

IN THE MATTER OF

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

AND

DAN LEONARD AUTO SALES LTD.

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 references in the *Act* to the director include 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. Dan Leonard Auto Sales Ltd. is a body corporate, incorporated pursuant to the laws of Saskatchewan for the purpose of selling vehicles. Dan Leonard Auto Sales Ltd. carries on the business of a vehicle dealership and is licensed under the *Act*, pursuant to Licence number 918028 (the “Licensee”). Daniel Leonard (“Mr. Leonard”) is the sole officer and director of the Licensee.

5. Information to date provided to our office has shown that the Licensee experienced some serious changes in circumstance that were not disclosed. For the reasons below and based on the circumstances presently known, I am inclined to find that the Licensee is no longer suitable to be licensed. This, therefore, constitutes a NOPA to **cancel** 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 cancelled.

II. Background

6. The background information set out below is based on the information enclosed with this Notice of Proposed Action (the “Disclosed Information”), which is attached as Appendix A and includes an index. In addition, attached as Appendix B are the various provisions of the *Act* that are applicable to the within NOPA.

a. Background to the Investigation

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

8. On or about January 8, 2018, Catherine Milos, Licensing Officer for the Consumer Protection Division of the Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”), 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”).

9. On or about February 21, 2018, Roseanne Tkachuk, Investigator for the Consumer Protection Division of the FCAA (“Ms. Tkachuk”), emailed Mr. Leonard, providing him with a link to the News Release and asking for his comments. Ms. Tkachuk also reminded Mr. Leonard of the Licensee’s obligation to disclose in writing any changes in circumstances to our office within five business days.

10. On or about February 28, 2018, Mr. Leonard called Ms. Tkachuk, admitted that charges were laid against him as described in the News Release, and provided his explanation of the circumstances which had led to the charges mentioned in the News Release. During this telephone call, Ms. Tkachuk again reminded Mr. Leonard of his obligation to advise our office of any changes in the Licensee’s circumstances.

11. On or about June 14, 2018, Ms. Tkachuk spoke with staff from Regina Provincial Court who confirmed that Mr. Leonard had been charged with the following serious criminal offences:

- four counts of assault/threatening to assault with a weapon, contrary to subsection 267(a) of the *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 assault, contrary to clause 85(2) of the *Criminal Code*; and
- four counts of uttering threats, contrary to subsection 264.1(1) of the *Criminal Code*.

12. Mr. Leonard was also charged with the following less serious, though still criminal offences:

- five counts of breach of undertakings, contrary to subsection 145(5.1) of the *Criminal Code of Canada*, RSC 1985, c C-46 [*Criminal Code*]; and
- one count of mischief, contrary to subsection 430(4) of the *Criminal Code*.

13. Prior to Ms. Tkachuk's June 14, 2018 discovery, our office was not aware of the five charges relating to the breaches of undertakings and one of the uttering threats charges. Since the time of the charges, three of the breaches were stayed by the Crown. The charges that remain as spread across the two Informations will be collectively referred to in this NOPA as the "Criminal Charges".

14. Currently two Informations are before the courts: Information 90131821 containing 12 counts and Information 90145026 containing one count of mischief. The former is scheduled for a preliminary inquiry on April 2, 2019, with the latter scheduled for trial on May 21, 2019. As things stand today, Mr. Leonard has pleaded not guilty, though the Crown, in proceeding with the prosecution, believes there is a reasonable likelihood of conviction and that the prosecution is in the public interest.

15. As a result of the information obtained by Ms. Tkachuk, she conducted a deeper investigation to determine if the charges against Mr. Leonard related to the Licensee's operation as a licensed 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 NOPA as the Consumer, Witness 1, and Witness 2.

b. Background to the Transaction

16. 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.

17. The Consumer paid \$1,000 as a deposit to the Licensee with the remaining amount being financed by the Licensee. The Consumer alleges that as a term of the financing, he was expected to pay \$500.00 at the end of every month.

18. At the time of purchase, the Consumer alleges that Mr. Leonard represented to him 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 the odometer. The vehicle contract lists the Yukon’s “mileage” as “unknown”. The Consumer alleges that he 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.

19. Each of the Consumer and Witness 1 allege that, 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 a pistol, slammed it on the table and said “this is how I deal with people who don’t pay their bills”.

20. The Consumer and Witness 1 alleged that, immediately following the purchase and on the way back to the Consumer’s home, the Yukon broke down. It is further alleged that the Licensee then took the Yukon back to do repairs to it.

21. According to the Consumer, Witness 1, and Witness 2, 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 states that the Licensee refused to accept cheques as payment and would only accept cash. Both Witness 1 and Witness 2 indicate that when payments were delivered, Mr. Leonard refused to issue receipts as they were “not needed”.

22. Witness 1 also states 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.

23. When the Yukon was eventually returned to the Consumer, he states that it still did not run properly. In addition, and despite the promise of a warranty, the Consumer states that when he picked up the Yukon, Mr. Leonard presented him with a “huge” bill for the repairs. At this point, the Consumer states that he refused to continue making payments on the vehicle.

24. With payments no longer being made, Witness 1 states that Mr. Leonard would “harass” her by calling her and stating “you said you would pay if he didn’t pay”, referring to the outstanding car payments. In addition, Witness 1 states that Mr. Leonard would attend at her home to ask if the Consumer was there and to demand that the Consumer pay him. Eventually, Witness 1 began to ignore Mr. Leonard’s calls.

25. 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.

26. Intending to reach an agreement with Mr. Leonard regarding the SGI Cheque, the Consumer states he attended at the Licensee’s premises on or about January 2 or 3 of 2018. The hope was that an agreement could be reached so the SGI Cheque could be cashed and the parties could resolve any outstanding issues regarding the Yukon. However, the Consumer states that Mr. Leonard told the Consumer during their meeting 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. (That said, the Consumer states that he contacted the sheriff’s office and he was advised that the sheriff had no file regarding the Consumer).

27. The Consumer states that he refused to pay the Licensee half of the amount of the SGI Cheque. After so refusing, the Consumer states Mr. Leonard got visibly upset, pulled a pistol out of the desk drawer, slammed the pistol on the desk, and pointed the pistol toward the Consumer. The Consumer states that at this point he told Mr. Leonard that the conversation was over and he left the Licensee’s premises.

28. The Consumer states that he 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.

29. After this pistol incident, Witness 2 states that he called Mr. Leonard and told him that both Witness 2 and the Consumer were going to attend at the Licensee's premises in McLean and that they would settle this matter. Witness 2 also advised Mr. Leonard that the Consumer was prepared to give the Licensee \$1,400.00, an amount that the Consumer believed remained outstanding on the loan for the Yukon.

30. Both the Consumer and Witness 2 state that they then proceeded to the Licensee's premises. The Consumer states that he brought Witness 2 with him because he was "now concerned for his life". When the Consumer and Witness 2 arrived at the Licensee's premises, they state that they found Mr. Leonard sitting at a desk with one of his employees standing behind him. According to each of Witness 2 and the Consumer, the Consumer offered to pay the Licensee the \$1,400.00 that was believed to be owed on the Yukon through the SGI Cheque. However, Mr. Leonard continued to insist that the Licensee be paid \$4,500.00.

31. Witness 2 states that after so insisting, the employee sitting behind Mr. Leonard stood up and a few other people gathered behind the desk as well. Witness 2 states Mr. Leonard then once again reached into his desk drawer and pulled out a pistol. Witness 2 states that he grabbed the pistol out from Mr. Leonard's hand, and then him and the Consumer immediately left the building and took the pistol to Witness 2's vehicle which was parked outside. Witness 2 states he put the pistol in the back seat of his vehicle and then called the RCMP to request that they come collect the pistol because he did not want anything to do with it.

32. Each of Witness 2 and the Consumer state that they were followed out of the Licensee's premises by the various employees who had been behind Mr. Leonard in the office. The Consumer states that the employees were carrying bats and bars when they came out of the building.

33. The Consumer and Witness 2 also each state that they met the RCMP at another location in McLean, Saskatchewan to hand over the pistol and explain what had taken place at the Licensee's premises. Thereafter, the Consumer and Witness 2 went to the Indian Head RCMP detachment to give statements. At no time were the Consumer or Witness 2 arrested in respect to this incident, nor were they charged.

34. Ms. Tkachuk interviewed Mr. Leonard on or about February 28, 2018 in relation to the Criminal Charges. Mr. Leonard's version of event are as follows.

35. Mr. Leonard states that the Consumer and Witness 2 had financed a car. He states that they were late with payments and had quit making payments altogether about six months prior to their attendance at the Licensee's premises. He states that due to the payments no longer being made, Mr. Leonard placed a lien on the vehicle.

36. Mr. Leonard also states that the Yukon is located at SGI currently and admits to the existence of the SGI Cheque. He states that the SGI Cheque was jointly in his name, and that this made the Consumer and Witness 2 angry.

37. In addition, Mr. Leonard admits that he billed the Consumer for the repairs to the motor. He did not provide any evidence as to whether he stated or did not state to the Consumer that there would be warranty provided on the sale.

38. Mr. Leonard also states that the Consumer and Witness 2 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".

39. Mr. Leonard states that after this first 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 this letter attached as an Exhibit to an Affidavit used in civil proceedings between these individuals. Mr. Leonard states that about 6-8 days after this, 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 by saying if he did not hand over the SGI Cheque they would "blow [him] away". He also states that the Consumer and Witness 2 are very large individuals, between 450 and 500 lbs.

40. After the alleged threat from the Consumer and Witness 2, Mr. Leonard admits that he possessed an imitation firearm, took the imitation firearm out of his desk drawer, and showed the imitation firearm to the Consumer and Witness 2. He states that he thereafter did not touch the imitation firearm, but instead that the Consumer and Witness 2 pushed him and grabbed the imitation firearm. He also states that he was the one that called 911 which ultimately led to his arrest.

41. Mr. Leonard states that there are pictures of both the Consumer and Witness 2 on Facebook with guns. Moreover, Mr. Leonard states that there is video footage of the Consumer and Witness 2 showing the gun they allegedly brought to the Licensee's premise to Mr. Leonard. That said, Mr. Leonard has not provided any evidence of the alleged Facebook posts, nor has he provided any such video to this office to date.

42. Recently, our office has learned that the charges brought against Mr. Leonard were instituted pursuant to two different charging documents or Informations. Information 90145026 contains twelve counts, including multiple counts of assault with a weapon (an imitation firearm)

and uttering threats. Information 90131821 contains one count of mischief. Neither of these Informations, or the counts contained therein, were disclosed to our office.

III. Issues

43. The background facts give rise to the following three issues:
- i. did Licensee make false statements about a vehicle when selling it to a consumer and therefore commit an unfair practice;
 - ii. did the Licensee fail to voluntarily disclose in writing to our office the criminal proceedings brought against its director within the prescribed timeframe; and
 - iii. did the actions of Mr. Leonard, as the sole director of the Licensee, relating to the sale of a vehicle to a consumer render the Licensee unsuitable for continued licensing and/or make continued licensing of the Licensee objectionable.

IV. Applicable Legislative Provisions

44. The purpose of the *Act* and the *Regulations* is to protect the public and is aimed at providing 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.

45. 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.

46. 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.

47. Subsection 8(1) of the *Act* states “no supplier shall commit an unfair practice”. Subsection 6(b) of the *Act* states that it is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to make a false claim.

48. 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.

49. 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

50. At this stage, considering the consistency in the narratives of the three individuals interviewed by Ms. Tkachuk, the corroborating evidence in the Disclosure Information including the fact that criminal charges were laid and the nature of the criminal charges laid, and the key admissions of Mr. Leonard as to the criminal allegations, my inclination without submissions from Mr. Leonard is to prefer the evidence of The Consumer, Witness 1, and Witness 2 whenever their evidence may be in conflict with Mr. Leonard’s evidence.

51. With that being said, first, I am inclined to find that, in purchasing the Yukon, the Consumer was a consumer of goods and the Licensee was a supplier of goods. As such, the unfair practice provisions of the *Act* apply.

52. I am also inclined to find that Mr. Leonard told the Consumer that the motor in the Yukon had been replaced and only had 100,000 kilometers on it. In addition, I am inclined to find that the motor had not actually been replaced as Mr. Leonard represented, that the motor was the original motor, and that the motor had 290,000 kilometers on it. With these findings, I am inclined to find that Mr. Leonard made misleading or false statements to the Consumer involving a transaction for goods contrary to subsections 6(b) and 8(1) of the *Act*. In other words, I am inclined to find that the Licensee in this case committed an unfair practice in breach of the *Act*.

53. In respect to the failures to disclose issue, I am inclined to find that Mr. Leonard was charged in two separate Informations, one of which contained serious allegations involving an imitation firearm. The Information containing the mischief charge is dated November 23, 2017, while the Information containing the other charges is dated January 5, 2018. This second Information appears to be an Information that amalgamated some breach charges with the assault with a weapon and uttering threats charges. As such, there was likely other Informations in existence earlier than January 5, 2018.

54. Regardless, Ms. Tkachuk only learned of the existence of these other charges brought against Mr. Leonard on June 14, 2018 when she spoke with staff from Regina Provincial Court. This was many months beyond the five-day reporting timeline imposed by section 70 of the *Act*. Moreover, Mr. Leonard did not, at any time, voluntarily disclose to our office these or any charges as required by section 70 of the *Act* and subsection 5(h) of the *Regulations*. As such, I am inclined

to find that Mr. Leonard failed to disclose the Criminal Charges brought against him as he was required to.

55. Furthermore, I am inclined to find that the conduct underlying the criminal charges is serious and linked to a consumer transaction entered into between the Licensee and a consumer. Considering the nature of the charges and the context they arose in, these non-disclosures are serious and are directly connected to public safety concerns.

VI. Analysis of Suitability

56. Mr. Leonard failed to advise our office of any of the Criminal Charges brought against him within five days of those charges being laid as required by the *Act* and *Regulations*. It was the work of the FCAA's investigators that led to those charges being uncovered. The charges are numerous, serious, and involve allegations of troubling violence with the use of weapons and threats against consumers in the context of a motor vehicle transaction.

57. So far, there is no explanation as to why these charges were not disclosed. Considering they directly relate to the Licensee's business, and Ms. Tkachuk repeatedly advised Mr. Leonard of his need to disclose a change in circumstance (this advice being outright ignored), I am inclined to find that Mr. Leonard did not voluntarily disclose the Criminal Charges because he did not want them to be known to our office. The non-disclosures, and the context surrounding them, raise honesty and integrity issues, which are a serious concern regarding continued suitability.

58. In addition, the Disclosure Information appears to show that the Licensee either failed to honour the warranty on the Yukon or made false claims regarding the existence of the warranty. Mr. Leonard appears to have falsely advised the Consumer that a warranty existed for the Yukon and also falsely advised the Consumer that the Yukon's original motor had been replaced with a motor that had fewer kilometers recorded on it. The Licensee therefore appears to have committed unfair practices as described by subsection 6(b) of the *Act*, which is also a serious concern regarding continued suitability.

59. Even further, it appears based on the witness statements which are included in the Disclosed Information, that Mr. Leonard acted with inappropriate aggression and violence when he threatened the Consumer, Witness 1, and Witness 2 with an imitation firearm. The Consumer was a consumer and the threats of violence occurred within the context of a consumer transaction. Therefore, there appears to be a direct connection between the troubling conduct of Mr. Leonard and the need to protect the public through licensing regime established by the *Act* and the *Regulations*.

60. 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.

61. 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.

62. As the sole director of the Licensee, Mr. Leonard is the Licensee's only directing mind. The Disclosure Information suggests 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. The Disclosure Information also suggests that 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.

63. It therefore appears that Mr. Leonard's behaviour outlined above provides the requisite grounds to find the Licensee's continued licensing to be objectionable and that the Licensee is no longer suitable to be licensed.

VII. Preliminary Conclusion Regarding Suitability

64. 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*.

65. In reaching my preliminary conclusions, I am mindful of Barclay J.'s decision in *Macnamara v Saskatchewan (Acting Registrar, Motor Dealers Act)*, 2009 SKQB 37, 34 Sask R 148. In this case, under the predecessor legislation to the *Act* and *Regulations* relating to motor

vehicle dealers, the then Registrar of Motor Vehicles rendered a decision to, amongst other things, suspend a licensee's licence once it came to light that the licensee had been convicted of multiple counts of willful tax evasion.

66. On appeal, Barclay J. reversed the Registrar's decision, reasoning that a suspension was not appropriate in the circumstances because the types of offences that the licensee was convicted of did not create public protection concerns. He interpreted the provision at issue in the predecessor legislation that allowed for a suspension when the dealer was guilty of fraud to need a direct connection between the fraudulent 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 was the protection of the public.

67. The current provisions at issue, being subsection 65(1), is broader than the provisions of the predecessor legislation. The subsection allows for the suspension or cancellation of a dealer license for a variety of reasons, including breaches of the *Act* and/or *Regulations*, as well as if there is a prescribed change in circumstance. That said, I remain mindful that the overarching purpose of the *Act* and *Regulations* is still the protection of the public. As such, to suspend or cancel a licence, the reasoning in *Macnamara* likely remains applicable, meaning that there should be a direct connection between the nature of the breach or the change in prescribed circumstances and the protection of the public.

68. In the present case, the connection appears to be rather obvious. As mentioned above, the use of the imitation firearm took place in the context of a dispute with a consumer. The public must be able to purchase vehicles without the threat of harm or violence, including through the use of weapons.

69. The troubling behaviour that the Licensee appears to have exhibited 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.

70. 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.

71. 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 disregard for the importance of this information to the regulatory system set up by the *Act* and the *Regulations*.

72. Moreover, the alleged false claims made to the Consumer appear to show a lack of honesty and integrity on the part of the Licensee's sole directing mind, Mr. Leonard. This apparent lack of honesty and integrity leads me to believe that the Licensee's operations pose harm to consumers that should be protected against.

73. Most significantly, and on its own notwithstanding the other issues mentioned above, the alleged threatening behaviour of Mr. Leonard and others on the Licensee's premises aimed at the Consumer, Witness 1, and Witness 2 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.

74. 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 is objectionable.

VIII. Proposed Actions and Right to Make Representations

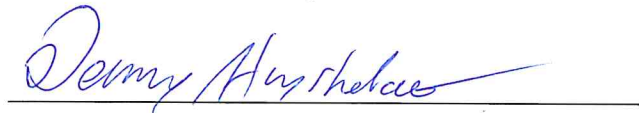
75. In summary, based on the evidence currently available to me and the analysis above, I am inclined to **cancel** the Licensee's licence.

76. 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 Information.

77. 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.

78. I remind Mr. Leonard 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 action I am inclined to take.

Dated at the City of Regina in the Province of Saskatchewan this 15th day of March, 2019.



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

Appendix A – Disclosed Information

1. Roseanne Tkachuk typed notes dated March 5, 2019
2. Letter from Roseanne Tkachuk to Regina Provincial Court dated February 28, 2019
3. Fax from Regina Provincial Court dated February 28, 2018 containing Information 90131821 and Information 90145026
4. Email from Roseanne Tkachuk to Denny Huyghebaert dated February 28, 2019
5. Letter from Roseanne Tkachuk to [REDACTED] dated September 11, 2018
6. [REDACTED] Witness Statement Form dated October 5, 2018
7. Audio Statement of [REDACTED] taken October 5, 2018***
8. Transcription of [REDACTED] October 5, 2018 Statement
9. Letter from Roseanne Tkachuk to [REDACTED] dated September 11, 2018
10. [REDACTED] Witness Statement Form dated October 5, 2018
11. Audio Statement of [REDACTED] taken October 5, 2018***
12. Transcription of [REDACTED] October 5, 2018 Statement
13. [REDACTED] Witness Statement Form dated October 19, 2018
14. Transcription of [REDACTED] Audio Statement
15. Roseanne Tkachuk notes re Telephone Conversation with [REDACTED] on November 7, 2018
16. Email from Roseanne Tkachuk to Denny Huyghebaert dated October 19, 2018
17. Audio Statement of [REDACTED] taken October 19, 2018***
18. Transcription of [REDACTED] October 5, 2018 Statement
19. Letter from Roseanne Tkachuk to [REDACTED] dated September 11, 2018
20. [REDACTED] Witness Statement Form dated October 5, 2018
21. Audio Statement of [REDACTED] taken October 5, 2018***
22. Letter from Roseanne Tkachuk to [REDACTED] dated September 11, 2018
23. [REDACTED] Witness Statement Form dated October 5, 2018
24. Audio Statement of [REDACTED] taken October 5, 2018***
25. Court of Queen's Bench Application Materials
 - a. Notice of Application dated June 8, 2018
 - b. Affidavit of Daniel Leonard sworn June 8, 2018
 - c. Order of the Court of Queen's Bench dated June 15, 2018
26. Affidavit of [REDACTED] sworn July 14, 2018
27. Roseanne Tkachuk Typed and Handwritten notes regarding February 28, 2018 telephone call with Dan Leonard
28. Email from Roseanne Tkachuk to Denny Huyghebaert dated June 14, 2018
29. Letter from A. Fritzler to [REDACTED] dated January 4, 2018
30. Email from Roseanne Tkachuk to [REDACTED] addressed to Daniel Leonard dated February 21, 2018 and attachment
31. Global News Article dated January 8, 2018

32. Invoice 618291 from Royal Reporting Services Ltd. for transcript services

33. List of Financial and Consumer Affairs Authority investigation costs

***Audio statements are contained on the enclosed USB stick

Appendix B – Legislative Provisions

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

Unfair practices

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

...

(b) make a false claim;

Unfair practices prohibited

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

(3) A supplier and the supplier's employee, agent, salesperson or representative are liable for an unfair practice of the employee, agent, salesperson or representative.

(4) In determining whether or not a person has committed an unfair practice, the general impression given by the alleged unfair practice may be considered.

(5) In determining whether or not a person has committed an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered.

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.