



IN THE MATTER OF
THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT
AND
IN THE MATTER OF
AN APPLICATION FOR A VEHICLE DEALER LICENCE MADE BY
102069557 SASKATCHEWAN LTD. dba BIG Q AUTO.
DECISION

Hearing held: September 28, 2023, Regina, Saskatchewan
Before: Denny Huyghebaert, Executive Director, Consumer Protection Division, Financial and Consumer Affairs Authority of Saskatchewan
Date of decision: December 13, 2023

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”). The Financial and Consumer Affairs Authority (“FCAA”) is responsible for the administration of the Act and 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. (Act s. 56) To obtain a license, I must be satisfied that the Applicant meets the requisite criteria and requirements, is in compliance with the Act and Regulations, is suitable to hold a licence, and is not for any reason objectionable. (Act s. 61)
3. Amanda Smith, on behalf of 102069557 SASKATCHEWAN LTD. dba BIG Q AUTO (“Applicant”) applied under section 58 of *The Consumer Protection and Business Practices Act* for a vehicle dealer licence on or about February 23, 2023. This application underwent an initial review by a Licensing Officer within the Consumer Protection Division (“CPD”) of the FCAA on February 27, 2023. On March 14, 2023, the application was sent back to the Applicant seeking additional information to address deficiencies contained within the application.
4. On July 6, 2023, the Applicant resubmitted their application for the FCAA's review. Upon reviewing the application, the Deputy Director, Consumer Protection, Financial and Consumer Affairs Authority of Saskatchewan (“Deputy Director”), proposed to refuse to grant the application, on the grounds that the Deputy Director was not satisfied that the Applicant was suitable to be licensed and had not complied with the Act and Regulations. In accordance with the requirements of section 71 of the Act, a written notice of proposed action dated August 16, 2023, was sent to the Applicant along with related disclosure materials.
5. As provided for in section 71 of the Act, the Applicant requested an opportunity to be heard at an oral hearing on the matter before the Deputy Director took the proposed action. A hearing was held on September 28, 2023.
6. My decision regarding the Applicant’s application is outlined below.

Background

7. The Applicant previously held a vehicle dealers licence from July 23, 2019, to November 22, 2022, when their license was suspended for failing to renew their penal bond. On November 24, 2022, the Applicant was sent a letter via registered mail to their address for service notifying the Applicant that their licence was suspended for failing to submit a new or reinstated bond to replace the bond their insurance agency cancelled. The letter further states that if a new bond

or financial security for \$25,000 is not filed within 30 days of this letter, your licence is automatically cancelled in accordance with the Act. Thereafter a new application will be required with a new fee. This letter goes on to advise that to operate as a vehicle dealer without being properly licensed is in violation of the Act. In addition to this letter, the Applicant was sent a notification to the email address on file, which stated “this message is to notify you that 102069557 SASKATCHEWAN LTD, - 100255 vehicle dealers’ licence is no longer active. The subject line in this email stated 100255 – 102069557 SASKATCHEWAN LTD: Change in Vehicle Dealer Licence Status Due to Suspension.

8. The Applicant failed to renew their penal bond within 30 days per section 60 of the Act, so their vehicle dealer's license was cancelled on December 29, 2022. A registered letter dated December 29, 2022, was sent to the address for service on file. The letter stated that further to the notice of proposed action to cancel your licence, this is to advise that the vehicle dealer licence issued to 102069557 SASKATCHEWAN LTD, BIG Q AUTO has been cancelled effective the date of this letter pursuant to section 60 of *The Consumer Protection and Business Practices Act*. The Applicant was also notified by email that their licence was cancelled.
9. On February 13, 2023, Shawn Cook, Director of Enforcement for CPD, sent a letter to the Applicant, attention Amanda Smith, reminding her that the sale of motor vehicles is a regulated activity. The letter summarizes several outstanding complaints that need to be addressed in addition to raising concerns about their apparent unlicensed activity. The letter was an official written warning to immediately Cease and Desist the sale of all motor vehicles to consumers until such a time they are appropriately licensed.
10. On or about February 23, 2023, Amanda Smith filed an application on behalf of the Applicant to become a licensed vehicle dealer in the Province of Saskatchewan. Amanda Smith and Tyler Smith are listed as the directors and officers of the corporate Applicant.
11. Under the Act, an applicant is eligible to be licensed as a motor vehicle dealer if it provided a completed application; the director is satisfied that the Applicant meets the applicable requirements and satisfies the criteria set out in the Act and the regulations; if the director is satisfied the Applicant has otherwise complied with the Act and regulations and is suitable, and the proposed licensing is not for any reason objectionable. (Act s. 61)

12. Once a licence is obtained, a licensee must comply with the Act and regulations at all times and remain suitable, or not otherwise objectionable to hold a licence. (Act s.61, s. 65)
13. The suitability of an applicant or licensee is based upon a review of all relevant information, including the conduct of the Applicant or the licensee and its officers and directors before it is licensed, while it is licensed and after it is licensed.
14. Licensed vehicle dealers hold a position of trust. Consumers rely on them to give clear and honest information when purchasing a vehicle. It is of the utmost importance that vehicle dealers act in accordance with the law and conduct themselves at all times with integrity and honesty. Trustworthiness and a commitment to following the governing Act and Regulations are important attributes of an applicant and licensee.
15. In making a determination, as with any decision the Deputy Director makes, the public interest is the ultimate consideration. The Act and corresponding Regulations constitute public welfare legislation that aims to protect consumers and help ensure consumer safety. The Deputy Director will be mindful of the need to enhance the public's confidence in the industry and any financial or other consequences to the Applicant.
16. The Deputy Director had concerns about the Applicant's apparent breaches of the Act and Regulations and their conduct, including their honesty, integrity, and trustworthiness. Given the nature of these concerns, the Deputy Director was unsure if the Applicant was suitable to be licensed as a vehicle dealer.
17. These concerns were outlined in the notice of proposed action, which was sent to the Applicant on August 16, 2023, along with related disclosure materials. Upon receipt of the notice of proposed action, the Applicant requested an oral hearing to make representations before the Deputy Director.
18. On September 28, 2023, Amanda Smith and Amanda's mother-in-law, Lori Smith, attended an oral hearing to make representations in relation to the proposed refusal of the Applicant's application.
19. Amanda Smith testified on behalf of the Applicant at the hearing. The Applicant requested leave to provide additional information at the conclusion of their testimony. I granted leave and

the Applicant provided three emails with attachments showing Big Q Auto's interactions with CONSUMER 2 and CPD staff member Shawn Cook. The Applicant explained that the emails contained correspondence with CONSUMER 2 showing he took his vehicle to his uncle, had given a five-star review, and the Applicant repaired his vehicle shortly after he purchased the vehicle. Another email showed interactions with Shawn Cook and how the "compliance order" never came to pass along with other conversations.

20. I have considered the notice of proposed action, related disclosure materials, Amanda Smith's testimony and the additional information provided by the Applicant after the hearing. I have decided to refuse the Applicant's application for a license on the grounds set out below.

Facts

In relation to the CONSUMER 1 matter, in summary, the CPD investigation presented:

21. CONSUMER 1 complaint, initiated on October 12, 2022, centers around his purchase of a 2015 Chevrolet Trax from the Applicant on June 29, 2022, for \$14,032.48. At the time of purchase, CONSUMER 1 noted the check engine light was on and purchased the vehicle, understanding that the Applicant would rectify the issues, which he had understood to be a faulty O2 sensor, post-purchase. Importantly, CONSUMER 1 states he did not receive an SGI Vin search or any disclosure about the vehicle's past history or usage. If he would have, he would have known that the vehicle had been in a collision on April 17, 2021, with an appraised damage of \$5,107.32. This information may have influenced his decision to purchase or not purchase that vehicle.
22. Subsequent events revealed a series of repair attempts by the Applicant. Despite assurances, the check engine light persisted, and on August 17, 2022, a third-party diagnosis by Minute Muffler identified issues with the front O2 sensor and suspected problems with the catalytic converter. The Applicant acknowledged the catalytic converter issues but stated they were unaware of the spacers installed.
23. Repair attempts continued through multiple rescheduled dates and incomplete repairs, prompting CONSUMER 1 to file a complaint with the CPD on October 12, 2022. CPD's involvement led to the Applicant providing disclosure documentation to CPD on November 11, 2022, stating repairs would be completed between December 25, 2022, and January 2, 2023.

However, repairs extended further, with the vehicle returned to CONSUMER 1 on December 30, 2022.

24. The situation persisted into January 2023, with the check engine light reoccurring and the Applicant asserting the completion of repairs. CPD informed the Applicant on January 16, 2023, that CONSUMER 1 had the right to seek third-party repairs and reimbursement due to multiple failed repair attempts. CONSUMER 1 chose Western Automotive Services and Sales for diagnosis, which revealed adaptors were installed between O2 sensors, and the catalytic converter did not look new or had recently been replaced.
25. Despite the Applicant's claims of catalytic converter replacement, further contradictions emerged. The CPD requested work orders and receipts to support Big Q Auto's claims that both catalytic converters had been replaced are new and in good condition. No work orders were provided, and the Applicant indicated it could create them if needed. Ultimately the vehicle was returned to Western Automotive for a more comprehensive diagnostic on March 2, 2023. This diagnostic showed: replace the front and rear catalytic converter, the heat shield for the front catalytic converter was missing, and upstream and downstream O2 sensors and gaskets need replacement.
26. Repairs were finally completed on April 17, 2023, with CONSUMER 1 paying \$2,190.51. The Applicant received the invoice on April 20, 2023. However, as of this date, the Applicant has not compensated CONSUMER 1 .

In response to these allegations, the Applicant stated at the hearing that:

27. They made many attempts to fix the issue with it not being re-creatable when the vehicle was left to us. [Transcript, Page 13]
28. The third-party mechanic has attempted to state that the Applicant did not replace any pieces. Particularly the catalytic converter. However, the receipt was provided to FCAA investigators. [Transcript, Page 13]
29. The Applicant said in response to the issue "Did the applicant fail to provide material facts to consumer" as set out in the notice of proposed action, that it was an education piece, nothing was done intentionally or with malice. [Transcript, Page 24]

30. When questioned further about the failure to disclose the vehicles previous history, the Applicant states "I was not aware". [Transcript, Page 49]

Based on CPD's investigation and the Applicant's testimony, I find the following;

31. The Applicant failed to provide disclosure about the vehicle's history including a previous accident with \$5,107.32 in damages and justified its failure to do so as it didn't know about disclosure requirements set out in the Act and regulations.
32. The Applicant failed to repair the vehicle to address the issues regarding the check engine light despite its claim that repairs included replacement of the catalytic converter. The catalytic converter receipt reveals that it was ordered and was a direct fit replacement for several models of vehicles including a Chevrolet Trax model year 2016. CONSUMER 2 purchased a 2015 Chevrolet Trax. In the absence of a BIG Q Auto work order or other business record outlining the extent of the repairs to the Chevrolet Trax, there is no corroborating evidence to show that the catalytic converter ordered from Amazon was installed. I am not satisfied that it is more likely than not that the catalytic converter was installed without corroborating evidence in light of Western Automotive's diagnosis that the catalytic converter did not look recently replaced. This diagnosis showed that other repairs were required to address the vehicle's issues in addition to replacing the catalytic converter.
33. Ultimately, the Applicant failed to rectify issues associated with the vehicle and the check engine light as promised when the vehicle was purchased.

In relation to the CONSUMER 2 matter in summary the CPD investigation presented:

34. CONSUMER 2 initiated the transaction on January 11, 2022, acquiring a green 2008 Jeep Wrangler from the Applicant. The Facebook marketplace ad, bearing the seller's DL#100255, emphasized a full inspection, 254,826 KM, and other purported details. However, the subsequent bill of sale recorded the mileage at 252,618 KM. During the purchase process, the Applicant disclosed that their vehicles come from out-of-province and undergo the mandatory safety inspections by the Applicant's own certified inspection station once they arrive in

Saskatchewan. An SGI inspection report dated November 9, 2021, was provided to CONSUMER 2, revealing identified issues that were initially rejected and then remedied according to the inspection certificate. At the time of the inspection, according to the report, the vehicle's odometer read 252,674 KM.

35. However, CONSUMER 2 states that he was not provided with an SGI Vin search or any other disclosure about the vehicle's past history or usage.
36. Issues surfaced immediately post-purchase, including a persistent check engine light. The radiator was replaced on January 13, 2022. Despite these repairs, ongoing concerns persisted, including drivetrain noise and a clunking sound from the rear. CONSUMER 2 reported engine shake issues on February 9, 2022, leading to five new engine codes. The vehicle was subsequently returned to the dealership for approximately 2-3 weeks, during which a coil spring was replaced.
37. Auto Electric's March 10, 2022 inspection revealed issues, including oil leaks, with the odometer reading 255,624 KM. A subsequent inspection on July 22, 2022, highlighted dangerous conditions, deeming the vehicle unsafe and non-roadworthy. The odometer at this time registered 259,016 KM. Auto Electric contacted SGI Safety Standards and SGI employee, [REDACTED], who notified CONSUMER 2 that, in its current state, the vehicle would not pass inspection and was therefore non-roadworthy.
38. CONSUMER 2 communicated issues to the dealership on July 26, 2022. The dealership, however, asserted that the vehicle had been inspected, warranties did not apply, and there was no return policy.
39. Auto Electric contacted SGI on July 29, 2022, reporting issues. SGI Inspection Station Incident Report on August 31, 2022, outlined critical defects. A subsequent SGI visitation report on October 19, 2022, detailed discussions with the Applicant regarding previous inspections and the lack of repairs.
40. SGI inspector [REDACTED] attempts to obtain the SGI inspection report from the dealership were unsuccessful. The dealership provided excuses for not having paperwork, raising concerns about the filing of documentation.

41. On June 5, 2023, CONSUMER 2 discovered his vehicle listed for sale by the Applicant. The vehicle appeared on Ron Braden's personal Facebook account.
42. The vehicle's registration to [REDACTED] on January 12, 2022, was cancelled on January 12, 2023. A brief re-registration to Big Q Auto occurred on March 21, 2023. On May 25, 2023, the vehicle was sold by Big Q Auto to Amanda Rae Smith for \$1, using the bill of sale from Adesa Vancouver Auction.
43. On June 7, 2023, CONSUMER 2 filed a fraud report with the Regina Police Service, resulting in police advising SGI to halt further registration attempts. CONSUMER 2 confirmed the vehicle's presence at the Smith residence, where he confronted Amanda Smith and regained possession of the vehicle.

In response to these allegations, the Applicant in hearing stated that:

44. The vehicle was safetied by the Applicant's SGI certified technician and the Applicant's job as signing officer for the SGI certified station, was to lend its name to simply attest the vehicle was safetied and they were not expected to have the knowledge themselves. [Transcript page 14]
45. The inspection of the vehicle done by CONSUMER 2's uncle seven months down the line was an opinion that the vehicle parts should not have been worn to the point they were without any proof of the customer's use of the vehicle. [transcript page 15]
46. The vehicle was safetied by the Applicant's SGI certified technician, Jarrett Gordon and it was identified nearly seven months after the vehicle passed inspection that it shouldn't have passed. [Transcript, Page 15]
47. The Applicant feels that not all the information is factual and perhaps CONSUMER 2 has buyer's remorse. [Transcript, Page 15]
48. The vehicle underwent an initial inspection at Auto Electric on March 10, 2022, where the focus was solely on addressing an oil leak during a hoist inspection. The mechanic conducting this inspection did not identify any of the non-roadworthy components mentioned later on. In an email, Auto Electric clarified that their examination during this specific visit was limited to the oil

leak issue. The crucial issues with various worn-out components only came to light during a subsequent reinspection on July 22, 2022. The Applicant states that the mechanic's failure to note these issues during the initial hoist inspection raises questions, as one might expect a reputable mechanic to recognize and report such significant concerns, especially if the components were genuinely in an unroadworthy condition. [Transcript, Page 17]

49. Applicant suggests that Shawn Cook, Director of Enforcement, FCAA was made aware during a meeting with the Applicant that they were going to sell CONSUMER 2's vehicle privately in order to recoup funds to refund CONSUMER 2. [Transcript, Page 18]
50. Concerning the change of ownership and registration of the vehicle, the Applicant states that this was done for the purpose of relocating the vehicle and no attempt was made to take ownership of the vehicle. [Transcript, Page 19, 20.]
51. The Applicant said in response to the issue "Did the applicant fail to provide material facts to consumer" that it was an education piece, nothing was done intentionally or with malice [Transcript, Page 24]
52. When questioned further during the hearing about the CONSUMER 2 matter, the Applicant stated that they did not have the financial means to pay him back without selling the vehicle in an effort to make CONSUMER 2 happy as fast as possible. [Transcript, Page 40, 41]
53. When questioned further about the vehicle being posted and sold by Ron Braden, the Applicant indicated that this is her father and the reason that the Applicant posted the vehicle there rather than her personal Facebook account was because "I had run into the point where I had people commenting on vehicles that I posted in Facebook". "I always wish that on Facebook there was a way to post as Big Q Auto" "And I got to the point where I wasn't comfortable doing that anymore" [Transcript, Page 42, 43]
54. When asked if CONSUMER 2 was aware that the Applicant was going to sell his vehicle while he still owned it, the Applicant responded " I hadn't called and said, Hey, [REDACTED], I'm going to be listing your vehicle. But I mean, perhaps that was a misstep on my part. Perhaps, I could have had more conversation with him. I'm not saying we handled the situation perfectly. My point being

in all of it, that it wasn't done with malice intent to try and steal his vehicle or anything like that." [Transcript, Page 43, 44]

55. When asked further about the change of ownership with SGI. The Applicant responded by stating that "they purchased it from Adesa in Vancouver, brought it back. And as you know, Saskatchewan dealers aren't required to license the vehicle individually, they can just put a dealer plate on. That's all we did until CONSUMER 2 purchased it. He plated it himself, and the only time that.... I guess on paper, that it changed ownership was the time I presented that Adesa bill of sale from our initial purchase to SGI to just place a 24-hour permit on it to drive it from Wynyard to Regina for the purpose of trying to.... To sell it. It was never to.... I didn't plate it. I didn't.... you can check those records with SGI, it was.... I would hate to drive it un-plated and get in an accident and then I don't have his vehicle or his money. I don't think that would go over well. So we were just.... That was the means I had to do so to get a 24-hour permit, so that was the route I had taken." [Transcript, Page 44, 45]
56. The Applicant further stated that "he had taken his plates off, and I wasn't licensed so I couldn't get a dealer plate, so again, I was just plating it to move it to the shop in Wynyard that we had at the time. So it was literally just for insurance coverage purposes, not for taking ownership of it. Though, I know legally through SGI, it looks the same, but it was never with that intention." [Transcript, Page 47]
57. When asked about the failure to disclose significant previous vehicle damage history and that the vehicle was a previous daily rental as stated in the Adesa bill of sale provided to the Applicant when they first purchased the vehicle, in response, the Applicant stated that "I was unaware" and confirmed it was an education piece for them.[Transcript, Page 49] The Applicant later claims that Shawn Cook said that "you're a young dealer, there's a lot of legislation and that they can't be expected to know all of it."
58. When asked about items that were initially rejected as part of the vehicle's inspection, but then later were passed and the vehicle was safetied by the Applicant's certified tech and how this correlates to the Auto Electric report that states that those parts have failed and that they don't appear to have been changed or repaired. In response, "our point of what we're trying to say is, like, it's so long after the fact for these parts to be considered, well, they never should have

passed safety. We don't know... and I'm not stating CONSUMER 2's a bad person. We have no idea what he did with the vehicle in the seven months he owned it. He could have driven it in a lake, you know that caused significant rust in pieces, left it outside. I'm not sure. We don't know how it was treated during that time. So even though, yes, he only put on 'X' amount of kilometers or.... But I find it very bizarre that by July, almost a full year after it was safetied, they've said, no, it shouldn't have passed." The Applicant goes on to question why did Auto Electric not find the vehicle non-roadworthy in March when the vehicle was up on the hoist. [Transcript, Page 54, 55]

59. Following the hearing the Applicant also provided email with multiple screen shots showing CONSUMER 2's and Amanda Smith's interaction beginning with communications leading up to CONSUMER 2 purchasing the Jeep Wrangler. The attachments also show an exchange of texts between them about issues with the vehicle starting on January 12, 2022, and Big Q Auto's efforts to address the various issues with the vehicle. CONSUMER 2 takes the vehicle to Auto Electric, his [REDACTED], where further issues were diagnosed. The parties discussed possible terms for the return of the vehicle. CONSUMER 2 owned the vehicle for 11 months at the time however he did not have use of the vehicle for 6 months and 11 days. Big Q Auto received a five-star review from CONSUMER 2 on February 25, 2022, twenty five days after the vehicle was purchased as shown in one of the email attachments.

I am satisfied that in relation to CONSUMER 2, it is more likely than not that:

60. The Applicant failed to provide material disclosure about the vehicle's condition and previous history. The Adesa Bill of sale reveals information about the vehicle's condition including previous accident claims. The Applicant explains it failed to disclose material facts including an SGI VIN search because it wasn't aware it was required to as it was an inexperienced dealership.
61. The Applicant failed to disclose the vehicles condition at the time of sale that, rendered the vehicle unsafe and not eligible to be driven on Saskatchewan roads, as illustrated below.
62. The Applicant advanced a number of theories to explain the damage to the vehicle including; CONSUMER 2 has owned the vehicle for about a year, CONSUMER 2 was motivated by buyer's remorse, the vehicle was damaged between inspections by events that Applicant could only

speculate about including possibly driving into a lake; if there was damage it should have been discovered by Auto electric the first time it was up on the hoist and the inspection was suspect because it was performed by an establishment owned by CONSUMER 2's uncle.

63. The Applicant received a five star review from CONSUMER 2 on February 17, 2022, twenty-five days after the vehicle was purchased and before the extent of damage to the vehicle was diagnosed by Auto Electric. CONSUMER 2's complaint and his actions following the vehicle's diagnosis show he was not a satisfied customer. Any suggestion of buyer's remorse is overwhelmingly refuted by the fact that the vehicle was deemed unsafe to drive.

64. The Applicant presented no corroborative evidence to support its various theories even though it was aware of the extent of the damage and had the opportunity to inspect the vehicle while it was in the Applicant's possession after Auto Electric's diagnosis. This opportunity also existed at the time that the Applicant changed the vehicle registration so the vehicle could be insured and driven between Regina and Wynyard. The suggestion that the vehicle's diagnosis was suspect because CONSUMER 2's [REDACTED] Auto Electric is refuted by the fact that SGI agreed with Auto Electric's diagnosis and assessment. Inspection Incident report dated August 31, 2022, provided by SGI found;

- "Vehicle was inspected by CT # 84779 Jared Gordon at Big Q in Wynyard. Jared left the station about May 10, 2022. Was contacted by station number 70184 on July 29, 2022 about issues found at their shop. Found items would have been in a condition that would have failed at the time of inspection. Contacted station about issues was told tech had left the station. I was told they were in process of finding another tech and would keep in contact with the customer and arrange to have vehicle brought to their shop and repaired."

65. The vehicle was driven 6342 kilometers in 6 and ½ months between Applicant's safety inspection and the diagnosis that the vehicle was not roadworthy. Auto Electric's diagnosis the vehicle was unsafe due to the extent of the damage that existed at the time of the Applicant's inspection was confirmed by SGI.

66. I accept Auto Electric's assessment that the wear on the components that were clearly worn out and rendered the vehicle unsafe could not be explained by the passage of time between the vehicle inspection and discovery. I also agree with Auto Electric's assessment that the worn-out components should have been replaced prior to passing the Applicant's inspection.
67. I find that it is more likely than not that the damage existed before the vehicle was sold given the short distance the vehicle was driven and the short time that transpired between Auto Electric's diagnosis of the extent of the damage. I also accept Auto Electric's explanation that the damage was not discovered initially because the vehicle was up on the hoist looking for oil leaks.
68. I decline to infer as a fact that over the time CONSUMER 2 owned the vehicle and distance driven that there intervening events that caused the vehicle's damage. The Applicant's unsubstantiated theories, individually and collectively, are mere conjecture, and they do not follow logically or reasonably from the facts noted above.
69. The Applicant changed the vehicle's registration several times and attempted to sell CONSUMER 2's vehicle without his permission, culminating with CONSUMER 2 confronting the Applicant to recover possession. The Applicant acknowledged that transferring registration and its attempt to sell the vehicle without CONSUMER 2's permission was a misstep.
70. The Applicant explained its misstep as:
- They wanted to sell the vehicle as fast as possible under a Facebook profile not associated with Big Q Auto because it didn't have the funds to repay CONSUMER 2.
 - Big Q Auto said it told CPD staff it was going to sell the vehicle privately;
71. This latter statement implies that somehow CPD staff sanctioned the Applicant's decision to sell CONSUMER 2's vehicle without his consent. To suggest CPD staff were complicit, agreed with or advised the Applicant is a serious allegation that requires clear, cogent and convincing evidence. The Applicant provided no such evidence. The Applicant ultimately and reluctantly agreed that its decision was wrong and motivated by its desire to resolve CONSUMER 2's concerns.

Unlicensed Conduct

CONSUMER 3

In relation to the CONSUMER 3 matter, in summary, the CPD investigation presented:

72. CONSUMER 3 filed a complaint with CPD on February 6, 2023, regarding her experience with the Applicant. She discovered a Facebook Marketplace ad for a 2001 Honda Civic posted by what seemed to be a licensed vehicle dealer. After contacting Amanda Smith through Facebook Messenger, CONSUMER 3 agreed to purchase the vehicle for \$5,000. The exchange took place at Amanda and Tyler Smith's residence in Regina on February 1, 2023. Shortly after taking possession, CONSUMER 3 reported multiple issues with the car to Amanda, including problems with the air intake, power steering, callipers, rotors, brake pads, oil dipstick, and speed sensors.
73. Expressing dissatisfaction, CONSUMER 3 requested either a vehicle return or a partial refund. She later messaged Amanda while stranded on the highway. On February 3, 2023, Amanda explained prior work on the vehicle and stated that Big Q Auto could help her because "they were a dealer, had she bought it privately she would be definitely out of luck". Amanda informed CONSUMER 3 on February 4, 2023, that the issue was a simple fuse, subsequently resolving it. Eventually, the Applicant agreed to unwind the transaction and refund the entire amount to CONSUMER 3.

The Applicant responded to these allegations as follows:

74. During the hearing the Applicant states "This vehicle, we agreed, was sold during an unlicensed time" [Transcript, Page 20]

With respect to the Applicant's dealings with CONSUMER 3, I find that:

75. Big Q Auto's representative held out the Applicant as a dealer after the Applicant's license was cancelled.

Facebook Marketplace

The CPD investigation presented the following:

76. CPD investigation revealed four vehicles posted for sale on Facebook Marketplace on Amanda Smith's Facebook account after the Applicant's license was suspended and then cancelled. Several of these postings refer to Big Q Auto's cancelled dealer licence 100255.
77. In response to the other alleged unlicensed activity, during the hearing the Applicant states "These all took place prior to the conversation with Shawn and Travis. Again, if there were to be feigned ignorance in this regard, the Facebook Marketplace listings would not still be posted to this date. They would have been removed in an attempt to hide what I was doing or attempt to sell vehicles during that two-month period between December and the conversation in February." [Transcript, Page 21, 22]
78. When questioned about the Applicant's licence being cancelled on December 29, 2022, and the unlicensed activity that led to the Cease-and-Desist letter they received dated February 13, 2023. "My point is as soon as February 13th, they said listen, we're going to publish it in the papers, you can't be doing this. It's very serious. There's nothing posted after that. It was done out of literally not knowing that it was such a problem." [Transcript, Page 57]
79. When asked "Did you know, when your licence was suspended, that you can no longer continue to operate as a vehicle dealer?" The Applicant responded with " Well, I ... I mean, I guess, but I didn't know... like I said, we're new to this, so it wasn't done to.... If I was trying to hide it, it wouldn't just be posted in the exact same place that all my other vehicles had been posted for years". "I'm new. I don't know everything on running a dealership". [Transcript, Page 57, 58]
80. I find that the Applicant held out Big Q Auto as a dealer after its license was cancelled. The Applicant representations explained its decision to sell vehicles after its license was cancelled because they did not know everything about running a dealership and didn't realize the seriousness of their actions.

The Application Process

CPD records show that with respect to the application:

81. On or about February 23, 2023, Amanda Smith filed an application on behalf of the Applicant to become a licensed vehicle dealer in the Province of Saskatchewan. On July 6, 2023, the Applicant resubmitted their application for the FCAA's review.
82. In its July 6, 2023, application Big Q Auto identified its dealer lot and office address as 401, Bosworth St, Wynyard.

During the testimony and in their submissions following the hearing, the Applicant indicated;

83. The previous application did not comply with the application requirements because there was a deficiency or two including new criminal record checks. [Transcript, page 62]
84. The Applicant indicated to CPD staff on April 20, 2023, that it was aware of the deficiencies in its February 23, 2023, application; "I also have just got the last document the licensing department requested for our updated license application..."
85. During the proceedings the Applicant indicated that it would reopen its business in Regina. The Applicant testified it wasn't able to pay for their building and would actually be in the city at this point and would welcome investigators to drop by. [Transcript p. 67]

With regard to Big Q Auto's application, I find the following:

86. Big Q Auto submitted its initial application on February 23, 2023. After being informed of deficiencies and asked for additional information, the application remained with the Applicant until July 6, 2023, when they resubmitted a completed application for review. This resubmission occurred 155 calendar days after the initial application on February 23, 2023. Big Q Auto's intended lot and office location is not in Wynyard. It would locate its business in Regina if it granted a license.

In relation the conduct of Big Q Auto and its representatives during the application process, the CPD investigation presented:

87. Tyler Smith's inappropriate conduct at the FCAA main office, as detailed in statements from FCAA staff, included two significant incidents. On May 19, 2023, Smith arrived at the office, claiming he wanted to speak with Shawn Cook and accusing Cook and another staff member of harassing his wife, according to Shawn Cook's statement. Smith, visibly upset and angry, stated that their business, Big Q Auto, was struggling, with staff layoffs and financial difficulties. He demanded the reinstatement of their vehicle dealer's license, insisting they could sell vehicles without it and citing financial hardships. Despite Cook's attempts to clarify the legalities, Smith asserted confidently, "yes, I can, that's the law." The conversation continued as Cook explained outstanding complaints, and Smith expressed surprise at a comprehensive letter outlining alleged contraventions sent in February 2023, which he did not appear to have been aware of.
88. On June 20, 2023, according to statements from FCAA staff Clarence Yam, Robbyn Scott, and Troy Ostapiw, Tyler Smith returned to the FCAA office. He expressed a desire to speak with Denny and became visibly agitated, emotional, and extremely aggressive when informed that Denny was unavailable. He threatened the staff, slammed a table, and shouted profanities, including "I am not f*cking leaving" and "wipe that f*cking smirk off your face." Smith accused Shawn Cook of lying, feeling he received conflicting information, and declared his intention to return daily. The situation escalated to the point where FCAA considered involving the police, though the call for assistance was canceled when Smith left.
89. Following Amanda Smith's inquiry to the Minister of Justice about their delayed licensing application on July 19, 2023, according to Shawn Cook's case notes, he called her to explain the application status. Shortly after this call, Tyler Smith called back, audibly agitated. He disputed facts, accused the FCAA of making up its own laws, especially regarding selling vehicles without a dealer's license. Smith insisted they hadn't broken any laws and criticized the FCAA for allegedly delaying their license application indefinitely. He raised unrelated issues, including problems with other Crown Corporations. Tyler ended the call abruptly, forbidding Cook from contacting his wife and refusing further communication.

In response to these allegations, the Applicant in the hearing stated that:

90. “And really, no further progress was made on even speaking to me about the licensing until it was finally that the Ministry of Justice had reached out . Which then the licensing department - - I got a call pretty much the next day, so it definitely seemed that it was - - nobody was willing to do anything or move anything forward until their hand was forced to do so”. [Transcript, 62 and 63]
91. The Applicant characterized the meetings with the FCAA at FCAA as based on misunderstandings on both sides and said the statements provided were not fully accurate. Apparently, Tyler understood I would be attending these meetings, the story kept changing and he became frustrated and suggested that the police be called, but no calls to the police were made. [Transcript, Page 22 and 23]
92. The Applicant said his belongings were removed upon his using of the washroom and suggestion to contact the police was actually provided by Tyler himself [Transcript, page 23]
93. The Applicant explained “For the third interaction where Shawn had called myself on July 19th, this was literal hours ... after I had given birth to my fifth child, and was speaking from a hospital bed... this was the reason that Tyler had viewed is as an inopportune time to be calling and discussing such matters”. [Transcript, page 23]
94. The Applicant said “I’m fully aware that Shawn did not have any knowledge of this prior to calling, however it was just a factor that precipitated the reaction that took place that day. It was a high stress time” [Transcript, page 23]
95. This is a very narrow situation and timeline for which to judge character and suitability for licensing. [Transcript, page 25]
96. The Applicant elaborated that “Fair judgment of character takes multiple points into consideration. Initial interactions with FCAA from February 2023 through June 2023 were very civil, but as indecision, change in stories and lack of response, no action carried on for months frustrations set in.” [Transcript page 25]

97. The Applicant believed that that Tylers conduct would not be a complaint; “Do not believe that if Tyler were to conduct himself in such a manner that FCAA would not be contacted with a complaint. [Transcript page 25]
98. The Applicant said “No threats of violence were ever made or perceived at your offices. Only strong language to a government body who was consistently refusing service or mocking a customer, Tyler, after months of getting absolutely nowhere in our process”. [Transcript page 26]
99. The Applicant said “You pushed a man to his breaking point and then feel fair sitting in your judgment of him and the fact that he became emotional speaking on behalf of, apparently, all of society.” [Transcript, page 27]
100. Big Q Auto says that the customer issues were during a time of financial hardship with no staff and were further exacerbated by the FCAA’s unwillingness to progress the licensing application process, and CPD took full advantage that this no specific timelines within which decisions need to be made. [Transcript, page 27]
101. Th Applicant also said, “No threats were made, no harm was brought and certainly using strong language as grown adults at a point of frustration is certainly no reason to deem a person unfit for society.” [Transcript, page 27]
102. The Applicant said it was “a full 225 days since seeking a remedy to this process and the inaction of this government office has caused significant financial hardship in not allowing us to continue to make a living”. [Transcript, page 29]
103. FCAA offered to engage in a voluntary compliance order never came to pass and the Applicant was willing to cooperate and be educated. [Transcript page 29 and 30].
104. The Applicant characterized its engagement with the CPD has been a run around from the start with stories constantly changing. [Transcript page 33]

105. The Applicant indicates that it is willing to be educated to “discuss the laws we have broken and the steps that can be taken to continue with the new knowledge of what changes need to be made going forward as we are quite a young dealership”. [Transcript page 34]
106. The Applicant indicates that its license application should not be rejected because the time does not fit the crime given the few complaints the denial of the license is not proportional to the complaints. [Transcript page 35 and 36]
107. The Applicant provided further screenshots of emails from February 17, 2023, to May 26, 2023. The purpose of the Applicant’s submission was to show interactions with Shawn Cook and how the voluntary compliance agreement never came to pass along with other conversations.
108. These emails show Amanda and Tyler Smith’s engagement with FCAA staff about consumer complaints related to regulatory issues and outlined potential regulatory outcomes regarding Big Q Auto’s non-compliance with the Act and the Regulations.
109. In the email exchanges, CPD staff outlined four consumer complaints, the potential contraventions of the Act and Regulations. It provided additional information about the sale of non-roadworthy vehicles and the use of “as is” as a substitute for vehicle disclosure requirements. Staff explained that regulatory matters needed to be addressed and could be considered in the licensing application. Big Q Auto agreed it would address the matters. CPD Staff noted the discussion with Big Q Auto about a compliance order that would follow once the regulatory matters and application process was addressed. Staff also indicated that a notice of bond forfeiture could be forthcoming because of outstanding matters and provided information about the bond forfeiture process.
110. Big Q Auto asked that the outstanding consumer issues be revisited after its business license was assigned to it and it could start selling vehicles. CPD advised that an expedited process was not possible and the failure to comply as discussed may lead to a forfeiture of its bond and ongoing compliance and cooperation may influence its suitability to be licensed. CPD pointed out that a voluntary compliance agreement would include steps to address non-compliance for Big Q Auto to be licensed going forward. Big Q Auto requested face-to-face meetings with me

to discuss the issues, expressed its willingness to be educated on voluntary compliance and was prepared to agree to a bond increase from \$25,000 to \$50,000.

111. Big Q Auto concluded from its exchanges that CPD staff promised to issue a voluntary compliance agreement and failed to do so. Big Q Auto also concluded that a voluntary compliance agreement as a condition of licensing could expedite the issuance of a vehicle dealer license.
112. From my review of the relevant emails, I find that staff didn't promise to issue a voluntary compliance agreement. Staff indicated how Big Q Auto responded to outstanding regulatory issues arising from consumer complaints would be a factor with regard to its suitability to be licensed under the Act. Staff also indicated that the voluntary compliance agreement would include the steps to be taken to address contraventions to be licensed as a vehicle dealer going forward. Staff also indicated that the voluntary compliance agreement would be considered during the license application process and that staff did not indicate an order would expedite or accelerate its license application. I also find that staff provided an explanation of the regulatory matters that Big Q Auto was potentially facing.
113. The Applicant surmised it could obtain a dealer licence if it was willing to be educated, entering into a voluntary compliance agreement and met its obligations to consumers after it was issued a license if it agreed to a bond increase to \$50,000. It seems Amanda Smith and Tyler Smith were frustrated that how they wanted to address the various matters did not happen. The Applicant's representatives say their frustration was exacerbated by personal and financial pressures.
114. The situation presents a complex interplay of frustration, stress, and potential communication challenges. The weight assigned to each aspect depends on the credibility of statements and the overall context of the Applicant's behavior. The Applicant's evidence about its frustration is relevant to the extent that it relates to its conduct and that of its directors and officers.
115. Unfortunately, Tyler Smith did not appear at the hearing to explain his conduct firsthand or respond to questions I might have about his views about the vehicle dealer regulatory system. Amanda Smith testified, and Tyler's mother spoke to his conduct on his behalf. His absence

raises questions about his commitment to addressing regulatory concerns and providing a firsthand account of the events.

116. In summary CPD's investigation shows as follows:

- Inquiries and Office Visits: Tyler Smith made persistent inquiries, suggesting a strong interest in the application's status.
- May 19, 2023, Interaction: Smith accused FCAA staff of harassment, expressed financial struggles, and demanded license reinstatement.
- June 20, 2023, Interaction: Smith exhibited aggression, making threats, prompting FCAA staff to consider involving the police.
- Amanda Smith's Contact: Amanda's contact with the Minister of Justice's office suggests frustration with the application process.
- Phone Calls on July 19, 2023: Tyler's agitation, accusations, and allegations during the calls raise concerns about his professionalism and communication.

117. Tyler Smith's perspective of staff, the regulatory system, and its requirements were revealed during his interactions with staff between February 13 and June 20, 2023. In these engagements, he indicated that CPD was lying, making up its own laws, especially as it related to selling vehicles without a license, and he was permitted by law to sell a number of vehicles a year without a license.

118. A close examination of the Applicant's testimony reveals there was never direct evidence to challenge the staff's account of events including the incidents on May 19 and June 20, 2023. Rather, the Applicant aimed to challenge the accuracy of events, recharacterize the evidence without specific evidence to the contrary, and advance explanations about Mr. Smith's conduct highlighting frustration and stress factors, downplaying or explaining it as the failure to put aside egos, mistakes on both sides and explaining his behaviour based on their perception of delays in the regulatory process.

119. I prefer the evidence of FCAA staff / investigators due to the professional neutrality and objectivity they are expected to uphold in their assessments. Their firsthand observations and interactions with Tyler Smith provide a direct and unbiased perspective on the events in

question. The consistency in written accounts from multiple staff members adds credibility to the staff's evidence, reinforcing the reliability of the information. Additionally, documented incidents, including dates, times, and details of interactions, offer a concrete basis for the concerns raised about the Applicant's conduct.

120. After having reviewed the Applicant's interactions with staff set out in the disclosure materials, Applicant's testimony and additional submissions, I am satisfied Tyler Smith's conduct is explained, not justified, by his frustration about his personal circumstances and his erroneous views that Big Q Auto could sell or lease vehicles without a license and staff was lying about the requirement to be licensed. I find his conduct, in particular his threats were unacceptable and unprofessional notwithstanding his frustration.

The Law

Unfair Practices

121. Subsection 8(1) of the Act states "no supplier shall commit an unfair practice". Section 6 of the Act states that it is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to fail to do or do anything or say anything that could mislead or deceive a reasonable consumer or make a false claim. Section 9 of the Act clarifies that an unfair practice can happen before, during or after a transaction whether or not a transaction takes place and does not have to be directed at a specific consumer but can be directed to the public at large.

Material Fact Disclosure

122. Section 5-22 of the Regulations requires a dealer to disclose all material facts in writing about a vehicle including specific disclosure with regard to used vehicles – such as an SGI VIN search result. A material fact is information that a dealer is reasonably expected to know that could reasonably be expected to influence a reasonable consumer's decision to purchase or lease the vehicle if he or she knew about it. Dealers and salespeople have an obligation to disclose all material facts, even if the consumer does not ask.

Express Warranty

123. Section 16 of the Act describes when an express warranty regarding a vehicle's condition is given by a dealer. Express warranties include promises relating to the sale of a vehicle. Dealers fail to comply with this section if they fail to honour an express warranty.

Prohibited Sale of Improperly equipped Vehicles.

124. Section 5-20 of the Regulations prohibits a dealer from selling or leasing a vehicle that is not equipped as required by section 114 of *The Traffic Safety Act* unless provided for in the vehicle contract and the consumer acknowledges that they do not intend to drive the vehicle until equipped under that Act.

Mandatory Licensing

125. Section 56 of the Act prohibits a person from engaging in the sale of vehicles without a licence. Section 5-10 of the Regulations requires every vehicle dealer to hold a valid license.

Eligibility for Licensing

126. Subsection 61(b) of the Act permits the director to refuse to issue a licence if the requirements set out in subsection 61(a) are not met and the Applicant is given the opportunity to be heard under section 71. Section 61 of the Act reads as follows:

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.

127. Section 71 states:

(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.

[...]

Application must include Designated Premises

128. Under section 5-12 of the regulations, an application must provide evidence that the dealer meets the premise requirements in section 5-14 of the Regulations. Under section 5-14, the dealer must have land designated for vehicle display and storage and as structure where business is conducted.

Issues

129. Does the Applicant's application meet the requirements and criteria for a license under the Act?

130. Did the Applicant otherwise contravene the Act or regulations in its dealings with consumers?

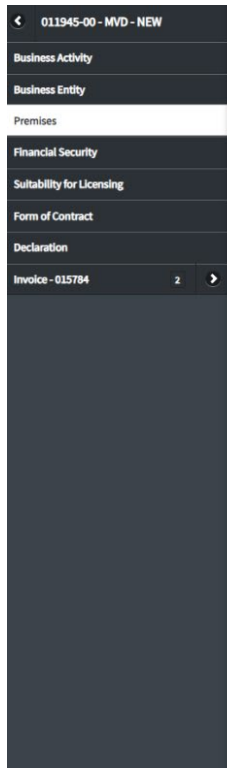
131. The further issue for determination is whether the Deputy Director is satisfied that the Applicant is suitable to be licensed as a motor vehicle dealer in the Province of Saskatchewan.

Analysis

The Application does not satisfy Licensing Requirements

132. Section 5-12(1)(d) of the Regulations states an applicant must provide evidence it meets the premise requirements in section 5-14.

133. The premise requirements includes land designated for vehicle display and storage and a structure where business is conducted. The Applicant describe the lot and office location of the licensed business at location in Wynyard in its application.



After completing the form click the  button on the right to proceed. Your information will be saved.

011945-00 - 102069557 SASKATCHEWAN LTD

Lot and Office Location

Previously provided mailing address

PO BOX 969
WYNYARD SASKATCHEWAN
S0A 4T0

Is your vehicle lot located at the mailing address you have provided?*

Yes No

Address type*

Civic Land Location Lot

Street/ PO Box*

401 Bosworth St

City*

Wynyard

Postal Code*

S0A 4T0

Province*

SASKATCHEWAN

Is your Office address the same as your lot address?*

Yes No

Do you have a website?*

Yes No

134. During the hearing, the Applicant testified it would be in the city, and the Applicant now intends to conduct business from premises in Regina.
135. I am not satisfied that the Applicant has met the premise requirements and the requirements for licence set out in this Act and the regulations as required under Act 61(a)(ii) because it has failed to set out a lot and business premises that meets the requirements in Reg 5-14. Big Q will be required to complete an application with a designated location in Regina.

The Applicant Contravened the Act and Regulations

136. The Applicant failed to comply with the Act and Regulations in dealing with consumers when it engaged in unfair practices, failed to provide material facts, sold an improperly equipped vehicle, failed to honour express warranties, and sold or offered vehicles for sale without a dealer's licence.

CONSUMER 1

137. CONSUMER 1 complained because he was misled and believed that the check engine light that came on while test driving the vehicle was a result of a faulty O2 sensor. He was also led to believe that if he purchased the vehicle, the repairs would be completed. The Applicant's promise to repair the vehicle and address the issues related to the check engine light, which it did not do, was an unfair practice contrary to section 8 of the Act that misled CONSUMER 1 and was a false claim.
138. The Applicant failed to disclose material facts that the dealer knew or ought to have known about the vehicle. The Applicant did not provide CONSUMER 1 with a current printed VIN search provided by Saskatchewan Government Insurance and contravened section 5-22 of the Regulations. If they did, CONSUMER 1 would have known that the vehicle had been in a collision on April 17, 2021 with an appraised damage of \$5,107.32, which may have influenced his decision to purchase or not purchase that vehicle.
139. The Applicant promised to repair the vehicle when CONSUMER 1 expressed concerns about the check engine light at the time of sale. The Applicant contravened section 16 of the Act when it failed to honour its express warranty to fulfill the promise to CONSUMER 1 to repair the vehicle and address the issue related to the check engine light.

CONSUMER 2

140. CONSUMER 2 complained to CPD because he believed he was misled about the condition of the vehicle.
141. Auto Electric's diagnosis dated July 22, 2022, and assessment outlined significant issues with the Jeep that existed at the time the vehicle was sold. This diagnosis and assessment, when compared to the Applicant's inspection report, shows that the Applicant failed to disclose material facts about the vehicle's condition that existed at the time of the Applicant's inspection that rendered the vehicle unsafe and not eligible to be driven on Saskatchewan roads. The Applicant

contravened section 8 of the Act and committed an unfair practice because the Applicant failed to disclose material facts and misled CONSUMER 2 about the Jeep's condition.

142. The Applicant also did not disclose material facts, including several previous accident claims, that the vehicle was previously used as a daily rental, and the vehicle was from the US as stated in the Adesa bill of sale provided to the Applicant when they first purchased the vehicle from auction. The Applicant committed an unfair practice when it failed to disclose material facts contrary to the Act as CONSUMER 2 was misled about the vehicle's history and its condition.
143. The Applicant failed to disclose material facts to CONSUMER 2 about the vehicle's unsafe condition and previous history that the dealer knew or ought to have known contrary to section 5-22 of the Regulations in their dealings with CONSUMER 2.
144. A dealer is reasonably expected to know information that could reasonably be expected to influence a reasonable consumer's decision to purchase or lease the vehicle if he or she knew about it. The Applicant did not disclose material facts about the condition of the vehicle to Mr. CONSUMER 2 that may have influenced his decision to purchase the Jeep.
145. The Applicant contravened section 5-20 of the Regulations when it sold an unsafe vehicle not equipped as required by *The Highway Traffic Act* to CONSUMER 2. The vehicle's condition as outlined in Auto Electric's report, existed at the time the Applicant inspected the vehicle prior to sale.

CONSUMER 3 and Facebook Marketplace

146. Concerning the CONSUMER 3 transaction, the Applicant filed a bill of sale with CPD showing it sold a Honda civic to CONSUMER 3 when the Applicant did not hold a valid licence. During the course of a Facebook messenger exchange the Applicant (Amanda Smith) states that she can help CONSUMER 3 with an issue "because we are a dealer, had you bought it privately, you would definitely be out of luck."
147. In several of the Facebook Marketplace advertisements included in Mr. Cook's memo, the Applicant included the Applicant's previous inactive vehicle dealer licence number 100255.

148. This was a misleading and a false claim as the Applicant held itself out as a licensed dealer to further its vehicle sales. A licensed dealer is required to include the name of the dealership or the initials DL followed by the dealer licence number when publishing vehicle advertisements. The Applicant committed an unfair practice contrary to section 8 of the Act because holding itself out to be a licensed dealer was a misleading and false claim made to a specific consumer and to the public generally.
149. Finally, the Applicant carried on the business of a vehicle dealer without a licence after it was suspended and cancelled, contrary to section 56 of the Act and the requirement for a vehicle dealer to hold a valid license under section 5-10 of the Regulations.

The Applicant is not Suitable to be licensed.

150. In my role as Deputy Director, it is incumbent on me to be satisfied that all vehicle dealers are suitable to be licensed. A licensee's suitability is evaluated based on their ability to comply with the expectations set out for vehicle dealers in the Act and the Regulations.
151. Suitability is a broad, flexible term which allows the Deputy Director to consider all relevant facts and information to determine whether an Applicant has governability issues and/or an application raises public safety concerns. In this line, the Deputy Director may consider evidence regarding the past conduct of an Applicant (Financial and Consumer Affairs Authority (Consumer Protection Division) v Aubichon, January 3, 2017 (unreported); see also 7992 v Registrar, Motor Dealers, 2013 Canll 45553 (ONLAT) and Fryer v Motor Vehicle Sales Authority of British Columbia, 2015 BCSC 279).
152. The Act and Regulations do not define what it means to be suitable. However, there is guidance from similar legislation consistent with the consumer protection objective of the Act. The word "suitable", in the context of mortgage brokers and brokerages, refers to the qualities or attributes that a person should have in order to hold a licence. In Carson v. British Columbia (Registrar of Mortgage Brokers [2006] B.C.W.L.D. 4033, the British Columbia Financial Services Tribunal quoted with approval the statement in *Khosla v. Real Estate Council of British Columbia* [2000] BCCO No. 11:

[T]he suitability required by the statute refers to the qualities or attributes that a person should have in order to be licensed. The qualities that make a person suitable for licensing include such things as honesty, reliability, integrity and professionalism. Where an Applicant's conduct has shown an absence of one or more of these qualities, the Applicant is not suitable and should not be licensed. These qualities are questions of character which are often enduring.

153. Vehicle salespersons hold a position of trust over buyers; buyers rely on dealers to give them clear and accurate information when looking to purchase a vehicle. The purchase of a vehicle can be a major event in an individual's life, and it is often the second most expensive item a person will buy – the most expensive often being their home. Honesty, integrity and trustworthiness are therefore of the utmost importance.
154. Applying for a license is voluntary. Once a license is issued the Applicant is authorized to engage in licensed activity and is subject to all of the duties and obligations associated with the regulatory regime that govern it. Wagner J of the Supreme Court of Canada noted in *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, [2013] 3 SCR 756 at para. 49, “[t]hose who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards, which are typical of such spheres of activity.”
155. To adhere to Saskatchewan's regulatory requirements for vehicle dealers, the Applicant or licensee accepts the professional responsibility to understand and adhere to the applicable Acts and regulations governing their licensed activities. This responsibility extends to both experienced and inexperienced licensees, regardless of their familiarity with dealership operations. It is expected that they recognize and accept the rigorous standards set forth in legislation and regulations.
156. In determining whether an Applicant is suitable to hold a licence as a motor vehicle dealer in the Province of Saskatchewan, the Deputy Director may consider all relevant facts and information. This would include information regarding an Applicant's past conduct including contraventions of the law, and in particular, any record of past criminal behavior by an Applicant, or, in the case of a corporate Applicant, by its directors and officers. This information is highly relevant; the

best indicator of future behavior is often said to be past conduct. While the existence of any previous breaches will not automatically render an Applicant unsuitable, the facts surrounding these issues can serve as a good indicator as to whether an Applicant will be governable, act in accordance with the law, or conduct themselves with the level of honesty integrity and professionalism required by licensees.

157. Another useful tool in assessing an Applicant's suitability can be the Applicant's own testimony. When an oral hearing is held, this provides the Deputy Director with the opportunity to hear, first-hand, relevant information provided by the Applicant. The Deputy Director is able to weigh this evidence, along with the already-gathered information, while assessing the Applicant's demeanor and credibility.
158. During Ms. Smith's testimony, a notable inconsistency in her stance became apparent, oscillating between acknowledging partial responsibility for her actions and attempting to portray herself as an inexperienced new dealer unaware of regulatory responsibilities. This vacillation raises questions about whether the dealership genuinely lacks experience or if there is a deliberate effort to evade accountability by presenting a novice status. The revelation that she facilitated the sale of over 600 vehicles adds a layer of uncertainty about the depth of her professional experience, casting doubt on the authenticity of her claims.
159. Throughout the oral hearing, the Applicant's testimony was scrutinized, revealing further uncertainties and inconsistencies in their responses. The Applicant said it didn't know it had to be licensed until it realized its contraventions might be serious is inconsistent with Tyler Smith's stated belief the Applicant could sell vehicles without a license. The Applicant explained its frustration with delays in the licensing process and knew its original application was deficient yet failed to take responsibility for its part in any delay. In consumer-centric industries, honesty, transparency, and accountability are considered essential, and any deviation from these standards raises valid concerns about the Applicant's suitability for licensure. The lack of full ownership for the issues at hand further compounds these concerns, as accountability is a crucial aspect of maintaining trust within such industries.

160. Ms. Smith's consistent downplaying of the severity of problems associated with the CONSUMER 2 and CONSUMER 1 cases during her testimony raises red flags regarding transparency and accountability. Her attempt to minimize these issues, highlight Big Q Auto efforts to unsuccessfully repair consumer's vehicles or deflect responsibility to CPD demonstrates a reluctance to fully acknowledge the gravity of the situation. Notably, Ms. Smith failed to convey genuine remorse for any of her actions during the hearing, prompting doubts about the sincerity of her testimony and the overall commitment to addressing the issues at hand. This lack of remorse and accountability adds to the apprehensions surrounding the credibility of Ms. Smith's statements and the Applicants dedication to rectifying identified problems.
161. The Applicant's history, notably the suspension of their previous license due to a failure to renew the penal bond, raises fundamental questions about their commitment to meeting statutory obligations. The Applicant's assertion that the process, in particular its application has been delayed by over 225 days is also concerning. The Applicant fails to acknowledge any delay between March 14 when it was advised of deficiencies in its application and its July 6 application was entirely within its hands because it did not provide the required information. The Applicant's stance is the FCAA did not call to explain the delay until after the Applicant contacted the Ministry of Justice. This illustrates its lack of understanding about the regulatory framework, unwillingness to accept responsibility for its actions and lack of commitment to regulatory requirements. Such oversights, particularly in meeting the basic requirements for licensure, cast doubt on the Applicant's capacity to uphold regulatory and industry standards.
162. Moreover, the consumer complaints, particularly those from CONSUMER 1 and CONSUMER 2, reveal a concerning pattern of unresolved issues, lack of transparency in vehicle transactions and a potential breach of consumer trust. Consumer protection, a cornerstone of our regulatory framework, demands dealers to be forthright, transparent, and accountable. The Applicant's handling of these cases falls short of these expectations.
163. For example, when addressing the concerns raised by CONSUMER 2's case, the Applicant asserted that they lacked the financial means to promptly rectify the situation and opted to attempt to sell the vehicle without CONSUMER 2's consent or knowledge to recoup sufficient funds. While financial constraints may pose challenges, the Applicant's decision-making process

and subsequent actions must align with the legal and ethical obligations to consumers. The ends do not justify the means. The Applicant's explanation that it told CPD it was going to sell the vehicle privately is a further attempt to deflect responsibility for its conduct in this situation.

164. Additionally, unlicensed conduct, as evidenced by CONSUMER 3 case, and on Facebook marketplace wherein the Applicant conducted sales or held itself out as a vehicle dealer during a period of license suspension and cancellation, is a stark violation of regulatory norms. Tyler Smith, during his exchange with CPD personnel indicated Big Q Auto had the authority to sell vehicles without a license and the staff were lying. The persistence of such behavior even after formal warnings indicates a reckless disregard for the legal framework established to protect consumers.
165. The Applicant's application for a motor vehicle dealer's license has raised significant concerns with respect to the Applicant's conduct during the application and review process. Tyler Smith on behalf of the Applicant, not only made multiple inquiries about the application but also visited the regulatory office on numerous occasions, indicating a heightened level of interest. Two notable incidents at the FCAA main office further raised red flags. On May 19, 2023, Smith accused regulatory staff, including myself, of harassment, revealing the financial struggles of Big Q Auto and demanding license reinstatement. The encounter escalated, with Smith displaying anger and asserting his belief that they could sell vehicles without a license. Another incident on June 20, 2023, turned confrontational, with Smith becoming agitated, emotional, and making explicit threats, prompting consideration of police intervention.
166. The conduct exhibited by Tyler Smith, as documented in the investigators' statements, underscores potential lapses in professionalism, compliance awareness, and adherence to regulatory standards. The emotional and aggressive behavior displayed by Mr. Smith during these encounters raises serious doubts about the Applicant's suitability for holding a motor vehicle dealer's license.
167. Communication with regulatory staff further highlighted issues. Amanda Smith's inquiry to the Minister of Justice's office and subsequent calls from Tyler Smith revealed a lack of understanding of the application process. Mr. Smith and Ms. Smith disputed facts, accused the

FCAA of perpetual delays, and brought up unrelated financial difficulties. Mr. Smith's claim that they could sell vehicles without a license raises serious compliance and consumer protection concerns.

168. It appears that Big Q Auto's directors want to establish a vehicle dealership in Regina. They believe they can make a living in the car business and recoup their losses. Big Q maintains that the circumstances around the consumer complaints are a very narrow situation and timeline for which to judge character and suitability for licensing given it had sold over 600 vehicles since it was licensed. Big Q says denying its license is out of proportion to the consumer complaints and contraventions of the Act.
169. The number of complaints received is not determinative. I must consider the seriousness of the Applicant's contraventions and the Applicant's apparent inability to judge how seriousness of these contraventions. The Applicant fails to appreciate that its explanations and missteps offered to justify its actions in relation to serious contraventions of the Act and Regulations are not sufficient. The Applicant engaged in the retail sale of motor vehicles without a license and failed to provide consumers with disclosure of material facts about vehicle conditions. These aspects of the legislation are foundational to protecting Saskatchewan consumers. Despite the personal and financial pressures, the ends do not justify the means. The Applicant's failure to express genuine remorse for its actions and hold itself accountable for its conduct do not tip the balance in favour of licensure, rather they highlight the need to protect Saskatchewan consumers.
170. Refusing a license may have financial consequences, however the potential impact on consumers associated with the Applicants and its directors' lack of capacity and accountability is significant and calls into question the merit of licensing an entity controlled and directed by those who disregard regulatory decisions and seek to course correct when they realize how serious it is.
171. The Applicant offered no comprehensive explanation of how it will correct and address its shortcomings and proactively deal with its regulatory responsibilities. The Applicant indicated that it was willing to work with the regulator to become educated about its noncompliant conduct, possibly enter into a voluntary compliance agreement as a condition of licensing and

increase its financial security. The Applicant's commitment to working collaboratively with the FCAA contrasts with its claim that staff are not truthful about regulatory requirements. My predominate consideration is to ensure that the standards in the Act and Regulation are upheld and consumers are protected.

172. The Applicant fails to fully recognize the severity of concerns about its honesty, integrity and professionalism demonstrated by the complaints, its conduct and interaction with staff. The Applicant stated it did not hide the fact that it failed to provide material disclosure to consumers without intent or malice and didn't deny or hide the fact that it sold vehicles without a license. However, the Applicant's representatives have not expressed genuine remorse. The Applicant's statement that it is a young dealership, and its directors can't be expected to know everything about how to run a dealership shows its unwillingness to fully accept accountability for its actions.
173. In conclusion, the refusal of the Applicant's vehicle dealer license is a proactive step in safeguarding consumer interests, upholding regulatory integrity, and maintaining public confidence in the industry. Granting a license to an entity with a history of failing to disclose material facts about a vehicles condition, selling vehicles without a license, of non-compliance and unresolved consumer grievances would undermine the core principles of consumer protection.
174. In light of the extensive and troubling series of events surrounding the sale and subsequent handling of the vehicles in question, including the apparent pattern of negligence, misrepresentation, unauthorized attempts to sell a vehicle, questionable changes in ownership and registration and failed inspections and Big Q Auto directors' conduct , I find that the Applicant's lacks the requisite level of honesty, integrity and professionalism, and as such, I am not satisfied that there are reasonable grounds to believe that the Applicant is suitable to be licensed as a vehicle dealer in the Province of Saskatchewan.

Decision

175. I hereby refuse the Applicant's application, dated February 23, 2023, because the Applicant has not met the licensing criteria and requirements, has not complied with the Act and Regulations and is not suitable to be licensed. Such a decision is imperative for safeguarding consumer interests and maintaining the integrity of the automotive marketplace.

DATED at Regina, Saskatchewan, this 13th day of December 2023.



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

Appeal

The Act provides:

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.