle dealer will threaten them or assault them with a weapon. Consumers should never have to be concerned that in the event they have a dispute with their motor vehicle dealer over a transaction, that a firearm or imitation firearm may be pulled on them or even shown to them in a threatening way. In my respectful view, for Mr. Leonard to attempt to argue that this type of behaviour is appropriate, even though he admitted it was criminal and is currently serving a period of imprisonment in the community as a result, demonstrates that he has little to no insight into the seriousness of his behaviour, which creates too high a risk to the public should the Licensee remain licensed.

94. In all the circumstances, the reasoning in the NOPA at paragraphs 60-62 remains fitting and it is appropriate to repeat it in this decision:

> 58. There is case law in Ontario that has considered violent conduct in the context of a motor vehicle transaction. 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.
>
> 59. I am in agreement with this reasoning. The *Act* and *Regulations* in Saskatchewan are similarly designed to protect and safeguard consumers. **Aggressive, violent, or threatening behaviours provide grounds to reconsider a licensee's suitability to be licensed or to find continued licensing to be objectionable.**
>
> 60. As the sole director of the Licensee, Mr. Leonard is the Licensee's only directing mind. ...Mr. Leonard's behaviour included the use of an imitation firearm to intimidate consumers and harass a consumer's family members. The fact that the firearm was an

> imitation was not known at the time to the consumers. ...Mr. Leonard permitted employees to follow a consumer out of the building in a threatening manner, also with weapons. Threatening use of this type of extreme force falls far below the standards of behaviour expected from society as a whole. Ultimately, serious acts of violence and aggression on the part of licensees or their principals in the course of carrying on business as a vehicle dealer are unacceptable.
>
> [emphasis added

95. It is also important to reiterate from the NOPA my mindfulness of Barclay J.'s decision in *Macnamara v Saskatchewan (Acting Registrar, Motor Dealers Act)*, 2009 SKQB 37, 34 Sask R 148 [*Macnamara*]. In that case, Barclay J. held in respect to predecessor legislation that in deciding whether to impose a licence suspension due to the licensee being convicted of criminal acts, there should be a direct connection between the *Act* and the harm that is or could be caused to the public (at para 34). This is because the overarching purpose behind the legislation is the protection of the public.

96. As also noted in the NOPA, I appreciate that the provisions at issue in the *Act* and *Regulations* provide broader authority to take action against licensees as compared to the provisions under the predecessor legislation. Subsection 65(1) of the *Act* is broader as it allows for the suspension or cancellation of a dealer license for a variety of reasons, including if there exists a prescribed change in circumstance or if the licensee is no longer suitable to hold a licence. However, I still remain mindful that the overarching purpose of the *Act* and *Regulations* is the same as the predecessor legislation, which is the protection of the public. As such, to suspend or cancel a licence, the reasoning in *Macnamara* likely remains applicable, meaning that when taking action as serious as a licence cancellation, there should be a direct connection between the nature of conduct at issue and the protection of the public.

97. The connection in the present case is obvious. Mr. Leonard assaulted a consumer with an imitation firearm in the context of a dispute over a motor vehicle transaction with the Licensee. This troubling behaviour does not meet the standards of suitability expected and required of licensees under the *Act*. I adopt the following from the NOPA that expanded upon this important principle:

> 69 ...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.
>
> 98. 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.
>
> 99. The alleged failures by the Licensee in this case to provide prescribed information to me in an accurate and timely fashion... show a disregard for the importance of this information to the regulatory system set up by the *Act* and the *Regulations*.
>
> 100. Moreover, the... false claims made to the Consumer... show a lack of honesty and integrity on the part of the Licensee's sole directing mind, Mr. Leonard. This... lack of honesty and integrity leads me to believe that the Licensee's operations pose harm to consumers that should be protected against.
>
> 101. Most significantly, and on its own notwithstanding the other issues mentioned above, the... threatening behaviour of Mr. Leonard and others on the Licensee's premises aimed at the Consumer, Witness 2, and Witness 3 is not appropriate for a vehicle dealer and cannot be condoned. This behaviour is directly linked to public safety and the need to protect the public.

97. In the end, Mr. Leonard has now been convicted of a serious and violent criminal offence that involved a consumer, the Licensee, and a motor vehicle transaction.

98. In addition, on two occasions[2], Mr. Leonard failed to disclose to our office as required by the *Act* and *Regulations* that he had criminal proceedings instituted against him. On each occasion, Mr. Leonard was expressly warned of the need to voluntarily disclose criminal charges to our office, but he still failed to do so. As I did preliminarily in the NOPA, I find that the non-disclosures by Mr. Leonard were intentional as he was attempting to avoid having these charges be detected by our office. Moreover, Mr. Leonard failed to disclose that he ended up being convicted of assault with a weapon and filed misleading submissions to this office thereafter. Similar to his other non-disclosures, I find that Mr. Leonard failed to disclose the conviction and was misleading in his written submissions as he did not want this office to be aware of the true state of affairs. This, as well, is entirely unacceptable behaviour.

99. In my respectful view, Mr. Leonard's violent criminal conduct with a consumer as well as his repeated non-disclosures, each standing on their own, would justify cancelling the Licensee's licence. Taken together, cancelling the licence is not only the appropriate sanction, but in my view respectful view is the necessary sanction to ensure the public is adequately protected. I therefore exercise my discretion and cancel the Licensee's licence.

---

[2] Mr. Leonard failed to disclose that he had been charged with mischief on one occasion and 13 offences including assault with a weapon on a separate occasion.

VI. Conclusion and Appeal Information

100. The Licensee's licence is cancelled effective immediately.

101. Now, it is my understanding that the Licensee continues to have a potentially significant amount of vehicle inventory that Mr. Leonard wishes to dispose of. Of course, to sell these vehicles without a license to consumers would be a breach of the *Act* and *Regulations* and would constitute an offence. With this in mind, I grant leave to Mr. Leonard to make a proposal to me within 14 days, should he be so inclined, in respect to how these vehicles may be disposed of that would ensure the safety of consumers and would not be otherwise objectionable (such as by way of a third party auction). I am open to considering any such proposal to ensure that that *Act* and *Regulations* are complied with in light of the fact that the Licensee is no longer licensed, so long as public protection concerns are addressed.

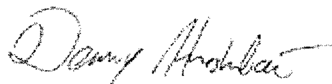
102. Subsection 71(10)(d) of the *Act* requires me to provide any person directly affected by this decision information regarding the right of appeal. Section 85 of the *Act* sets out the right of appeal as follows:

> 85(1) Any person who is directly affected by an order or decision of the director pursuant to this Act may appeal the order or decision to the court.
>
> (2) An appeal must be made within 20 business days after a decision or order of the director.
>
> (3) An appellant shall serve a notice of appeal on the director and any other person that the court may order.

103. Subsection 2(c) of the *Act* defines the word "court" to mean, unless the context requires otherwise, the Court of Queen's Bench. In this situation, context does not require court to mean any other court besides the Court of Queen's Bench. Therefore, should the Licensee and/or Mr. Leonard wish to appeal this decision, their appeal is to the Court of Queen's Bench.

104. Finally, so there is no confusion, while Mr. Leonard has been granted leave to make a proposal in respect to disposing of the vehicles remaining in the Licensee's inventory, this does not extend the time period for filing an appeal. This decision cancels the Licensee's licence effective immediately, so the appeal period runs from the date of this decision.

Dated at the City of Regina in the Province of Saskatchewan this 12th day of November, 2019.



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