

In the matter of an appeal pursuant to section 179 of the Consumer Protection Act, RSA 2000, c C-26.3 arising from a June 20, 2022 Order of the Director of Fair Trading (as delegated) towards Genuine Contracting and Gordon Claude Perreault.

### **DECISION OF THE APPEAL BOARD**

Appeal Board: Christopher Davison (Chair)

Barbara McKinley (Board Member)

James (Jim) Lees (Board Member)

Counsel: Gordon Perreault: for the Appellants, Gordon Claude Perreault and Genuine Contracting

Joseph O’Kurley: for the Respondent, the Director of Fair Trading (as delegated) (“the Director”)

#### **OVERVIEW**

1. On June 22, 2022, the Director of Fair Trading, based on a complaint and the resulting investigation, rendered an Order pursuant to s. 157 of the *Consumer Protection Act*, RSA 2000, c C-26.3 (CPA) against Gordon Claude Perreault and Genuine Contracting. This Order directed the Appellants to immediately (1) cease entering into prepaid contracts with consumers until licensing requirements have been met, and (2) ensure all prepaid contracts are in writing and compliant with the appropriate legislation.
2. The Appellants adjourned the first hearing date and then failed to appear for the second hearing date.

#### **DECISION**

3. For the following reasons, the Appeal Board (“the Board”) dismisses this Appeal. The Order of the Director will remain in effect as if there has been no appeal.

#### **JURISDICTION**

4. On June 22, 2022, the Director of Fair Trading, based on a complaint and the resulting investigation, rendered an Order pursuant to s. 157 of the CPA against the Appellants. A copy of the Order is found at Appendix 1 following this decision.
5. On September 19, 2022, the Appellants appealed the Order pursuant to s. 179 of the CPA.
6. On October 2, 2022, the Deputy Minister of Service Alberta appointed this Board under s. 179(2) of the CPA to hear this appeal.

7. On October 24, 2022, and November 27, 2022, respectively, the Director and Appellants consented to service of documents via email.
8. On December 12, 2022, a Notice of Hearing was served upon the parties via email. It set a prehearing date of January 30, 2023, and a hearing date of January 31, 2023. The hearing was to proceed virtually via Zoom.

#### **THE HEARING AND PREHEARING PROCEEDINGS**

9. On January 30, 2023, both parties appeared for the prehearing. The purpose of the prehearing was to address any technological issues, ensure all parties had the documentation required, verify witnesses and procedure for the hearing, and to address other prehearing issues.
10. The Appellants indicated they had properly received disclosure and hearing documentation. The Director and the Appellants were to call one witness each on the hearing date.
11. During this prehearing, the appellants were asked the following question: "Do you know you have the right to legal counsel?" The Appellants responded "Yes." The Appellants were then asked the following question: "Do you want to proceed without legal counsel at the hearing tomorrow?" The Appellants responded "Yes."
12. On January 31, 2023, both parties appeared for the hearing.
13. Both parties had no objection to the Board members hearing this appeal.
14. Early into the Director calling evidence from his first (and only) witness, the Appellants applied for an adjournment due to a family medical emergency.
15. The details of this application and the resulting decision are found at Appendix 2 following this decision.
16. The Board decided adjourn to February 6, 2023, at 9:30am to continue the hearing. The written adjournment decision was served on the parties via email January 31, 2023, at 1:45pm.
17. It is noteworthy that when the Board caucused to consider the application, the Appellants left the Zoom proceedings and did not return despite being given an opportunity to do so.

#### **THE SECOND HEARING DATE**

18. On February 5, 2023, at 9:11am, the Appellants emailed the Board and indicated they would not be present for the second hearing date due to the pre-booked business activities.
19. The Board responded via email at 9:18am and asked the following questions: (1) Do you want us to proceed tomorrow in your absence? (2) If you do not want us to proceed in your absence, do you want to make another adjournment application?
20. The Board further responded via email at 9:35am and drew the Appellants attention to s. 12 of the *Appeal Board Regulation, Alta Reg 195/1999 (ABR)* which states:
  - 12 If a party to an appeal fails to appear in person or by lawyer or other agent, or, where applicable, by electronic means, within one hour from the time set out in the notice given under section 6, the appeal may be dismissed or the hearing conducted and determined in that person's absence as the appeal board considers proper in the circumstances.
21. The Appellants did not respond to the Board's questions.
22. On February 6, 2023, the hearing commenced at 9:30am. The Appellants were not present. The Board asked the Director for submissions on the application of s. 12 of the *ABR* in these

circumstances. The Director stated they had instruction to ask that this appeal be dismissed.

23. The hearing was adjourned one hour. The Appellants were still not present.
24. The Board rendered its decision orally that this appeal was dismissed, and written reasons were to follow within 45 days.

#### **ANALYSIS**

25. In coming to its decision, the Board considered the following:
  - a. The Appellants initiated this appeal, and the appeal was for their benefit.
  - b. The Director's Order did not impose any direct sanction upon the Appellants and appears to have required them to follow laws they were already bound to follow.
  - c. The Appellants consented to service of all documents via email, and it was clear that all documents sent were promptly received by the Appellants.
  - d. The Appellants were made aware of their right to counsel and declined to be represented for these proceedings.
  - e. The Appellants left the first hearing date and did not return despite being provided a reasonable opportunity to do so.
  - f. The Appellants waited 5 days after being served the adjournment decision to inform the Board any problem with the second hearing date.
  - g. The Appellants were given an opportunity to make an adjournment application for the second hearing date. They were given approximately one full day before the second hearing date proceedings commenced. They failed to make that application.
  - h. The Appellants did not appear for the second hearing date within one hour of the date and time set out in the adjournment decision (Appendix 2).
26. S.12 of the *ABR* enables the Board to dismiss this appeal when a party fails to appear within one hour of the date and time of the hearing, and where the Board considers it appropriate. In consideration of the above, the Appeal board finds that it is appropriate to dismiss the appeal. The Appellants were given ample and appropriate opportunity to participate in their own appeal or adjourn it to a later date and failed to do so. The fact that the Director's Order does not impose any direct sanction was given a substantial amount of weight in coming to our decision.
27. As an aside, the Board would like to state that it does not appear that the Appellants understand the importance of following the Director's Order. The Board reminds Mr. Perreault that it is very important that he and Genuine Contracting follow the Director's Order by only engaging in prepaid contracts with consumers if they are properly licensed and by then ensuring all prepaid contacts are in writing and compliant with s. 35 of the *CPA*. As stated on the Order, if Mr. Perreault and Genuine Contracting do not comply with the Order, they may be prosecuted under s. 163 of the *CPA*.

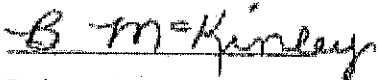
**CONCLUSION AND ORDER**

28. In accordance with the reasons above, the Appeal Board dismisses the Appeal.
29. The Order of the Director dated June 22, 2022, against Gordon Claude Perreault and Genuine Contracting will remain in effect as if there has been no appeal.
30. No decision is made as to costs.

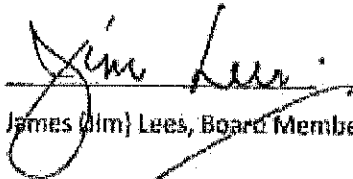
ISSUED AND DATED in the Province of Alberta this 9 day of February 2023



Christopher Davison, Chair



Barbara McKinley, Board Member



James (Jim) Lees, Board Member

# **APPENDIX 1**

**DIRECTOR'S ORDER UNDER SECTION 157 OF THE  
CONSUMER PROTECTION ACT**

**TO**

**GENUINE CONTRACTING**

**AND**

**GORDON CLAUDE PERREAULT**

**ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE OF  
GENUINE CONTRACTING AND/OR GORDON CLAUDE PERREAULT**

**Issues**

The Consumer Investigations Unit of Service Alberta opened an investigation into the activities of Gordon C. Perreault operating as Genuine Contracting.

An investigation was opened into a complaint filed with the Consumer Investigations Unit, North, Service Alberta. A resident of Tomahawk, Alberta submitted the complaint. The allegation is that Gordon Perreault operating as Genuine Contracting entered into a prepaid contract with a consumer without a Prepaid Contracting Business Licence. In addition, the prepaid contract did not comply with the requirements of the Prepaid Contracting Business Regulation.

As of today's date, Gordon Perreault nor Genuine Contracting is properly licensed to operate as a prepaid contracting business in the Province of Alberta.

**Legislation**

*Consumer Protection Act*

**Section 35** A written direct sales contract must include

- (a) the consumer's name and address;
- (b) the supplier's name, business address, telephone number and, where applicable, fax number;
- (c) where applicable, the salesperson's name;
- (d) the date and place at which the direct sales contract is entered into;

- (e) a description of the goods or services, sufficient to identify them;
- (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
- (g) the itemized price of the goods or services, or both;
- (h) the total amount of the direct sales contract;
- (i) the terms of payment;
- (j) in the case of a sales contract for the future delivery of goods, future provision of services or future delivery of goods together with services, the delivery date for the goods or commencement date for the services, or both;
- (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- (l) where credit is extended,
  - (i) a statement of any security taken for payment, and
  - (ii) the disclosure statement required under Part 9;
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
- (n) the signatures of the consumer and the supplier.

**Section 104** No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

*Designation of Trades and Business Regulation*

**Section 10(2)** In this section,

- (a) "construction or maintenance contract" means a contract for the purpose of
  - (i) constructing, altering, maintaining, repairing, adding to or improving
    - (A) a building that is used or is to be used by the owner, occupier or person in control of it as the owner's, occupier's or person's own private dwelling, or
    - (B) a structure that is to be used in connection with a building referred to in paragraph (A) and that is located on the same parcel as that building,
  - or
  - (ii) altering, maintaining or improving real property to be used in connection with a building or structure referred to in subclause (i),
- (b) "prepaid contract" means a construction or maintenance contract in which all or part of the contract price is to be paid before all the goods or services called for in the contract are provided;
- (c) "prepaid contracting business" means the activities of soliciting, negotiating or concluding in person, at any place other than the seller's place of business, a prepaid contract.

*Prepaid Contracting Business Licensing Regulation*

- Section 10**
- (1) This section applies to prepaid contracts in which the value of the goods or services to be provided under the contract is more than \$200.
  - (2) A person who is engaged in the prepaid contracting business must ensure that every prepaid contract that the person enters into
    - (a) complies with the requirements of section 35 of the Act, and
    - (b) sets out quality or types of materials to be used under the contract and the services and work to be carried out under the contract.



- (3) A person who is engaged in the prepaid contracting business and who enters into a prepaid contract with a buyer must provide a copy of the signed contract to the buyer
- (a) on or before the date work commences under it, or
  - (b) within 10 days after the buyer signs the contract, whichever occurs first.

### **ORDER**

Gordon Claude Perreault and Genuine Contracting Ltd. and any employee, representative, or agent of Gordon Claude Perreault and/or Genuine Contracting must immediately:

- Cease entering into prepaid contracts with consumers until the licensing requirements have been met;
- ensure that all prepaid contracts are in writing and include the terms required by the Prepaid Contracting Business Licensing Regulation and the *Consumer Protection Act*.

### **NON-COMPLIANCE WITH ORDER**

**ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *CONSUMER PROTECTION ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *CONSUMER PROTECTION ACT*.**



Scott Hood  
Director of Fair Trading (as delegated)  
June 20, 2022

# APPENDIX 2

## ADJOURNMENT DECISION - Genuine Contracting and Gordon Claude Perreault

Chris Davison <cadavison@hotmail.com>

Tue 2023-01-31 1:45 PM

To: joseph.okurley@gov.ab.ca <joseph.okurley@gov.ab.ca>; Gord Perreault <genuineskirting@gmail.com>

Cc: Jim Lees <jamesleesgm@gmail.com>; Barbara McKinley <barbmckinley@shaw.ca>

The Board's decision on the Appellant's adjournment application is as follows:

In the matter of an appeal pursuant to section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3 arising from a June 20, 2022 order of the Director of Fair Trading (as delegated) towards Genuine Contracting and Gordon Claude Perreault.

On January 31, 2023 the hearing commenced via Zoom at 9:30. While the Director was in the early stages of calling his case by examining his first witness, Mr. Perreault made an application to adjourn.

Mr. Perreault stated that his granddaughter was being admitted for emergency dental surgery, there was no one else from his family that could care for her, and that he did not know this hearing was scheduled for all day.

The Director stated he had no objection to the adjournment.

The Board caucused for a time during which Mr. Perreault was disconnected from the hearing. When the Board recommenced the hearing, Mr. Perreault was emailed a message indicating he needed to re-attend the hearing. He was also re-sent a Zoom invitation via email.

The Board waited more than 10 minutes, then re-commenced the hearing without Mr. Perreault present. We delivered our decision to adjourn the hearing, and indicated that these written reasons were to follow. We also canvassed the availability of the parties present including the Director's witness.

Mr. Perreault emailed the Chair shortly after the hearing has been adjourned and did not address his absence.

While the Board does not accept that Mr. Perreault was unaware this was a full day hearing, we do accept that he had a family medical emergency that was outside of his control which required an adjournment.

The hearing is hereby adjourned to February 6, 2023 at 9:30am. Both parties are expected to be present for the entire day.