

**Re: In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, Chapter C-26.3 Arising from an August 7, 2020 Decision of the Director of Fair Trading (as Delegated) to Order Renee Mulrooney, operating as Haven Design & Build, to Cease Engaging in the Activities of a Prepaid Contracting Business until Obtaining a Prepaid Contracting Business License**

**March 10, 2021**

*Appeal Board: Paul Alpern (Chair), Dr. Nick Tywoniuk and Barbara McKinley*

*Representing the Applicant, Renee Mulrooney, operating as Haven Design & Build: Renee Mulrooney*

*Representing the Respondent, the Director of Fair Trading (as delegated): Joseph O’Kurley, LL.B, Statute Administrator*

*Appeal Heard: 10 February 2021 via Microsoft Teams Virtual Hearing*

*Also in attendance:*

*Zeljko Kokolic – Investigator, Service Alberta*

*Shaun Brinton – Senior Investigator, Service Alberta*

An Appeal Board constituted pursuant to section 179 of the *Consumer Protection Act*, R.S.A. 2000, c. 26.3, and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199) met to hear an appeal by Renee Mulrooney, operating as Haven Design & Build (“Mulrooney”) of the August 7, 2020 decision of the Director of Fair Trading (as delegated) (the “Director”) to order Mulrooney to cease engaging in the activities of a prepaid contracting business until obtaining a prepaid contracting business license.

## **THE ISSUE**

The Director alleges that between May 1, 2018 and March 18, 2020, Mulrooney was operating as a prepaid contractor without the necessary prepaid contracting business license.

Mulrooney disputes the allegation and asks that the Director’s order be quashed and the associated consumer alert published on Service Alberta’s website be removed.

## **RELEVANT LEGISLATION**

***Consumer Protection Act*, RSA 2000, Chapter C-26.3**

***Designation of Trades and Business Regulation*, Alberta Regulation 178/1999**

***Appeal Board Regulation*, Alberta Regulation 195/1999**

### **Opening Statement of Joseph O’Kurley, representing the Director of Fair Trading**

1. Service Alberta’s intent is to establish that the investigations were fair and reasonable to allow the Appeal Board to affirm the Director’s Order.
2. S. 104(1) of Alberta’s *Consumer Protection Act* requires that “No person may be engaged in a designated business unless the person holds a license under this Act that authorizes the person to engage in that business.”
3. At the relevant time, Mulrooney was aware that she needed a prepaid contracting business license to solicit, negotiate or conclude prepaid contracts but failed to have such a license.
4. Service Alberta’s investigation, intelligence gathering, and inspection operations confirmed that Mulrooney was operating a prepaid contracting business as defined in s. 5(2) of the Designation of Trades and Businesses Regulation.

### **Opening Statement of Renee Mulrooney**

5. Mulrooney is confused as to how we have gotten to this point.
6. She has had many interactions with Service Alberta over the past 4 years, some overt, many covert.
7. She had one incident several years ago where she was charged and convicted under the *Consumer Protection Act*. That was a misstep on her part.
8. She learned a lot going through that process and now knows what to do to be compliant with the *Consumer Protection Act*.
9. All the interactions with Service Alberta to gain evidence on her with respect to this Order have been covert. There have been no other consumer complaints.
10. For some reason, she has ended up on the Service Alberta “target list”. They have planned and orchestrated interactions to gain evidence about her with an objective for some reason.
11. She has been found guilty without an opportunity until now to say why she isn’t guilty.
12. She has not contravened the *Consumer Protection Act*. She has acted within the scope of what the *Act* allows.
13. Her recommendation is that the Director’s order be quashed, and the consumer alert be lifted immediately.

### **Witness Statements**

14. The Director called two witnesses: Shaun Brinton and Zeljko Kokolic

### **Evidence of Shaun Brinton (“Brinton”)**

15. She is a senior investigator/inspector with Service Alberta, designated to act as such when she was hired by the Consumer Investigations Unit in September 2018.
16. There are several types of techniques her office uses including intelligence probes, investigations, and inspections.
17. A probe involves gaining information about a company, particularly how business is being conducted.

18. If there are concerns arising from a probe (e.g., covert attendance at trade shows indicates a business may be operating in breach of the *Consumer Protection Act* or related statutes and regulations), an enhanced investigation is commenced with overt or covert investigations via personnel in Service Alberta's Consumer Investigation Unit ("CIU").
19. If there is a consumer initiated complaint, that will also often lead to an investigation.
20. Targets for probes include those businesses or individuals who may have had past complaints, past convictions, past licensing issues and potential compliance issues evident from open-source searches.
21. Taking information gathered from probes, CIU intelligence analysts go through the information and make up a list of who to target for follow-up.
22. Investigations may include covert residence operations where investigators work out of a "bait house", pretending to act as consumers of home renovation services.
23. With overt operations/inspections, investigators must present identification and authorization to conduct the investigation and share that with the target. With covert operations, there are no specific requirements.
24. Brinton was an inspector/intelligence gatherer at the Fall 2019 Edmonton Home Show.
25. Prior to attending at the event, an analyst with the CIU would have gone through the vendor list, Service Alberta records, licensing history, and open-source searches to identify a list of targets.
26. Mulrooney had prior history with the CIU. In 2018, Tom Boy Construction (a trade name operated by Mulrooney) and Mulrooney were convicted of operating as a prepaid contractor without a license. Also, Tom Boy Construction's business license had expired.
27. Brinton was a covert operative at the 2019 home show. She spoke with Mulrooney at her booth. She was given a pamphlet and a business card. Mulrooney told Brinton that she had a prepaid contractor business license so she could take a deposit. She would go to Brinton's home to discuss basement renovation work and prepare an estimate.
28. Notwithstanding Mulrooney's statement to Brinton at the 2019 Home Show that she was licensed as a prepaid contractor, Mulrooney had no such license at the time. This raised suspicions that Mulrooney was operating as a prepaid contractor without a license.
29. Brinton checked the Consumer Affairs Tracking System to confirm whether Mulrooney had a prepaid contracting license. She did not have such a license.
30. Following the Edmonton Fall Home Show, the CIU conducted an undercover operation. Investigator Kokolic obtained evidence at a bait house that Mulrooney was operating as a prepaid contractor.
31. Following the undercover bait house operation, a letter was sent to Mulrooney with proposed next steps. Mulrooney replied with an email confirming that she needed to continue to try to obtain her prepaid contracting license through Service Alberta.
32. Prior to the Issuance of the Director's Order on August 7, 2020, Mulrooney never followed through with obtaining a prepaid contractor license, notwithstanding that she was aware of the requirements given her 2018 conviction and previous communications from Service Alberta.

**On cross examination by Mulrooney, Brinton's evidence was as follows:**

33. With reference to the April 2019 bait house, Brinton was not there, but Investigator Kokolic was. Brinton recommended use of the bait house as part of this investigation. She reviewed Kokolic's notes from the operation and included that information in her recommendation to the Director.

34. Brinton is a peace officer and an investigator/inspector under the *Consumer Protection Act* and other statutes.
35. She prepared for the Edmonton Fall Home Show by reviewing legislation, helping to prepare a list of targets, and getting her story together to act as a consumer.
36. Her objective at the Home Show was to determine how businesses were operating, where contracts were signed, the type of business, prepayment requirements, etc.
37. She confirmed that a business does not need a prepaid contractor license to be a renovator in Alberta unless they are accepting prepayment, but they may need a direct seller's license.
38. Accepting prepayments at a trade show would be away from the seller's place of business.
39. "Solicit, negotiate or conclude" includes "a meeting of the minds"... agreeing to terms.
40. All her investigation notes were entered at the time of the event (same day or within a short period of time).
41. By letter dated March 18, 2020, she informed Mulrooney that an investigation had been initiated against Mulrooney and Haven Design & Build concerning operation of a prepaid contracting business without a license. Included in the letter was information about prepaid contracting license applications and associated tip sheets. A response from Mulrooney was requested by April 8.
42. Based on the lack of a substantive response from Mulrooney and no evidence in the Consumer Affairs Tracking System that Mulrooney had taken any material steps to obtain a prepaid contractor license, on August 4, 2020 Brinton prepared a recommendation summarizing the facts and Mulrooney's history of non-compliance and suggesting enforcement action, including issuance of Service Alberta Consumer Alert.

**On further questioning by Joseph O'Kurley and panel members, Brinton's evidence was:**

43. Once an investigation commences and a letter such as that sent to Mulrooney on March 18, 2020 is delivered, there is no requirement for the investigator to follow up with the respondent.
44. Mulrooney told Brinton that she would be in contact with Brinton while the licensing process was underway.
45. Mulrooney replied to the March 18, 2020 letter in mid-April. Brinton recommended enforcement action mid-August. In the meantime, Brinton looked at the licensing tracking system and there was no record of further efforts by Mulrooney to obtain a prepaid contracting license.
46. Under s. 150 of the *Consumer Protection Act*, the Director and/or Minister can provide information to the public re. an ongoing investigation. Brinton recommended a Consumer Alert be issued in this case based on danger to the public arising from Mulrooney operating without a prepaid contractor license. Such an alert is typically issued only after enforcement action.
47. Based on historical non-compliance by Mulrooney and current enforcement action, Brinton's conclusion was that there was a risk to public arising from Mulrooney's business activities.
48. Consumer alerts can be removed or updated at the discretion of the Director.

### **Zeljko Kokolic's Evidence**

49. In his role with the CIU, he requires operational knowledge of what's required to run a prepaid contracting business in Alberta.
50. The *Consumer Protection Act* provides that anyone who solicits, negotiates or concludes a prepaid contract in person outside their place of business and takes money before the work is done requires a prepaid contracting license in Alberta.
51. He had the following involvement in the Mulrooney investigation: (i) January 2019 Edmonton Home show; (ii) January 2020 Edmonton home show; and (iii) covert residence inspection in February 2020.
52. At the home shows, Mulrooney was identified as a red flag target by the CIU because of dealings with her in the past.
53. When approached at the home show, Mulrooney said she ran a construction renovation business. Kokolic said he is looking for renovations to his home. Mulrooney said she would come out and taken measurements, talk about price, etc.
54. Based on his interaction with Mulrooney at the home show, Kokolic's conclusion was that Mulrooney was likely operating as a prepaid contractor. That led to planning for a covert operation in the form of a bait house.
55. Mulrooney was identified as a "high risk target" with the belief that she continued to operate as a prepaid contractor without a prepaid contractor license.
56. Mulrooney was contacted by Kokolic in February 2020 under the guise of him being a new homeowner, the home had been vandalized and he was looking to have some renovations done to the house.
57. The CIU secured the use of a derelict house owned by City of Edmonton.
58. Kokolic's cover story was that the house was his personal residence and he was looking to have a kitchen renovation. A date was set for Mulrooney to come out to take a look at the house.
59. The following was discussed between Kokolic and Mulrooney at the bait house:
  - a. Mulrooney said this is the type of work she does and she could help
  - b. discussed colors and materials for countertops
  - c. Mulrooney suggested she could refurbish the existing cupboards
  - d. If cupboards were kept in place, he could save about \$6,000
  - e. Would cost \$3,000 to adjust the look and color of the cupboards
  - f. Kokolic assisted Mulrooney with measurements
  - g. Talked about materials
60. Mulrooney said she would require a 50% deposit for the countertop materials before the goods/services to be provided as she is a small business.
61. All interactions he had with Mulrooney evidenced she was operating a prepaid contracting business.
62. Kokolic was appointed as a peace officer under s. 7 of the Peace Officer Act and as an inspector under s. 173(2) of the *Consumer Protection Act*. He was legally authorized to do what he did.

### **On cross examination by Mulrooney, Kokolic's evidence was as follows:**

63. He had three interactions with Mulrooney: (i) January 2019; (ii) January 2020; and (iii) February 2020 at the bait house.
64. He spoke on the phone with Mulrooney before the February 2020 interaction.
65. At the January 2019 home show, he visited Mulrooney's booth.

66. Because of previous interactions with the CIU, Mulrooney was a target.
67. He and his colleagues took a proactive approach by looking at all the tradespeople attending the home show.
68. At the show, his role was to determine if Mulrooney was still operating as a prepaid contractor given previous convictions.
69. He pretended to be a consumer.
70. In January 2020, Kokolik came by Mulrooney's booth again under the guise of being a consumer. He told Mulrooney that he wanted to update his kitchen.
71. Mulrooney said she would come to his house and give a quote.
72. In response to a question from Mulrooney about how many other sting operations occurred at the bait house that day, Kokolik responded that there were six and that Mulrooney was not the first.
73. Kokolik and Mulrooney discussed that the house had been vandalized, that the cabinets were salvageable and that the countertops could be left in place to save money.
74. Kokolik acknowledged that there were lots of details to still work out, including color of the cabinets and countertops, edge profile and supplier.
75. Kokolik said all of these were dependent on the quote Mulrooney was going to email to him.
76. Kokolik said that he's not sure if the quote ever came.
77. No price was ever agreed upon.
78. No start date was ever agreed upon.
79. Kokolik said he would have pretended to agree to any quote received.
80. No scope of work was ever agreed upon.
81. In response to a question from Mulrooney about whether Kokolik asked her how the payment of the 50% deposit would be made, Kokolik responded "no", but the purpose of the interaction was simply to determine whether a deposit would be required.

**On further questioning by Joseph O'Kurley and panel members, Kokolik's evidence was:**

82. A booth at a trade show does not count as a supplier's regular place of business.
83. With respect to the bait house, Mulrooney was not obligated or pressured to attend at the house or to enter the residence. She did do so on her own accord. She was there to give an estimate.
84. Concluding the terms of a contract is one element of the definition of a prepaid contracting business. Soliciting or negotiating are other elements and those certainly occurred in this case.
85. Mulrooney never did say she had a prepaid contractor's license.

**Renee Mulrooney's Evidence**

86. She grew up watching Bob Villa and always enjoyed fixing up houses.
87. She studied neuroscience and worked in stroke research prior to getting into home renovations.
88. In 2006, she saw that the market was changing and there was a business opportunity.
89. She bought five houses, fixed them up and sold them.
90. Friends and neighbors began asking her to help with small cosmetic projects.
91. Eventually, this grew into bathroom renovations, garage suites, etc.

92. Renovating and neuroscience have a lot in common. Both are creative processes. There's a psychology component too, including: client priorities; what they're looking to achieve; how they want to communicate.
93. Over 15 years, it has been important for her to hone her craft and build her reputation.
94. She had a conviction several years ago. She was charged with four counts under the Fair Trading Act and related statutes including not using a proper contract, not having a prepaid contractor's license, and not returning a deposit.
95. At that point, she did not know anything about prepaid contractor license requirements.
96. That was a mistake/misstep on her part.
97. She started the project that led to the charges but could not agree on scope and price so abandoned it.
98. A consumer complaint followed.
99. There are lots of shady contractors out there who take advantage. She is worked hard to treat clients fairly.
100. She has had only the one consumer complaint.
101. There have been no Better Business Bureau complaints.
102. Trade shows are interesting. Lots of work goes into preparation and there are very long workdays.
103. Trade shows are not a sell focus for her. They are a meet new people focus. She gives free advice. Some people just want to get out of the house.
104. People come to trade shows for lots of different reasons.
105. She measures success by having meaningful conversations with people.
106. It is up to consumers whether they follow-up.
107. The evidence so far does not confirm that she was acting as a prepaid contractor.
108. The *Consumer Protection Act* is confusing. It does not define "solicit, negotiate or conclude".
109. When she was trying to learn more about whether she was being compliant, she referred to the Consumer Bill of Rights published by Service Alberta.
110. Going to a consumer's home is not acting as a prepaid contractor unless there's a solicitation, negotiation or agreement.
111. She cannot do her job just over the phone. She must go to the home to see what the consumer's needs are.
112. At the early stages of an in-home consultation, she gathers information. What are the client's wants? She then goes away and prepares a scope and a quote.
113. She does not charge to go to a client's house. There is no obligation.
114. Typically, she would email a quote and scope. There is often a lot of back and forth with the client.
115. There are lots of opportunities for clients to decide they do not want to go ahead.
116. She never knows when she goes into a client's home whether the interaction is going to lead to a signed contract.
117. Sometimes the process takes weeks or months. It never happens in one day.
118. It's not a prepaid contract if the project is protected with a renovation home warranty.
119. She had an in-home inspection in April 2019 at her home with Julian Smith, a senior investigator with Service Alberta.
120. She understands Mr. Smith was given the activity notes from the January 2019 home show.
121. Mr. Smith wanted to speak about the requirements of a prepaid contracting license.
122. She and Mr. Smith talked about all aspects of her business including the fact that she did not have a prepaid contractor license at that time.

123. Mulrooney said she was not very busy at work, that she wanted to work on getting her prepaid contractor's license but hadn't at that point.
124. She wanted to get the license so she could sign the contracts in a client's home to make it easier on them.
125. She received a Nov 4, 2019 letter from Mr. Smith which concluded as follows: "After visit of April 10, 2019, I see no reason to commence enforcement action."
126. After that letter, she thought she was okay doing what she was doing.... Going to trade shows, meeting at consumers' homes. She thought she was compliant. There was nothing to tell her otherwise; no other communication suggesting she was not compliant.
127. The intent of the *Consumer Protection Act* is to protect consumers and businesses from unfair practices.
128. The consumer alert that has been posted is unreasonable. There have been no consumer complaints. She has a clear criminal record. There are no current allegations of fraud or running away with other people's money.
129. There are two other people on Service Alberta's consumer alert website. Both have multiple complaints against them on multiple platforms.
130. The alert is unfair and unwarranted.
131. She is licensed now as a prepaid contractor and her business practices meet current requirements.
132. She was unable to get clear information from Service Alberta respecting her alleged offences.
133. The Consumer Alert refers to "new offences under the *Consumer Protection Act*".
134. She called Scott Hood (Director of Fair Trading, as delegated) looking for more information about the offences and the actions that led to those offences.
135. Breach of s. 104 of the *Consumer Protection Act* is vague, giving her no information on how to comply. She was given no specifics.
136. What did she do in contravention of the Act? If compliance is their goal, it should be easy for her to get that information.
137. Regarding the Consumer Alert – it says you can call for information. When you do call, they do not have any information other than what is on the website.
138. She did not call any past clients as character witnesses... they wouldn't be paid for this, would have to step away from their jobs, etc.... she could not do that to them. Thought that would be selfish.

**On further questioning by Joseph O'Kurley and panel members, Mulrooney's evidence was:**

139. Brinton provided tip sheets and other documents regarding prepaid contractor license requirements, but those documents do not say renovators or constructors must have a license.
140. Some of her projects were covered by home warranty programs (Mulrooney later clarified that she was not truthful in giving this evidence).
141. Her previous conviction gave her insight into what was not allowed if accepting prepayment. Soliciting and negotiating contract terms in a client's home remains a grey area for her.
142. In response to a question about whose responsibility it is to ensure she understood the law, Mulrooney answered "that's why I called Scott Hood".

143. In response to a question about why she told Brinton that she had a prepaid contractor's license, Mulrooney said she does not know; it does not make sense why she would have said that except that she was working on her prepaid contractor's license at the time.
144. Mulrooney says she did not get to the part of a contract or asking for money at the bait house nor did she discuss warranty availability. Scope had not been finalized and no payment arrangements were made.

### **The Director's Arguments**

145. Mulrooney has not been subject to any administrative penalty or license cancellation as a result of these events, as shown by her obtaining a license later in 2020. Her personal character, work ethic, or how dedicated she is to her business are not in question here, only whether she had the required license while carrying out her business activities, and whether her activities met the definition of a prepaid contracting business.
146. Mulrooney has stated that she has not been provided any guidance on how to comply with legislative obligations, yet Brinton's letter of March 18, 2020 included 4 tipsheets on various requirements for operating a prepaid contracting business, which included contact information for Service Alberta which she could have used if she was unsure of the requirements. This was over four months before the Director's Order was issued.
147. The Board has heard evidence from two CIU investigators who have both general expertise with regard to the process leading to the Director's Order and firsthand knowledge of Mulrooney's activities. Their evidence should confirm that the activities carried out by the CIU regarding Mulrooney were legally valid, fair, and appropriate.
148. Mulrooney was licensed for prepaid contracting from April 12, 2017 to April 30, 2018, demonstrating her understanding that such a license was required for the prepaid contracting business she was operating.
149. In 2019 and early 2020, Mulrooney was soliciting and/or negotiating contracts for constructing, altering, maintaining, repairing, adding to or improving private dwellings, which meet the definition of "construction or maintenance contract" under s. 5(2)(a) of the *Designation of Trades and Business Regulation*.
150. Ms. Mulrooney demonstrated (and confirmed in the hearing) that she required part of the contract price to be paid before all the goods or services called for in the contract were provided, resulting in the prospective contracts meeting the definition of "prepaid contract" under s. 5(2)(b).
151. By soliciting and/or negotiating contracts at trade shows and at a prospective client's residence rather than her place of business, her activities met the definition of a "prepaid contracting business" under s. 5(2)(c).
152. The Certificates of No Licence issued by the delegated Director of Fair Trading in March 2020 are proof under s. 171(1) of the *Consumer Protection Act* that Mulrooney did not possess a prepaid business license during the period in question.
153. Through the period spanning all of 2019 up to the issuance of the Director's Order on August 7, 2020, Mulrooney at times engaged in a business that met the definition of a designated business in the regulations (prepaid contracting) and did not possess a license for it as required by s. 104(1).
154. I therefore ask that the Board confirm the Director's Order of August 7, 2020.

## Mulrooney's Arguments

155. She has not acted in a way that's unfair to consumers. She endeavored to ensure that their rights were protected.
156. She relied on information provided to her in the interactions with Julian Smith who was aware of her business practices that she was not doing anything wrong.
157. She believed she was right in believing she was acting in compliance.
158. She has gone on to get the prepaid contracting license as the Director's Order required.
159. She asks that the Director's Order be repealed and the Consumer Protection Alert be removed.
160. There have been no recent complaints other than the interactions with Service Alberta. That demonstrates that she is dealing with her clients fairly and that she doesn't present a risk to the consumer marketplace and that she's not a threat.
161. The Consumer Alert was a disproportionate response to the allegations.

## ANALYSIS AND CONCLUSIONS

162. This Appeal Board finds the following as facts:
  - a. On February 14, 2017, Mulrooney was charged with four offences under the Fair Trading Act (FTA):
    - i. FTA s. 104 - operating as a prepaid contractor without a license;
    - ii. Prepaid Contracting Business License Regulation s.10(2) – Using a contract that did not comply with s. 35 of the FTA;
    - iii. FTA s. 31(2) – failure to refund consumer's money within 15 days after cancellation of the contract;
    - iv. FTA s. 6(3)(a) – providing goods/services that the consumer did not receive any reasonable benefit from.
  - b. Following the above charges, Mulrooney did obtain a prepaid contractor license, which license was in effect from April 12, 2017 to April 30, 2018.
  - c. After a trial held in Edmonton provincial court on January 19, 2018, Mulrooney was found guilty of each of the above charges with the exception of FTA s. 6(3)(a). She was fined \$2,586 and ordered to pay \$11,980 in restitution.
  - d. Between January 25-27, 2019, during an interaction with a covert CIU investigator at the Edmonton Home Renovation Show, Mulrooney said that she would typically take a 30-50% deposit.
  - e. On October 18, 2019, an intelligence probe took place at the Edmonton Fall Home Show. During the operation, a CIU inspector acted in a covert capacity at the show, speaking with several businesses regarding their business practices. One of the businesses/individuals spoken with was Mulrooney, doing business as Haven Design & Build. During the discussion, Mulrooney provided the inspector a business card and pamphlet and advised the inspector that:
    - i. she could come out to her home to discuss the work;
    - ii. she required a \$5,000 deposit at the time of contract signing;
    - iii. she was licensed for prepaid contracting with the province;
  - f. Notwithstanding her statement to the undercover investigator, Mulrooney was not licensed for prepaid contracting with Service Alberta between May 1, 2018 and October 22, 2020.

- g. A similar interaction took place at the January 24, 2020 Edmonton Renovation Show. Mulrooney advised a covert investigator that she would need a 30-50% deposit depending on the job.
  - h. On February 21, 2020, a CIU investigator acting as a consumer set up a meeting with Mulrooney at a bait house. Mulrooney and the investigator discussed a potential kitchen renovation, including countertop options. Mulrooney stated a quote would be sent in a week. When the investigator asked for the next steps if the quote was agreed to, Mulrooney stated they would sign a contract and she would require a 50% deposit for the countertops. A quote was never provided.
  - i. On March 18, 2020, Brinton sent Mulrooney a letter indicating that Service Alberta has evidence that Mulrooney is operating as an unlicensed prepaid contractor. Included with the letter were various resources on licensing businesses, including:
    - i. Service Alberta's Tipsheet on Licensing and Registering your Business;
    - ii. Service Alberta's website page on Prepaid Contracting Licences;
    - iii. Service Alberta's Application for a Prepaid Contracting Business License;
    - iv. Service Alberta's Tipsheet on Prepaid Contracting Contract Requirements.
  - j. Mulrooney was given an opportunity to reply. No substantive reply from Mulrooney was received. Mulrooney did advise that she was taking steps to get licensed as a prepaid contractor.
  - k. A Director's Order was issued on August 7, 2020 requiring Mulrooney or Haven Design and Build to "cease entering into prepaid contracts with residential consumers until the licensing requirements have been met."
  - l. Mulrooney obtained a prepaid contractor license on October 22, 2020 effective through October 31, 2021.
  - m. Notwithstanding Mulrooney's assertion at paragraphs 125 and 126 hereof that Julian Smith found she was operating within the law, Julian Smith's letter of November 4, 2019 concludes only that there is insufficient evidence otherwise.
  - n. Notwithstanding her testimony to the contrary, none of Mulrooney's projects were covered by the Alberta New Home Warranty Program or a National Home Warranty Program.
163. S. 5(2) of the *Designation of Trades and Businesses Regulation* provides as follows:
- (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),  
but does not include a contract referred to in subsection (3)
  - (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.
164. S. 5(3) of the *Designation of Trades and Businesses Regulation* provides as follows:  
A construction or maintenance contract does not include

- (a) a contract in which the building, structure or real property that is to be constructed, altered, maintained, repaired, added to or improved is used or is to be used primarily for the business purposes of the owner, occupier or person in control of it,
  - (b) a contract between any 2 of a general contractor, a subcontractor and a subtrade,
  - (c) a contract for the construction of a home where the contract is covered by the Alberta New Home Warranty Program,
  - (d) a contract for the construction or renovation of a home where the contract is covered by the National Home Warranty Programs, or
165. S. 104 of the *Consumer Protection Act* provides: “no person may engage in a designated business unless that person holds a license under this Act that authorizes the person to engage in that business.”
166. This Appeal Board finds that in 2019 and early 2020, Mulrooney was soliciting and/or negotiating contracts for constructing, altering, maintaining, repairing, adding to or improving private dwellings, which meet the definition of “construction or maintenance contract” under s. 5(2)(a) of the *Designation of Trades and Business Regulation*.
167. Mulrooney demonstrated (and confirmed in the hearing) that she required part of the contract price to be paid before all the goods or services called for in the contract were provided, resulting in the prospective contracts meeting the definition of “prepaid contract” under s. 5(2)(b) of the *Designation of Trades and Business Regulation*.
168. By soliciting and/or negotiating contracts at trade shows and at a prospective client’s residence rather than her place of business, her activities met the definition of a “prepaid contracting business” under s. 5(2)(c) of the *Designation of Trades and Business Regulation*.
169. Mulrooney was not a credible witness. There is evidence that she lied to investigators about having a prepaid contractor license. She lied to this hearing panel about having projects covered by home warranty programs (which, arguably, would have exempted such projects from the prepaid contractor licensing requirements).
170. Mulrooney stated that she thought she was operating in compliance with the law and took no responsibility for not knowing that whenever she required a deposit or down-payment on residential renovation work that she required a prepaid contractor license.
171. Mulrooney’s previous conviction for operating without a prepaid contractor license and her previous license as a prepaid contractor make it clear that Mulrooney knew or ought to have known what the law required of her. She simply neglected to maintain a current prepaid contractor license or choose not to do so, all the while soliciting prepayments. Mulrooney has no one to blame for these proceedings except herself.
172. There is no reason to quash or vary the August 7, 2020 Director’s Order. The Order simply instructs Mulrooney not to enter into prepaid contracts without a prepaid contractor license.
173. Now that Mulrooney has obtained a prepaid contractor license effective though October 31, 2021, she remains in compliance with the Order.
174. With respect to the current consumer alert about Mulrooney warning consumers about Mulrooney (i) requesting deposits from consumers without having a proper business license; and (ii) providing renovation contracts that don’t align with consumer protection laws, this Appeal Board recommends to the Director that the alert be removed as Mulrooney is currently licensed as a prepaid contractor.

## DECISION

Based on this Appeal Board’s conclusions on the above issues:

**Re: In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, Chapter C-26.3 Arising from an August 7, 2020 Decision of the Director of Fair Trading (as Delegated) to Order Renee Mulrooney, operating as Haven Design & Build, to Cease Engaging in the Activities of a Prepaid Contracting Business until Obtaining a Prepaid Contracting Business License**

- A. The August 7, 2020 Director's Order to Renee Mulrooney and Haven Design & Build to "cease entering into prepaid contracts with residential consumers under the licensing requirements have been met" is affirmed.
- B. This Appeal Board recommends to the Director that the current consumer alert respecting Renee Mulrooney be removed as Mulrooney is currently licensed as a prepaid contractor.

No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 10<sup>th</sup> day of March, 2020 by the Appeal Board constituted to hear the above referenced matter pursuant to S. 179 of the *Consumer Protection Act*.

Paul Alpern  
Nick Tywoniuk  
Barbara McKinley