

The Consumer Protection and Business Practices Act

The *Consumer Protection and Business Practices Act* is a consolidation of consumer protection legislation.

The Act sets out obligations of suppliers in their interactions with consumers, requires a consumer to make a reasonable effort to minimize any loss and to attempt to resolve a dispute with a supplier before taking further action.

Unfair Practices

The Act makes it an offence for a supplier (retailer, manufacturer or distributor) to engage in an unfair practice by making a false claim or by doing or saying anything, or failing to do or say anything, if that might reasonably deceive or mislead a consumer. It also makes it an unfair practice for a supplier to take advantage of a consumer not in a position to protect the consumer's own interests.

Warranties

Suppliers are deemed to give minimum warranties known as statutory warranties whenever they sell a new or used consumer product.

The minimum statutory warranties include that:

- The product belongs to the buyer without undisclosed liens or other claims;
- The product is of acceptable quality;
- The product is reasonably durable and fit for the use intended as well as for any specific purpose stated by the retailer;
- The product matches its description and the quality of any samples shown to the consumer; and
- Spare parts and repair facilities will be available for a reasonable period of time.

Unsolicited Goods

The Act provides that when unasked for goods are received, the recipient has no legal obligation to pay for the goods unless the recipient has first acknowledged, in writing, that he or she intends to accept the goods.

Consumer Contracts

Consumer contracts are contracts for goods and services between a consumer and a supplier. They include:

- Internet sales contracts (contracts made over the internet);
- Future performance contracts (contracts where the goods or services will be provided in the future);
- Personal development services contracts (health, fitness, dieting, modelling, talent, martial arts, sports, dancing or similar activities that require payment in advance);
- Travel club contracts (the right to discounts or other benefits on the purchase of transportation, accommodation, or other services related to travel with membership in a club); and
- Remote contracts (entered into from a distance, such as by telephone or internet).

The regulations establish specific obligations of suppliers to provide disclosure to consumers, set out the required elements of each consumer contract, and detail consumers' cancellation rights for consumer contracts. Other types of consumer contracts can be added to the regulations in the future.

Gift Cards

The Act sets out rules regarding gift cards and gift certificates (prepaid purchase cards). With some exceptions, it:

- Prohibits expiry dates on most gift cards and certificates;
- Requires disclosure of terms and conditions on gift cards and certificates;
- Prohibits suppliers from charging inactivity or dormancy fees that reduce the value of a gift card or gift certificate if it is not used within a certain period of time;
- Prohibits any other fees that may be charged in relation to gift cards or certificates unless authorized in the regulations; and
- Provides that any agreement, whether verbal, written, express or implied, that the benefits of the Act do not apply or are not available, is void.

Designated Activities and Licensing

The Act sets out a framework for licensing of certain businesses. It allows regulations to make specific rules for different business types setting out requirements for:

- Licensing;
- Posting financial security by the business;
- Contracts that businesses must use;
- Business maintenance of records; and
- Specific actions that vary by business type.

Administration

The Director has inspection and investigatory powers under the Act, including the right to enter premises, and search and seize documents.

The Director may order a person who fails to comply with the Act:

- To stop an act or to begin an act;
- To comply with the Act; and
- To do or stop doing any other thing the Director considers necessary.

The Director may take a supplier to court to force compliance with the Act. The court may make any order it considers necessary.

A consumer who has suffered a loss may commence an action in court against a supplier.

Penalties

It is an offence to contravene any provision of the legislation. Penalties include:

- A fine of not more than \$5,000 for an individual for a first offence;

- A fine of not more than \$10,000 for an individual for a subsequent offence;
- In both cases, a jail term of up to one year;
- A fine of not more than \$100,000 for a corporation for a first offence;
- A fine of not more than \$500,000 for a corporation for a subsequent offence;
- Equal punishment for a director, officer or agent of a corporation who participated in the offence.

Corporations cannot be jailed.

Prosecutions must be commenced within three years of the facts becoming known to the Director.
Mistake and due diligence are defences to a prosecution.