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**NOTICE OF ADMINISTRATIVE PENALTY**

**ISSUED TO**

**BRAD DAVID KELLS, DIRECTOR**

**AND**

**GATEWAY MAINTENANCE INC.**

**AND TO**

**ANY EMPLOYEE, REPRESENTATIVE, OR AGENT**

**OF**

**BRAD DAVID KELLS**

**AND**

**GATEWAY MAINTENANCE INC.**

This Notice of Administrative Penalty was issued under s.158.1 of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1(3) of the *Fair Trading Act*, this Notice of Administrative Penalty is part of the public record.

For information on the Fair Trading Act, business licensing in Alberta or to search for a licensed business, please click here:

[Search for a Licensed Business, Charity or Fundraiser](#)

To view a tipsheet on this business licence category, please click here:

[Tipsheets](#)

Consumer Programs

Commerce Place  
10155 - 102 Street  
Edmonton, Alberta  
Canada T5J 4L4

Telephone (780) 422-8166  
Fax (780) 427-3033

**Hand Delivered**

February 4, 2014

File No. 28643

Mr. Brad David Kells, Director  
Gateway Maintenance Inc.  
#304, 20 Nevada Place  
St. Albert, Alberta  
T8N 4E9

Dear Mr. Kells:

**Notice of Administrative Penalty**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1 of the *Fair Trading Act* (FTA). This letter will detail the action that I propose to take under s.158.1.

I did not receive a response to my letter of November 27, 2013 so I was unable to consider your representations and had to make this decision without your input.

**Facts**

From August 20 to September 5, 2013 Consumer Services, Investigation Services North undertook a proactive investigation initiative to review contractors in Alberta. This initiative was intended to ensure awareness and compliance with licensing requirements for prepaid contracting businesses, and to confirm whether contractors who were operating as prepaid contractors were properly licensed. This would help facilitate a safe and fair marketplace for both consumers and prepaid contracting businesses.

Gateway Maintenance Inc. was one of the businesses selected for review during this initiative. This selection was made based on advertising located on the Internet. As our department was aware Gateway Maintenance Inc. did not possess a prepaid contracting licence, this review was to determine whether the operations of the business would require this licence.

This review consisted of an investigator inviting Gateway Maintenance Inc. to attend a residence to provide a quote for renovations to that property. On September 4, 2013, you, Mr. Brad David Kells, attended this property on behalf of your business and negotiated a contract with Consumer Services investigators. When the investigators asked about payments, you advised a deposit of fifty percent would be required before the contract was complete. You also provided an investigator with an e-mail stating a fifty percent payment would be required at the beginning of the job, and fifty percent at the end.

This would be considered as prepaid contracting, as money was required to be paid on a contract that was negotiated away from your normal place of business before all the work on the contract was completed. As noted above, Service Alberta's records show Gateway Maintenance Inc. does not possess a prepaid contracting licence.

Mr. Kells did not have a prepaid contracting license at any of the relevant times.

## **Legislation**

### **Designation of Trades and Business Regulation**

Section 5(2)(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.

### **Fair Trading Act**

Section 104(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

Section 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.

Section 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.

### **Analysis - Was there a violation of the Fair Trading Act?**

The analysis is based on the above facts. On September 4, 2013, Mr. Kells solicited and negotiated a renovation contract in person. The contract was to be prepaid. The contract was not for a business property – it was for a person's own dwelling. The contract related to the maintenance of the real property of the dwelling.

On September 4, 2013 Mr. Kells was engaged in the prepaid contracting business as defined in the Designation of Trades and Businesses Regulation. Mr. Kells did not have a prepaid contracting license in contravention of s.104(1).

### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Brad David Kells to pay an administrative penalty. This is based on my opinion that you contravened s.104(1) of the FTA by acting as a prepaid contracting business without a licence.

**Being unlicensed is a serious violation and warrants an administrative penalty in a significant amount. Consumers are at risk because the business has not provided security relating to licensing. Mr. Kell's breach has saved him money by not**

**incurring costs relating to licensing (e.g. licensing fee and costs related to a security). Mr. Kell's breach reduced his costs and put him at a competitive advantage compared to other law-abiding businesses.**

**The amount of this administrative penalty is \$1000.00.**

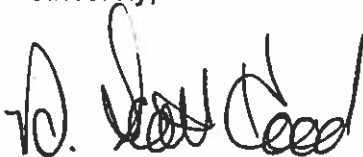
**Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, this administrative penalty must be paid within 30 days of service of this notice. Payment may be made to the Government of Alberta and sent to my attention.**

Section 179 of the FTA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta with a notice of appeal within 30 days after receiving the notice of administrative penalty. The appeal notice must contain, your name, your address for service, details of the decision being appeal and your reasons for appealing.

Pursuant to section 180(4) of the FTA, service of a notice of appeal operates to stay the administrative penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under section 4 of the *Administrative Penalties (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 or half the amount of the penalty. As such, the fee for an appeal of this administrative penalty, should you choose to file one, would be \$500.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hood', written over a printed name.

Scott Hood  
Director of Fair Trading (as delegated)

cc: Lee Chantal, Senior Investigator  
Investigation Services - North