

In The Matter of the Consumer Protection Act, RSA 2000, c. C-26.3

And In the Matter of an Appeal from the Decision
of the Director of Fair Trading (as delegated) made October 24, 2017
Imposing an Administrative Penalty pursuant to s.158.1
of the Fair Trading Act, RSA 2000, c. F-2

Between:

Racetrack R.V. Inc.

Appellant

-and-

Alberta Motor Vehicle Industry Council
("AMVIC")

Respondent

Decision on Preliminary Issue

Appeal Board: John Welbourn, C.Arb., MCI Arb.

Counsel for the Appellant:

Susanna Gafarova, Esq.

Counsel for the Respondent:

Paula Hale, Esq.

Preliminary Matters:

1. A teleconference with Counsel was held January 31, 2018 to discuss procedural matters. Counsel agreed that a decision on a preliminary issue would assist in the disposition of the appeal. Written submissions have been delivered and considered. Oral argument was not required.
2. The Fair Trading Act was renamed the Consumer Protection Act (the "CPA") effective December 15, 2017.

Issue:

3. Is a "trailer" a "motor vehicle" for the purpose of s.15 of the Vehicle Inspection Regulation, AR 211/2006 (the "VIR") enacted under the Traffic Safety Act, RSA 2000, c. T-6 (the "TSA")?

Facts:

4. For context in this Decision, it is understood that in 2015 the Appellant was properly licensed to operate an automotive sales business in Alberta. During that year, the Appellant sold a used 2001 Holidaire trailer (the "Trailer") to a consumer and did not provide the consumer with a used motor vehicle Mechanical Fitness Assessment ("MFA") at the time of sale. The Trailer was a recreational vehicle intended to be towed behind a motor vehicle.

Argument:

5. AMVIC relies on the Automotive Business Regulation, AR 192/99 (the "ABR") enacted under the Fair Trading Act, RSA 2000, c.F-2 (the "FTA"). Section 1(k) of the ABR defines "vehicle" to include a motor vehicle as defined in the TSA and:

A recreational vehicle intended to be towed that combines transportation and temporary living accommodations for the purpose of travel or camping.

6. Section 12 of the ABR requires an automotive business operator to:

Comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

7. Section 15 of the VIR provides:

... a dealer in used motor vehicles shall before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains ...

required information regarding the subject motor vehicle.

8. Section 1(1)(x)(i) of the TSA defines "motor vehicle" to include:

A vehicle propelled by any power other than muscular power....

9. Section 1(1)(ww) of the TSA defines "vehicle" to be:

A device in, on or by which a person or thing may be transported or drawn on a highway and includes a combination of vehicles but does not include a mobility aid.

10. Section 1(1)(uu) of the TSA states "trailer" means:

A vehicle so designed that it

- (i) may be attached to or drawn by a motor vehicle or tractor, and
- (ii) is intended to transport property or persons

and includes any vehicle defined by regulation as a trailer

11. AMVIC submits that a trailer is a vehicle by the TSA definition. Further, as a trailer is propelled by "other than muscular power", it is therefore a motor vehicle as defined by the TSA.
12. Further, the trailer in this matter was a recreational vehicle and is therefore a vehicle as defined by the ABR. As noted, s.12 of the ABR required the Appellant, as an automotive business operator, to comply with "any legislation that may apply to the selling of vehicles".
13. Section 15 of the VIR therefore required the Appellant to give the buyer a MFA before contracting to sell the trailer.
14. AMVIC further argues that the CPA is consumer protection legislation intended to regulate *inter alia* vehicle retail sales in Alberta. The purpose of the TSA is to ensure the safe operation of safe vehicles on public roads in the Province. In doing so, the TSA also provides consumer protection. It is therefore consistent to interpret the CPA and the TSA, and the regulations under each, as a coherent legislative framework for consumer protection. A trailer should be considered a "motor vehicle" for the purpose of s.15 of the VIR.
15. The Appellant agrees that a trailer is a "vehicle" but does not agree that it is a "motor vehicle" under the TSA and the VIR. The Appellant contends that "trailer" and "motor vehicle" are separate and distinct categories of "vehicle" under the legislation. Only used motor vehicles, not trailers, are subject to the obligation to provide a MFA on sale by regulated operators to consumers.

Finding:

16. Neither the TSA nor the VIR explicitly state that a "trailer" is a "motor vehicle". It is certain that a "trailer" is a "vehicle". The statute and the regulation use the terms "trailer", "motor vehicle" and "vehicle" such that an ordinary reading is clear that a "trailer" and a "motor vehicle" are distinct types of "vehicle" subject to distinctly different requirements.
17. Reading the TSA in its entirety makes certain that use of the term "vehicle" includes "motor vehicle" and "trailer". It is also clear that a "motor vehicle" is considered

distinct from a "trailer". Examples include s.52 which prohibit operation of a "motor vehicle or a trailer" unless it is properly registered. Section 53 prohibits operation of a "motor vehicle or a trailer" unless its license is properly displayed. Section 54 prohibits the operation of a "motor vehicle" only, unless it is properly insured. There is no reference to "trailer".

18. Further, s.1(1)(aa) of the TSA states "non-repairable vehicle" means:

A motor vehicle or a trailer described by the regulations as a non-repairable vehicle.

19. Including the words "or a trailer" indicates that a "trailer" is distinct from a "motor vehicle". The TSA does not state that a "trailer" is or can be a "motor vehicle".

20. The Vehicle Equipment Regulation, AR 120/2009 (the "VER") is also enacted under the TSA. It establishes equipment required to be installed or prohibited on individual types of vehicles including specifically but not limited to motor vehicles, trailers, mopeds, bicycles, motorcycles, emergency vehicles, police vehicles, recreational vehicles, camper units, and boat trailers. The regulation is detailed and clearly distinguishes the requirements and prohibitions in force for each type of vehicle. It is also specific that certain standards are required of all types of "vehicle".

21. The VER is evidence that the Legislature has been careful and selective in its enactments regarding "vehicles" generally and specific types or classes of vehicles. The governing TSA is similarly indicative of that care and attention.

22. Section 15(1)(a) of the VIR provides that a MFA shall contain:

A statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle.

The list describes classes of self-propelled vehicles followed by the generic term "motor vehicle". It is reasonable to limit that generic term "or other type of motor vehicle" to other classes of self-propelled vehicles. A "trailer" is not self-propelled. It is drawn or towed by a vehicle which can be a "motor vehicle" or another "trailer" that is itself drawn or towed by a "motor vehicle".

23. The Legislature must have considered and enacted the VIR with the same care and attention as is apparent from the TSA and the VER. Had the intention been to require a MFA be provided to a buyer of a used trailer, the Legislature could have used the terms "vehicle" or "motor vehicle or trailer" in place of "motor vehicle" in s. 15 of the VIR. It did not and therefore it is presumed that the MFA obligation is limited to used motor vehicle sales only.

24. AMVIC's submission that a trailer, once attached to a motor vehicle, is propelled by "other than muscular power" and therefore becomes a "motor vehicle" itself, is tenuous. It disregards the clarity and certainty found in the TSA and the VER. It also disregards the presumption established by the list in s.15(1)(a) of the VIR - that a MFA is required to be provided for a used motor vehicle that is self-propelled.

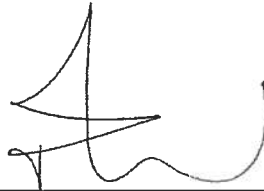
Decision:

25. The Trailer is not a "motor vehicle" for the purpose of s.15 of the Vehicle Inspection Regulation, AR 211/2006 enacted under the Traffic Safety Act, RSA 2000, c. T-6.

Declaration:

26. I confirm that I do not have any conflict with Counsel or either party in this matter.

Signed at Calgary, Alberta on May 4th, 2018.

A handwritten signature in black ink, appearing to read 'J. Welbourn', written over a horizontal line.

John H. Welbourn

IN THE MATTER OF AN APPEAL PURSUANT TO
SECTION 179 (1) OF THE *FAIR TRADING ACT*, RSA
2000, c. F-2

AND IN THE MATTER OF THE DECISION BY
THE DIRECTOR OF FAIR TRADING ON
OCTOBER 24, 2017, TO ISSUE AN
ADMINISTRATIVE PENALTY

Between:

Racetrack R.V. Inc.

Appellant

-and-

Alberta Motor Vehicle Industry
Council
("AMVIC")

Respondent

Appeal Board Chair: John Welbourn

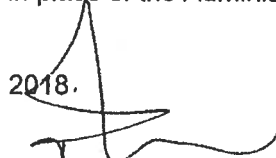
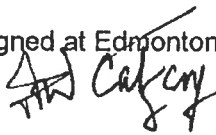
Counsel for the Appellant: James M. Clark

Counsel for the Respondent: Paula D. Hale

CONSENT DECISION

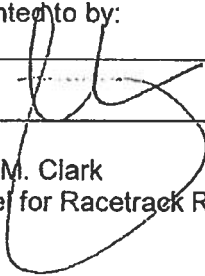
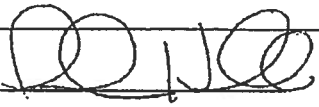
Whereas the Appeal Board Chair made a preliminary decision which reduced the number of issues to be heard, and whereas the Appellant acknowledged a breach of the *Fair Trading Act*, and upon joint submission by the parties, the appeal is resolved by substituting a payment of \$799.00 to the consumer in place of the Administrative Penalty previously issued.

Signed at Edmonton Alberta on June 11, 2018.



John Welbourn, Chair

Consented to by:

 James M. Clark Counsel for Racetrack R.V. Inc.	 Paula D. Hale Counsel for AMVIC
--	--

