

**Re: In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act* (formerly, the *Fair Trading Act*), RSA 2000, Chapter C-26.3 Arising from a June 17, 2019 Decision of the Director of Fair Trading (as Delegated) to Issue an Administrative Penalty to A AB Lock Surgeon Ltd. operating as Lock Surgeon**

**January 12, 2020**

*Appeal Board: Paul Alpern*

*Representing the Applicant, A AB Lock Surgeon Ltd. operating as Lock Surgeon: Scott Richardson, Student-at-Law, Hladun & Co.*

*Representing the Respondent, the Director of Fair Trading (as delegated): Allison Scott, Director of Consumer Programs, Service Alberta and appointed Director of Fair Trading.*

*Appeal Heard: 5 December 2019 at Service Alberta offices located at Commerce Place, 10155 – 102 Street, Edmonton, Alberta*

*Also in attendance:*

*Deborah Wagar – Statute Administrator, Service Alberta and Delegated Director of Fair Trading*

*Judy Cuff – Senior Investigator, Service Alberta (by phone)*

*Kay Vera – Complainant*

*Patrick Frick – Lock Surgeon*

*Gabrielle Beauchamp – Lock Surgeon*

*Henrica (Rita) Hendriksen – Lock Surgeon (by phone)*

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 A AB Lock Surgeon Ltd. operating as Lock Surgeon (“Lock Surgeon”) of the June 17, 2019 decision of the Director of Fair Trading (as delegated) (the “Director”) to issue an administrative penalty to Lock Surgeon.

## **THE ISSUES**

There are allegations by the Director of misconduct by Lock Surgeon, including:

1. Lock Surgeon failed to comply with S. 6(2)(f) of the *Consumer Protection Act* by charging a consumer a fee for an estimate without, in advance, having disclosed that a fee would be charged, its amount or obtaining the consumer’s express consent to be charged the fee.
2. Lock Surgeon failed to comply with S. 6(4)(a) of the *Consumer Protection Act* by failing to disclose to the consumer that a fee would be called for the service call to attend the consumer’s home, when they knew the fee would be charged regardless of the service performed.
3. Lock Surgeon failed to comply with a Director’s Order issued to Lock Surgeon under S. 157 of the *Consumer Protection Act* on June 6, 2017. The failure to comply with the

Director's Order occurred specifically when a breach of S. 6(4)(a) of the *Consumer Protection Act* occurred on June 12, 2017.

Lock Surgeon disputes each allegation of misconduct and asks that the administrative penalty issued by the Director be quashed.

## RELEVANT LEGISLATION

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

- 1(1) (l) "supplier" means, subject to the regulations under subsection (2), a person who, in the course of the person's business,
- (i) provides goods or services to consumers,
  - (ii) manufactures, assembles or produces goods,
  - (iii) promotes the use or purchase of goods or services, or
  - (iv) receives or is entitled to receive money or other consideration as a result of the provision of goods or services to consumers,
- and includes any salesperson, employee, representative or agent of the person;
- 1(1)(b) "consumer" means, subject to the regulations under subsection (2) and except in [section 108.1 \(c\)](#), an individual who
- (i) receives or has the right to receive goods or services from a supplier as a result of a purchase, lease, gift, contest or other arrangement, but does not include an individual who intends to sell the goods after receiving them,
  - (ii) has a legal obligation to compensate a supplier for goods that have been or are to be supplied to another individual and the other individual does not intend to sell the goods after receiving them, or
  - (iii) has a legal obligation to compensate a supplier for services that have been or are to be supplied to another individual;
- 1(1)(c) "consumer transaction" means, subject to the regulations under subsection (2),
- (i) the supply of goods or services by a supplier to a consumer as a result of a purchase, lease, gift, contest or other arrangement, or
  - (ii) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement;
- 6(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.
- (1.1) It is an offence for a supplier to engage in an unfair practice.
- (2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,
- (a) to exert undue pressure or influence on the consumer to enter into the consumer transaction;
  - (b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;

- (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
  - (d) to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;
  - (e) to charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless
    - (i) the consumer has expressly consented to the higher price before the goods or services are supplied, or
    - (ii) if the consumer requires additional or different goods and services, the consumer and the supplier agree to amend the estimate in a consumer agreement;
  - (f) to charge a fee for an estimate for goods or services unless the consumer
    - (i) is informed in advance that a fee will be charged and informed of the amount of the fee, and
    - (ii) has expressly consented to be charged the fee.
- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
  - (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
  - (s) when the price of any part of goods or services is given in any representation by a supplier,
    - (i) failure to give the total price of the goods or services, or
    - (ii) giving less prominence to the total price of the goods or services than to the price of the part;

**157(1)** If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

(2) An order may direct the person or publisher

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

(3) A person or publisher who is subject to an order under this section may appeal under section 179.

**158.1(1)** If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

- (2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

**158.2** Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

**163** Any person who

- (a) fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed,
- (b) repealed 2005 c9 s58,
- (c) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director, or
- (d) fails to comply with an undertaking under this Act contravenes this Act and is guilty of an offence.

### ***Administrative Penalties (Consumer Protection Act) Regulation, Alberta Regulation 135/2013***

**2(1)** Subject to section 158.1(3) of the Act and this section, the amount of an administrative penalty for a contravention or failure to comply is the amount set in accordance with this section by the Director.

(2) In setting the amount of the administrative penalty for a contravention or failure to comply, the Director may consider the following factors:

- (a) the seriousness of the contravention or failure to comply;
- (b) the degree of willfulness or negligence in the contravention or failure to comply;
- (c) the impact on any person adversely affected by the contravention or failure to comply;
- (d) whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
- (e) whether or not there were any mitigating factors relating to the contravention or failure to comply;
- (f) whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention or failure to comply;
- (g) any other factors that, in the opinion of the Director, are relevant.

(3) The minimum administrative penalty that may be imposed by the Director for a contravention or failure to comply with a provision of the Act or regulations is \$250.

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

#### **BACKGROUND**

1. A consumer, Kay Vera, the complainant in this matter, called Lock Surgeon on June 12, 2017 to inquire about Lock Surgeon's ability to conduct a security assessment on her home in Edmonton.
2. Ms. Vera had several petty break-ins at her property and was looking for ways to deter would-be thieves.
3. Ms. Vera was told by Lock Surgeon that they perform complimentary security assessments.
4. Happy to have a free assessment done, Ms. Vera arranged for a Lock Surgeon technician to attend at her property later that day.
5. Following his attendance at and review of her property, the Lock Surgeon technician prepared for Ms. Vera a quotation for various security solutions and presented her with an invoice for \$137.81.
6. Ms. Vera refused to pay the invoice, referring to the discussion she had with the Lock Surgeon dispatcher earlier in the day that security assessments were performed free of charge.
7. Lock Surgeon takes the position that while security assessments, quotations and estimates are generally free, all on site visits are subject to a service call fee.
8. The Director of Fair Trading argues a security assessment, estimate or quotation is not free if it's always subject to a service call charge and that the *Consumer Protection Act* requires that the existence and amount of such related charges be disclosed to consumers in advance and agreed to by consumers before services are performed.
9. Lock Surgeon argues that service call fees are not subject to the disclosure and consent requirements of S. 6(2)(f) of the *Consumer Protection Act* and their failure to disclose to consumers in advance the existence of such charges is neither deceptive nor misleading.

#### **Opening Statement of Allison Scott, the Director of Fair Trading**

10. The provisions of the *Consumer Protection Act* that are at appeal are:
  - a. Lock Surgeon failed to comply with section 6(2)(f) of the *Consumer Protection Act* by charging a consumer a fee for an estimate without, in advance, having disclosed that a fee would be charged, its amount or obtaining the consumer's express consent to be charged the fee.
  - b. Lock Surgeon failed to comply with section 6(4)(a) of the *Consumer Protection Act* by failing to disclose to the consumer that a fee would be charged for the service call to attend the consumer's home, when they knew the fee would be charged regardless of the service performed.
  - c. Lock Surgeon failed to comply with a Director's Order issued to A AB. Lock Surgeon Ltd. under section 157 of the *Consumer Protection Act* on January 6, 2017. The failure to comply with the Director's Order occurred specifically when a breach of section 6(4)(a) of the *Consumer Protection Act* occurred on June 12, 2017 as explained above.

11. Patrick Frick is a Director and the majority shareholder of Lock Surgeon.
12. On January 6, 2017 Lock Surgeon was issued a Director's Order under the *Fair Trading Act* (now the *Consumer Protection Act*). The Director of Fair Trading responsible for that Order found that violations of section 6(4)(a) and 6(4)(d) occurred and ordered Lock Surgeon and any employee, representative, agent or associate of Lock Surgeon to immediately come into compliance with the legislation.
13. On October 25, 2017 Service Alberta Consumer Investigations Unit (CIU) received a complaint from an Edmonton-based consumer named K. Vera who alleged that employees of Lock Surgeon misled her and charged her for a call out/estimate which she was led to believe was free of charge. An investigation was subsequently opened by CIU and Investigator Cuff was assigned.
14. Ms. Vera called on June 12, 2017 at which time she requested a security assessment be performed on her home.
15. Ms. Vera stated that she asked repeatedly if there would be a charge for the security assessment and that she was told it would be free.
16. The Dispatch Ticket created by Lock Surgeon employee Henrika Henriksen on June 12, 2017 does not include any reference to costs.
17. During the investigation, Lock Surgeon provided an email to the Investigator outlining:
  - a. their mandate that any discussion with consumers regarding costs must be recorded in the dispatch notes and that Lock Surgeon never offered free service to site.
18. The Lock Surgeon technician, Mr. Berg-Larsen, who attended the consumer's home provided Ms. Vera with an invoice for payment in the amount of \$137.81. The notes on this invoice state: "customer had me do up a quote for window bars and bolt buddies but not willing to pay for the service call and feels she was misled and dose not want the quote any more". This invoice acknowledges Ms. Vera's dispute and clearly charges a fee for a quote/estimate.
19. Mr. Frick has contended that Service Alberta does not have proof that Ms. Vera asked about price. In the Director's experience, consumers are most often concerned with cost. This complainant was articulate and thorough in her recollection of events and it is the opinion of the Director that she is a credible complainant. The Director therefore formed the opinion on a balance of probabilities that this complainant did ask about costs.
20. In addition to the information and evidence gathered during the investigation, several written representations were made by Mr. Frick which substantiate the allegations made by the complainant. Following the issuance of the Director's administrative penalty proposal letter, as per section 158.2 of the Act, Mr. Frick provided representations in which he stated:
  - a. "if a price or cost was requested, one would have been given. If this price was spoken about, it would have been indicated on the dispatch notes".
  - b. "the fee was not for a quote, but for a service call to have a technician come to site. It is the customer's responsibility to ask about pricing, and there is no indication that happened from our end."
  - c. "There was no mention anywhere in Ms. Henriksen's dispatch notes that pricing of any kind was discussed on the phone call with Ms. Vera."
  - d. "It is the customer's responsibility to determine the costs of the service, including inspections, prior to engaging a company. There is no indication in our dispatch notes that costs were asked about at all."
  - e. "Apparently an assessment was done, as an estimate for security deficiencies was discussed."

- f. "The quote presented to Ms. Vera would have reflected the security deficiencies reviewed in the assessment. There was no obligation to make a purchase or pay for this service."
  - g. "Ms. Vera had a responsibility to ask if there were any fees associated with this visit and did not."
  - h. "No attempt was made to mislead the consumer. The consumer simply did not ask the appropriate questions and made assumptions that there would be free services"
  - i. "Typically, onsite service providers like electricians, plumbers, HVAC charge a service call to go to site. Again, no attempt was made to mislead the consumer. The consumer simply did not ask the appropriate questions and made assumptions."
  - j. "Lock Surgeon's employee Ms. Henriksen did not record anything regarding price conversations on the initial dispatch. Therefore, this information is provided only by one side of this dispute. There is insufficient evidence to indicate that pricing was asked about or spoken about at all."
  - k. "We did not charge a fee for an estimate, nor did Ms. Vera request one in her initial call. "
  - l. "There is insufficient data to confirm this section one way or another, this is based on the information supplied by Ms. Vera only, and does not take into account the notes as they appear on our dispatch indicating: "Last week Kay had 2 times an unlawful entry into her home. Site check and do security review of the patio sliding doors, front entry side entry and man door garage. Be at site as close to 01:30PM as is possible. Call before." As these notes were entered at the time of the call, and not a recollection of events after the fact, they should be taken into account as containing the crucial bulk of information spoken about over the phone with Ms. Vera."
21. The legislation clearly articulates:
- a. that suppliers are prohibited from making representations, doing or saying, anything to reasonably mislead or deceive a consumer.
  - b. that suppliers are prohibited from charging a fee for an estimate if they have not, in advance, advised the consumer there is a fee, the amount of that fee and obtained consent from the consumer to be charged that fee.
  - c. that failure to comply with an Order under s. 157 Act from the Director of Fair Trading is an offence under the Act.
22. It is Service Alberta's position that the information and evidence gathered during the investigation and as provided in Mr. Frick's representations to the Director clearly demonstrate that Lock Surgeon staff:
- a. misled Ms. Vera by failing to disclose that security assessments are not free of charge, and
  - b. charged for an estimate/quote without advising Ms. Vera that there would be such a charge or obtaining her consent.
23. Mr. Frick's continued contention that it is not the supplier's responsibility to advise the consumer of costs or price is an aggravating factor.
24. By failing to comply with the legislation, Lock Surgeon has violated the Director's Order issued to them on January 6, 2017. This failure comes within 5 months of that Order being issued which indicates a disregard for compliance and is also viewed as an aggravating factor.

### **Deborah Wagar's Evidence**

25. Deborah Wagar's ("DW") evidence included:
- a. She has worked in Consumer Protection for 12 years, currently serving as a delegated Director of Fair Trading.

- b. She is responsible for interpretation, administration, policy, education, administrative action and prosecution.
- c. There is one Director of Fair Trading appointed by the Minister (Allison Scott) and three primary delegated Directors – including DW.
- d. She receives recommendations from investigators and then decides if action is warranted, including orders, license suspensions, cancellation and administrative penalties.
- e. Any penalties are preceded by a written proposal to the affected party.
- f. Need to have a supplier, consumer and consumer transaction (supply of goods or services) for the *Consumer Protection Act* to apply. All of those were present in the case under appeal.
- g. It's an unfair practice under S. 6(2)(f) of the *Consumer Protection Act* for a supplier to charge a fee for an estimate for goods or services unless the consumer is informed in advance that a fee will be charged, has been informed of the amount of the fee and has expressly consented to be charged the fee.
- h. The legislation requires the consumer be given the opportunity to pre-authorize any fee for goods or services.
- i. Lock Surgeon advises that they never offer free service calls to site. If that's the case, that needs to be disclosed to consumers so an informed decision can be made.
- j. Lock surgeon advises that "the fee was not for a quote but for a service call... up to consumer to ask about cost for service call."
- k. The supplier feels they're not obligated to provide notice to consumers of a fee for a service charge. The legislation says they do.
- l. Clearly, Lock Surgeon intended for the consumer to pay for the service call since they pursued recovery through a collection agency.
- m. Service calls for a quote need to be disclosed with the amount and with the consent to proceed.
- n. The onus is on the supplier to disclose and get consent from the consumer.
- o. S. 6(4)(a) of the *Consumer Protection Act* states that it's an unfair practice for a supplier to do or say anything that might reasonably deceive or mislead a consumer. Lock Surgeon's failure to disclose to the consumer that there's a fee for a service call to give a free quote or a free estimate or a fee security assessment is deceptive or misleading.
- p. In the case under appeal, the complainant is adamant that she asked about costs for the requested service. That's reflected in the invoice notes.
- q. All complainant documents are contemporaneous – the invoice notes provide some validity to the consumer's complaint.
- r. The complainant is credible. She is a police officer, articulate, and provided consistent evidence to the investigator.
- s. On a balance of probabilities, the Director believes that the consumer asked about costs for a security assessment and was told that there was no charge, that the service was complimentary.
- t. Lock Surgeon was issued a Director's Order on January 6, 2017 in respect to an unrelated matter. That Order specifically restated Lock Surgeon's obligation to comply with S. 6(4)(a) of the *Consumer Protection Act*. Any violation of that section in the future would be deemed to also be a violation of the Director's Order. Failure to comply with an Order is also an offence.
- u. All this led to the issuance of an administrative penalty.



On cross examination by Mr. Richardson, DW's evidence was as follows:

- v. "Estimate" is not defined in the *Consumer Protection Act* but its common definition is interchangeable with "quotation".
- w. The existence of a previous Director's Order doesn't materially change an offence but may impact the quantum of an administrative penalty.
- x. She believes the complainant did inquire during her initial call with Lock Surgeon about the cost of Lock Surgeon attending at her house to provide a security assessment and to give an estimate. Is that query by the complainant necessary to make out the offence? No. The onus is on the supplier to volunteer that cost information, to make that disclosure and to get the consumer's consent before assessing any charges.
- y. When the purpose of a service call is to provide an estimate, the fact that there is a fee for that service call, the amount of the fee and the consumers' consent are all required.

### **Katiuska (Kay) Vera's Evidence**

26. Kay Vera's (KV) evidence included:
- a. Has been employed by the RCMP for 24 years and is currently posted in covert operations.
  - b. Had two theft incidents at her home. Sheds on her property had been broken into and items stolen.
  - c. On June 12, 2017, she contacted Lock Surgeon for a security assessment on her home.
  - d. She asked the dispatch lady at Lock Surgeon what such an assessment would cost. She was told "it is complimentary".
  - e. She asked a second time to define complimentary – the Lock Surgeon's dispatcher's responses was: "there is no cost".
  - f. She took that to mean that there would be no cost for someone to come over, do the assessment and give a quote.
  - g. She thought the assessment would be free.
  - h. According to the Lock Surgeon invoice, she was charged for a quote for window bars and a bolt buddy.
  - i. She was never told about any fee in advance of being given the invoice.
  - j. No work was performed at the home at all.
  - k. She felt taken advantage of, deceived and misled.
  - l. She refused to pay the invoice.
  - m. This whole episode has taken up a lot of her time. She kept a record of all the interactions she's had with Lock Surgeon and with the collection agent retained on Lock Surgeon's behalf. Her intentions were clear and genuine. It's not about the money. It's about integrity. She received hundreds of calls at all hours from collections... all over \$137 dollars. Her father was in hospital at the time. She was getting calls at two o'clock in the morning from the collection agent. Often, she thought it was the hospital calling. This experience with Lock Surgeon was very troubling.
  - n. She feels she was set up to fail from the outset.
  - o. She's here on principle. She contacted Lock Surgeon in good faith but felt deceived from the outset.
  - p. She made it clear at the time of the service call that she would not pay the invoice.
  - q. She was told that someone from head office would contact her.
  - r. She received Lock Surgeon's invoice dated June 12, 2017 a couple of weeks later

- and received an overdue letter from Lock Surgeon on or about August 18, 2017.
- s. She sent an email to Lock Surgeon about nine days later.
  - t. There were several email communications between her and Lock Surgeon, with Lock Surgeon stating that they have no recording of her call with the dispatcher so couldn't verify what was or wasn't said.
  - u. She states that notwithstanding representations from Lock Surgeon that they always disclose the service call costs, that did not happen in her case.
  - v. She was clear from the outset that she was explicitly told by Lock Surgeon that there was no cost for the estimate.
  - w. As a result of Lock Surgeon pursuing collection of this inappropriate charge, her credit rating was seriously negatively affected.
  - x. She was denied further credit.
  - y. Phone calls from the collector were incessant; sometimes three a day; all over \$137.
  - z. She felt bullied and felt that Lock Surgeon's actions were wrong, that she was misled about charges and their forwarding this to collections was inappropriate.

### **Judy Cuff's (JC) Evidence**

27. Judy Cuff's evidence included:
- a. She is a Senior Investigator and Peace Officer with Service Alberta.
  - b. She administers various consumer protection legislation, including the *Consumer Protection Act*.
  - c. Her role includes taking steps to protect consumers and help ensure a fair marketplace.
  - d. Investigators are unbiased and do not act as advocates for any complainant.
  - e. In October 2017 a complaint was submitted by Kay Vera.
  - f. She was the investigator assigned, reviewed the allegations and contacted both parties.
  - g. She reviewed with Lock Surgeon potential violations of the *Consumer Protection Act* and enforcement options arising from Ms. Vera's complaint.
  - h. She reviewed the database for past enforcement involving Lock Surgeon.
  - i. Her review indicated that the complainant had made contact by phone with Lock Surgeon and asked for the cost of a residential home security assessment. The complainant was told a couple of different ways that the assessment was complimentary, that the service would be provided at no cost.
  - j. After the Lock Surgeon technician attended at the complainant's home, the complainant was presented with a bill for approximately \$137.
  - k. In the course of her investigation, JC wrote to Lock Surgeon and received a prompt response with backup information and documents. When she reviewed the information, Lock Surgeon maintained that their mandate was to review all prospective charges with consumers, but there was no evidence of that having happened with Ms. Vera.
  - l. Phone recordings from dispatch discussions were only kept for two weeks at the relevant time.
  - m. Lock Surgeon assumed that it would have disclosed service call costs to this consumer, but there is no evidence that they did so.
  - n. Lock Surgeon's June 12, 2017 invoice to the complainant provides some credible contemporaneous evidence. It includes Lock Surgeon notes that the consumer had no idea there would be a charge.
  - o. The complainant provided credible and consistent information throughout.

- p. Lock Surgeon couldn't provide evidence that they had prior express consent to the service call charge.
- q. A fair marketplace includes allowing consumers to make informed decisions. The complainant should have been told upfront that there would be a cost associated with the complimentary security assessment.
- r. Only months before the incident with this complainant, there was a Director's Order issued to Lock Surgeon with respect to licensing of certain Lock Surgeon employees, which Order restated Lock Surgeon's obligation to not provide misleading or deceiving information to consumers. As Lock Surgeon was recently subject to a previous order, there was little value in issuing another Director's Order. Lock Surgeon had already been cautioned about providing deceptive or misleading information to consumers. Escalation in the form of enforcement action came into play.
- s. The licensing of the technician who attended at the complainant's house was not an issue in this case.

### **Opening Statement of Scott Richardson on Behalf of Lock Surgeon**

- 28. Lock Surgeon did not violate any provisions of the *Consumer Protection Act*.
- 29. The essential elements of S. 6(2)(f) of the *Consumer Protection Act* have not been met.
- 30. On an objective standard, the actions of Lock Surgeon cannot reasonably be construed as being misleading or a breach of S. 6(4)(a) of the *Consumer Protection Act*.
- 31. There were no breaches of the recent Director's Order issued to Lock Surgeon.
- 32. Lock Surgeon was, at all times, in full compliance with its obligations under the legislation.

### **Gabrielle Beauchamp's (GB) Evidence**

- 33. Gabrielle Beauchamp's evidence included:
  - a. Lock Surgeon is a small family business.
  - b. She is responsible for human resources and operations, including networking, infrastructure, orientation of new hires, auditing and back-end paperwork, assisting Mr. Frick in everyday tasks, special assignments, research, integration, etc.
  - c. She has been with Lock Surgeon, most recently, since 2013.
  - d. Lock Surgeon's dispatcher, Henrica (Rita) Hendriksen, has been with the company for 11 years, having previously worked for a garage door company doing similar dispatch work.
  - e. There's a camera in the dispatch office with a microphone. Every 2 weeks, the recordings rewrite over themselves.
  - f. The system has now (subsequent to the incident under appeal) been upgraded to allow phone recordings to be kept for three months.
  - g. Lock Surgeon will always disclose service call cost information to consumers if asked, but will not generally volunteer that information unless asked.
  - h. For any Lock Surgeon attendance at a consumer's home or business, there is always a service call fee applied.
  - i. The only way to get a free quote is to get and pay for a service call – that service call fee covers travel to site, insurance, tools, etc..

## Henrica (Rita) Hendriksen

34. Henrica (Rita) Hendriksen's evidence included:
- a. She has no specific recollection about Ms. Vera or this particular transaction.
  - b. Her typical practice in similar circumstances would be to tell a consumer that there's no charge for a security assessment, that quotations are free, but there is a cost for service calls.
  - c. When customers are frantic or upset on the phone, they may not hear what was said.
  - d. Lock Surgeon's policy is - if consumers ask about cost, then we tell them.
  - e. Generally, Lock Surgeon has no issues or concerns from consumers with service call fees.
  - f. She Knows what the policy is and follows it routinely.
  - g. The complainant probably asked for a cost for an estimate or security review – there is no charge for that.
  - h. But there is a cost for service calls. That is not routinely disclosed unless the customer specifically asks.

## The Director's Arguments

The Director's Arguments included:

35. The Director restated the arguments from her opening statement (not repeated here).
36. It is an offence for a supplier to provide a deceptive or misleading statement upon which a consumer relies to enter into a consumer transaction.
37. Lock Surgeon submits that a service call is different than an estimate.
38. When a supplier offers a free estimate/quote or a free security assessment, but charges a service call fee to produce that estimate or security assessment, is the estimate or assessment free?
39. Would most consumers expect to pay a service call fee when they're expressly told that an estimate or security assessment is free?
40. The cost for an estimate, quote or assessment is promoted as free, but the only way to get the estimate, quote or assessment is to pay for the service call. Consumers aren't advised of the service call fee unless they specifically ask "is there a service call fee?" or words to that effect. That's deceptive and misleading.
41. The complainant was firm that she asked Lock Surgeon about costs for the security assessment and was told repeatedly that the assessment would be provided at no cost. The complainant was not aware of any service call cost until she was handed an invoice by the Lock Surgeon technician.
42. The complainant was materially negatively impacted by the behavior of Lock Surgeon and the collection agent retained on Lock Surgeon's behalf. The complainant having to deal with dozens of phone calls from collections, the impact on her credit rating and the time and frustration of having to deal with this matter are all aggravating factors.

## Lock Surgeon's Arguments

Mr. Richardson's arguments, on behalf of Lock Surgeon, included:

43. Based on the evidence, no estimate was ever requested by the complainant over the phone. S. 6(2)(f) deals with estimates, not the service itself.

44. The essential elements of the offence cannot be met; thus, Lock Surgeon cannot be found guilty of the alleged violation.
45. Lock Surgeon did not charge for an estimate for goods and services. The invoice to the complainant was for a service call fee (service included: driving out to the site location; remaining on the site from approximately 12:45 pm to 2:23 pm; measuring doors and windows; using miscellaneous supplies in the execution of his work).
46. The Lock Surgeon technician provided a free quote to the complainant. That free quote did not cover the work completed in the service call.
47. On a balance of probabilities, did Lock Surgeon intentionally deceive or mislead the complainant? Based on the evidence, no.
48. It is standard business practice to charge a fee for service calls; specifically, it is reasonable for Lock Surgeon to expect remuneration for its personnel's time and effort as well as the supplies used during his service call.
49. The evidence does not establish that Lock Surgeon was deceptive or misleading.
50. There was no contravention of the *Consumer Protection Act*. Accordingly, there was no breach of the earlier Director's Order.

## ANALYSIS AND CONCLUSIONS

51. The Preamble to the *Consumer Protection Act* outlines the core principles of the legislation, including:
  - a. Consumers have the right to be safe from unfair business practices, the right to be properly informed about products and transactions, and the right to reasonable access to redress when they have been harmed;
  - b. Businesses thrive when a balanced marketplace is promoted and when consumers have confidence that they will be treated fairly and ethically by members of an industry;
  - c. Businesses that comply with legal rules should not be disadvantaged by competing against those that do not.
52. It's with these themes in mind that I conclude that Lock Surgeon did engage in unfair, deceptive or misleading business practices in its dealing with the complainant, who's evidence and demeanor I found to be credible and beyond reproach.
53. Specifically, I find as facts the following:
  - a. When the complainant called Lock Surgeon to inquire about a residential security assessment, including the cost of such an assessment, a Lock Surgeon dispatcher told her that they do perform security assessments and that the service is complimentary. When pressed on that, Lock Surgeon confirmed that the service is provided free of charge.
  - b. At no time prior to presenting her with an invoice for a service call did Lock Surgeon advise the complainant that she would be subject to a service call fee associated with the "complimentary" security assessment.
  - c. Upon receipt of the invoice immediately following a Lock Surgeon technician's completion of the security assessment, the complainant challenged the service call fee and refused to pay the invoice, referring to her discussion earlier in the day with the Lock Surgeon dispatcher who had said that security assessments were performed free of charge.
  - d. Lock Surgeon sent the matter to a collections agent who proceeded, over the following weeks, to repeatedly call the complainant seeking recovery of service call fee.
  - e. The complainant's credit rating was negatively impacted as a result of Lock Surgeon's and their collection agent's actions.

54. A security assessment is an opportunity for a locksmith (or other tradesperson or professional) to: (i) determine points of intrusion vulnerability on a property; and (ii) offer alternative security means, methods and mechanisms to deter would-be intruders, often including an estimate of the cost of those alternatives.
55. To suggest that a security assessment is free when the only way to obtain that assessment is to pay a service call fee that is not disclosed to a consumer in advance is disingenuous, deceptive and misleading.
56. Lock Surgeon contends that S. 6(2)(f) of the *Consumer Protection Act* does not apply to a service call fee since such a charge is not a “fee for an estimate for goods and services”; rather, Lock Surgeon states a service call fee is to compensate the business for the technician’s time to travel to and attend at site, fuel, equipment, insurance, shop supplies etc.. In the context of the specific facts of this case, where the only way a consumer can get a security assessment (including an estimate of the cost of alternative security mechanisms) is to pay for a service call, I find that argument to be without merit.
57. The *Consumer Protection Act* is intended, in part, to ensure that consumers have the right to be properly informed about products and transactions.
58. It would have been a very simple matter for Lock Surgeon to advise the complainant that any on-site work was subject to a service call fee and the amount of that fee. Had they done so, the complainant would have been properly informed about the true cost of the transaction she was contemplating entering into and she could have made a decision about whether or not she wanted to pay that service call fee to obtain a free security assessment.
59. As a matter of policy, the evidence indicates that Lock Surgeon does not routinely advise consumers about the existence of service call fees for on-site visits unless consumers expressly ask about any such fee.
60. I tend to agree with the Director’s view that most consumers are interested in the cost of products or services they are considering buying.
61. In this particular case, the complainant certainly was concerned about cost and asked the Lock Surgeon dispatcher in a couple of different ways if the security assessment service was, indeed, free of charge. The complainant was told in certain terms that there would be no charge for the security assessment. To suggest that it was incumbent on the complainant to probe even further to ask about any other related charges, including service call fees, puts an unreasonable onus on the consumer.
62. I can only conclude that Lock Surgeon, as a matter of policy, chooses not to volunteer service call charge information to consumers unless specifically asked by consumers because they know that having been informed of such charges, some consumers may choose not to engage Lock Surgeon to provide so-called free security assessments/estimates. For the reasons stated above, I find such a policy and practice to be a breach of S. 6(2)(f) and S. 6(4)(a) of the *Consumer Protection Act*.
63. To conclude, I find that Lock Surgeon:
  - a. failed to comply with S. 6(2)(f) of the *Consumer Protection Act* by charging a consumer a fee for an estimate without, in advance, having disclosed that a fee would be charged, its amount or obtaining the consumer’s express consent to be charged the fee;
  - b. failed to comply with S. 6(4)(a) of the *Consumer Protection Act* by failing to disclose to the consumer that a fee would be called for the service call to attend the consumer’s home, when they knew the fee would be charged regardless of the service performed;
  - c. failed to comply with a Director’s Order issued to Lock Surgeon under S. 157 of the *Consumer Protection Act* on June 6, 2017. The failure to comply with the Director’s Order occurred specifically when a breach of S. 6(4)(a) of the *Consumer Protection Act* occurred on June 12, 2017.

Re: In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act* (formerly, the *Fair Trading Act*), RSA 2000, Chapter C-26.3 Arising from a June 17, 2019 Decision of the Director of Fair Trading (as Delegated) to Issue an Administrative Penalty to A AB Lock Surgeon Ltd. operating as Lock Surgeon

## **DECISION**

Based on my conclusions on the above issues, I uphold the decision of the Director to issue a \$1,000 administrative penalty to Lock Surgeon.

No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 12<sup>th</sup> day of January, 2020 by the Appeal Board constituted to hear the above referenced matter pursuant to S. 179 of the *Consumer Protection Act*.

Paul Alpern