



Amended pursuant to Rule 6-1(1)(a) of the *Supreme Court Civil Rules*
Original filed on October 29, 2019

No. VLC-S-S-1912193
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DAVID ALAN YAREMKO

Plaintiff

AND:

FORD MOTOR COMPANY and
FORD MOTOR COMPANY OF CANADA, LIMITED

Defendants

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

A. DEFINED TERMS

- 2. In this Statement Amended Notice of Civil Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “**BPCPA**” means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
 - (b) “**Class**” or “**Class Members**” means all persons in Canada, except for **Excluded Persons**, who own, owned, lease purchased or leased one of the ~~Vehicles~~ a new Vehicle, or such other definition that the court finds favourable;
 - (c) “**Coastdown**” is a test for each specific **Vehicle** model to simulate the level of aerodynamic, tire rolling, and driveline and powertrain mechanical resistance, amongst others, that the **Vehicle** would encounter if operated on the road;

- (d) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34;
- (e) “**CPA**” means the *Class Proceedings Act*, RSBC 1996, c 50, as amended;
- (f) “**EnerGuide**” means the official Government of Canada mark for rating and labelling the energy consumption or energy efficiency of products, including the **Vehicles**;
- (g) “**EPA**” means the United States Environmental Protection Agency;
- (h) “**Equivalent Consumer Protection Statutes**” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, the ~~*Fair Trading Act*~~ *Consumer Protection Act*, RSA 2000, c F-2, the *Consumer Protection and Business Practices Act*, SS 2013⁴, c C-30.2, the *Business Practices Act*, CCSM, c B120, the *Consumer Protection Act*, CCSM c C200, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, the *Consumers Protection Act*, RSY 2002, c 40, the *Consumer Protection Act*, RSNWT 1988, c C-17, and the *Consumer Protection Act*, RSPEI c C-19, all as amended and as set out in Schedule “B”;
- (i) “**Excluded Persons**” means:
- (i) the **Defendants** and their officers and directors;

- (ii) the authorized motor vehicle dealers of the **Defendants** and the officers and directors of those dealers; and
- (iii) the heirs, successors and assigns of the persons described in subparagraphs (i) and (ii);

- (j) “**Ford Canada**” means Ford Motor Company of Canada, Limited;

- (k) “**Ford US**” means Ford Motor Company;

- (l) “**Ford**” or “**Defendants**” means **Ford Canada** and **Ford US**, collectively and interchangeably;

- (m) “**Fuel Consumption Guide**” means a guide created annually by **NRC** that gives information about the fuel consumption of vehicles to Canadians in order to enable them to compare different vehicles’ fuel economy;

- (n) “**NRC Search Tool**” means the fuel consumption ratings search tool and its French language equivalent *Outil de recherche pour les cotes de consommation de carburant*, which is **NRC**’s online database intended to help Canadians identify the most fuel-efficient vehicle that meets their everyday needs by comparing the fuel consumption information of different models;

- (o) “**NRC**” means Natural Resources Canada;

- (p) “**Plaintiff**” means David Alan Yaremko;

(q) “**Representations**” means the representations described at paragraphs 23-27;

(r) “**Vehicles**” means the following vehicles:

Vehicles	Model Year(s)
Ford Ranger	2019 and <u>2020</u>
Ford F-150	2018-2019 <u>2018, 2019 and 2020</u>

B. NATURE OF THE ACTION

3. This is an action by a purchaser of a Ford Vehicle on behalf of himself and other owners and lessees of the Vehicles in Canada.
4. A Vehicle’s fuel economy is determined by performing tests on the Vehicle in a laboratory setting and in “real world” road testing. The road tests include performing a Coastdown test, a test that measures a Vehicle’s rolling resistance and drag, in order to calculate how much drag, rolling and other resistance to apply to the Vehicle in the laboratory setting to simulate the road and to calculate the Vehicle’s fuel economy and emissions.
5. The Defendants in this case misrepresented the Coastdown test results by using inaccurate draft and resistance figures to boost the Vehicles’ purported fuel economy.
6. The Defendants misrepresented fuel economy values of the Vehicles to the Plaintiff and the Class. The Vehicles consume more fuel than the Defendants represented. The Defendants’ misrepresentations caused the Plaintiff and the

Class to overpay for the Vehicles, reduced the market value of the Vehicles and caused the Plaintiff and the Class to pay more in fuel costs than represented.

C. THE PLAINTIFF AND THE CLASS

7. The Plaintiff is an individual residing in Comox, British Columbia. He purchased a Ford F-150 truck from Westview Ford Sales Ltd. on April 19, 2018. The Plaintiff seeks to represent the Class.

D. THE DEFENDANTS

8. Ford Canada is a company incorporated under the *Business Corporations Act*, RSO 1990, c B.16 with its head office in Oakville, Ontario.
9. Ford Canada is involved with, has responsibilities and provides direction for the research, design, development, engineering, manufacture, regulatory compliance, fuel economy and emissions testing, marketing, distribution, sale, and lease of the Vehicles throughout Canada.
10. At all material times, Ford Canada was the sole distributor of the Vehicles in Canada. It sold the Vehicles through its dealer ~~and retailer~~ network, which was controlled by the Defendants. The dealers ~~and retailers~~ were the Defendants' agents with respect to the Representations.
11. Ford Canada is a subsidiary of Ford US. Ford US is a corporation incorporated under the laws of the State of Delaware with its head office in Dearborn, Michigan.
12. Ford US, either directly or through its subsidiaries, including Ford Canada, engages in the research, design, development, engineering, manufacture,

regulatory compliance, fuel economy and emissions testing, marketing, distribution, sale and lease of the Vehicles. The Vehicles were sold or leased to the public in Canada by authorized Ford dealerships.

13. The Coastdown testing of the Vehicles was facilitated by Ford US and Ford Canada.
14. The business of each of Ford Canada and Ford US is inextricably interwoven with that of the other, and each is the agent of the other for the purposes of the research, design, development, engineering, manufacture, regulatory compliance, fuel economy and emissions testing, marketing, distribution, sale and lease of the Vehicles and for the purposes of the claims described herein.

E. METHODOLOGY FOR FUEL ECONOMY TESTING IN CANADA AND THE UNITED STATES

15. Canada and the United States have similar fuel economy testing standards. Fuel economy ratings are regulated in the United States pursuant to 40 CFR § 600.115-11 - *Criteria for determining the fuel economy label calculation method*, which requires manufacturers to undertake a 5-cycle testing method for determining fuel economy label values (the “**5-Cycle Test**”). The 5-Cycle Test tests for city and highway conditions as well as operating a vehicle in cold weather, the use of air conditioners, and driving at higher speeds with more rapid acceleration and braking. In Canada, manufacturers use the identical 5-Cycle Test as is used in the United States.

16. The 5-Cycle Test is conducted on a dynamometer (*i.e.*, a treadmill for cars) with certain resistance applied to simulate real road driving conditions. The level of resistance on the dynamometer is adjusted based on the Coastdown testing for each specific vehicle model to simulate the level of resistance that the vehicle would encounter if operated on the road. The Defendants were required to conduct Coastdown tests in accordance with government-approved procedures and standards. The Defendants were required to follow these standards.
17. The manufacturer conducts a Coastdown test by driving a Vehicle on the road up to a certain speed, typically around 128 kilometres per hour, after which the Vehicle is put into neutral and allowed to “coast” until its speed drops below 14 kilometres per hour. Special devices in the Vehicle measure environmental conditions (ambient temperature, humidity and barometric pressure), performance data, and speed and distance travelled during the Vehicle’s deceleration. These figures are used to determine the appropriate resistance levels (also referred to as “road load”) for laboratory testing of a given Vehicle model on a dynamometer.
18. Once the Coastdown tests are complete, the road load is used to configure the dynamometer for a given Vehicle model to measure the Vehicle’s fuel consumption values.
19. Ford used the same Coastdown and dynamometer tests in both the United States and Canada to estimate the Vehicles’ fuel economy and emissions.

F. FORD'S FALSIFIED COASTDOWN AND FUEL ECONOMY TESTING

20. The Defendants conducted the 5-Cycle Tests on the Vehicles to determine their fuel economy. During this process, the Defendants deliberately misrepresented the Coastdown tests used to calculate road load in order to misrepresent the Vehicles' fuel consumption values.
21. Road load measures the forces acting against the Vehicles during real-world driving. Accurate road load measures are thus critical to the laboratory simulation of real-world driving conditions using a dynamometer.
22. Ford's internal lab tests misrepresented road load forces. Consequently, the Defendants' fuel economy testing on the Vehicles showed better, but entirely inaccurate, fuel economy results. ~~A corollary of the better fuel economy for the Vehicles represented by the Defendants was that the Vehicles emitted less pollutants than they did in reality.~~

G. INACCURATE FUEL ECONOMY RATINGS MISREPRESENTED TO CANADIANS

23. The Defendants directly and/or indirectly through their dealer network made, approved or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, Vehicle manuals, media releases, and television, radio, internet, social media and print media advertising, including website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Vehicles. The Defendants specifically represented that the Vehicles met specified fuel economy ratings.

24. The Defendants used fuel economy as an incentive to attract Class Members to purchase the Vehicles. For example, the Defendants touted the Ford F-150's "Best-In-Class ... EPA-estimated highway fuel economy rating", "optimized performance and fuel efficiency", and "best-in-class fuel efficiency". The Defendants promoted the 2019 Ford Ranger as having "the best-in-class EPA-estimated city fuel economy rating of any gasoline-powered four-wheel-drive midsize pickup and it is an unsurpassed EPA estimated combined fuel economy rating".
25. In addition, the Defendants communicated and misrepresented the inaccurate fuel economy ratings to the Class by disclosing the fuel economy on the Canadian government-sponsored website of NRC, including the EnerGuide, NRC Search Tool and the NRC Consumption Guide, as well as on the Government of Canada's EnerGuide label for rating energy consumption and fuel efficiency affixed to new Vehicles.
26. The Defendants promoted understated fuel consumption ratings compared to the results that the Vehicles would have achieved if the Coastdown tests were accurately performed.
27. The Defendants failed to disclose material facts regarding the nature of the represented fuel consumption ratings, omitting that such ratings were based on inaccurate Coastdown testing and road load calculations, and, as a result, produced fuel consumption ratings that were misleading and lower than the fuel consumption ratings correctly calculated.

28. One of the purposes of fuel consumption ratings is to permit purchasers to compare fuel efficiency of different vehicles as part of the purchasing process. In making the Representations, the Defendants prevented the Plaintiff and the Class from making accurate comparisons.
29. In addition, by misrepresenting fuel economy, Ford led consumers to believe that the vehicles were more environmentally friendly than they were in reality.
30. As a result of the Defendants' misrepresentations, all Class Members pay between 10-15% more in fuel costs than they would if the reported fuel ~~mileage~~ economy figures were true.

H. FORD'S ADMISSIONS AND U.S. DEPARTMENT OF JUSTICE INVESTIGATION

31. Ford publicly admitted that in September of 2018 several of its employees acted in a whistle-blowing capacity to question and raise concerns about inaccuracies used to determine fuel economy ratings, arising out of inaccurate Coastdown tests and road load calculations. In February 2019, Ford disclosed the results of this investigation to the EPA and the California Air Resources Board. Ford also announced on February 21, 2019, that it would investigate its process for certifying vehicles to meet fuel economy standards.
32. Subsequently, Ford US disclosed in its quarterly report Form 10-Q dated March 31, 2019 that the U.S. Department of Justice had opened a criminal investigation into Ford's fuel-efficiency testing.

I. FORD ALSO MISREPRESENTED THE FUEL CONSUMPTION OF 2019 F-150 TRUCKS AND SUBSEQUENT MODEL YEAR F-150 AND RANGER TRUCKS

33. As with Ford's admission in respect of the 2019 Ranger, Ford's reported fuel consumption for Ford F-150 trucks from model-year 2018 onward is significantly less than real-world fuel consumption.
34. In particular, in all of the Vehicles, there is a discrepancy between real-world fuel consumption and the values presented on the Vehicles' EnerGuide labels. The discrepancies reveal higher fuel consumption than the EnerGuide labels disclose and exceed any reasonable margin of error.
35. The Fuel Consumption Guide ratings for the 2019 Ranger and the 2018 and 2019 F-150 are materially the same as the ratings for the 2020 model year.

Part 2: RELIEF SOUGHT

36. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
- (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
 - (b) a declaration that the Defendants are in breach of section 52 of the *Competition Act*;
 - (c) damages pursuant to section 36 of the *Competition Act*;
 - (d) investigation costs pursuant to section 36 of the *Competition Act*;

- (e) a declaration pursuant to section 172(1)(a) of the *BPCPA* and the equivalent parts and provisions in the Equivalent Consumer Protection Statutes (as set out in Schedules “A” and “B”) that the Defendants’ Representations are deceptive acts or practices;
- (f) damages pursuant to section 171 of the *BPCPA* and equivalent provisions in the Equivalent Consumer Protection Statutes (as set out in Schedules “A” and “B”);
- (g) ~~an order pursuant to section 172(3)(a) of the *BPCPA* and equivalent provisions in the Equivalent Consumer Protection Statutes directing the Defendants to restore to the Plaintiff and Class Members all money acquired as a result of the contravention of the *BPCPA* and Equivalent Consumer Protection Statutes;~~
- (h) in the alternative, an order rescinding the purchases of the Vehicles and any financing, lease or other agreements related to the Vehicles pursuant to any of the Equivalent Consumer Protection Statutes that provide for rescission (as set out in Schedules “A” and “B”);
- (i) a declaration that it is not in the interests of justice to require that notice be given pursuant to section 18(15) of Ontario’s *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, and pursuant to any parallel provisions of the balance of the Equivalent Consumer Protection Statutes, and waiving any such notice requirements (as set out in Schedules “A” and “B”);

- (j) a declaration that Ford Canada and Ford US are jointly and severally liable with the dealers for all damages under section 18(12) of Ontario's Consumer Protection Act and pursuant to any parallel provisions of the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B") and at common law;
- (k) restitution and disgorgement of profits as a result of the Defendants' unjust enrichment in an amount equivalent to the purchase price of the Vehicles;
- (l) general damages for negligent and/or fraudulent misrepresentation, unjust enrichment and conduct contrary to the governing statutes pleaded herein in the amount of \$400,000,000;
- (m) punitive damages and/or aggravated damages ~~in the amount of~~ \$20,000,000;
- (n) a reference to decide any issues not decided at the trial of the common issues;
- (o) the costs of administering and distributing a damage award;
- (p) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and
- (q) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

A. STATUTORY RIGHTS OF ACTION

a. *COMPETITION ACT*

37. The Defendants knowingly or recklessly made the Representations to the public and in so doing breached section 52 of the *Competition Act* because the Representations:
- (a) were made for the purpose of promoting the supply or use of the Vehicles for the business interests of the Defendants;
 - (b) were made to the public; and
 - (c) were false and misleading in a material respect.
38. As a result of the Representations, the Plaintiff and the Class Members paid a higher price for the purchase or lease of their Vehicles than they would have if the Defendants had accurately disclosed the Vehicles' fuel economy. The Plaintiff and the Class Members would not have purchased or leased the Vehicles, or would not have paid as high a price for their purchase or lease, without the Representations made in breach of section 52.
39. The Plaintiff and the Class Members relied upon or should be deemed to have relied upon the Representations to their detriment. The Plaintiff claims that such reliance should be implied.
40. The Defendants' breach of section 52 of the *Competition Act* caused loss to the Plaintiff and the Class Members. Pursuant to section 36 of the *Competition Act*,

the Defendants are liable to pay these damages plus investigative costs resulting from the breach.

41. The Defendants are jointly and severally liable together with their authorized Ford dealerships to the Plaintiff and the Class Members.

b. *BPCPA* AND EQUIVALENT CONSUMER PROTECTION STATUTES

42. The Defendants were and continue to be suppliers as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes. The Plaintiff and the Class were consumers as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.
43. The Defendants' marketing, promotion, labelling and sale of the Vehicles constituted and continue to constitute a consumer transaction as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.
44. The Representations were false, misleading or deceptive under section 4 of the *BPCPA*, and unfair, unconscionable and/or otherwise prohibited practices under section 8 of the *BPCPA*, and the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B"), given that, among other things, the Defendants knew, or ought to have known, that:
 - (d) the Representations were false, misleading, and deceptive;
 - (e) the Vehicles did not have the fuel economy, performance characteristics, uses, benefits or qualities set out in the Representations;

- (f) the Vehicles were not of the particular standard, quality or grade set out in the Representations;
- (g) the Vehicles did not provide the specific price advantage set out in the Representations;
- (h) the Representations used exaggeration, innuendo and/or ambiguity as to a material fact and failed to state a material fact in respect of the Vehicles;
- (i) the price for the Vehicles grossly exceeded the price at which similar goods or services were readily available to like consumers;
- (j) the Class Members were unable to receive all expected benefits from the Vehicles;
- (k) the consumer transactions were excessively one-sided in favour of the Defendants;
- (l) the terms of the consumer transactions were so adverse to the Class Members as to be inequitable;
- (m) because of such further conduct concealed by the Defendants and unknown to the Plaintiff; and/or
- (n) such other ways as will be proven at trial.

45. The Representations were made on or before the Plaintiff and other Class Members entered into the agreements to purchase or lease the Vehicles.

46. These are unfair practices, and as a result, the Plaintiff and other Class Members have suffered damages and are entitled to recovery pursuant to section 171 of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B").
47. ~~Further or alternatively, the Plaintiff and other Class Members are entitled to an order pursuant to section 172(3)(a) of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes requiring the Defendants to restore them money acquired as a result of the contravention of the *BPCPA* and Equivalent Consumer Protection Statutes.~~
48. Also further or alternatively, the Class Members in some or all of the provinces/territories are entitled to rescission of the purchase, lease or other related agreements pursuant to section 18 of Ontario's *Consumer Protection Act* and equivalent provisions of the balance of the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B"). The Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the applicable provisions of the Equivalent Consumer Protection Statutes, particularly as the Defendants concealed the actual state of affairs from the Class Members.
49. The Defendants are jointly and severally liable together with their authorized Ford dealerships to the Plaintiff and the Class Members.

B. NEGLIGENT AND/OR FRAUDULENT MISREPRESENTATION

50. The Defendants were in a proximate and special relationship with the Plaintiff and the Class Members by virtue of, among other things:

- (o) their design and manufacture of the Vehicles and their testing of the Vehicles for fuel economy and emissions;
- (p) their skill, experience and expertise in the design and manufacturing of Vehicles; and
- (q) the fact that Class Members had no means of conducting their own Coastdown or road load tests to confirm the accuracy of the fuel economy ratings.

51. The Defendants owed a duty of care to the Plaintiff and the Class Members.

52. The Defendants' Representations allowed the Defendants to charge a higher price for the purchase or lease of the Vehicles than they could have charged if they had disclosed accurate fuel economy information.

53. Further or in the alternative, the Defendants intended that the Plaintiff and the Class rely on the Representations. The Representations were uniform and made to the general public, including the Plaintiff and the Class Members. It was reasonably foreseeable that the Class Members would rely, to their detriment, upon the Representations when purchasing or leasing the Vehicles and would suffer loss. The Plaintiff and Class Members reasonably relied on the Representations in deciding whether to purchase or lease the Vehicles.

54. Had the Representations not been made, the Class Members would not have made the purchase or lease and would not have paid the higher price charged for Vehicles marketed for their fuel efficiency.

55. The Representations were false and were made negligently or fraudulently.
56. The Plaintiff and the Class Members suffered loss as a result of the Representations. The Defendants are liable to pay damages to the Plaintiff and the Class.
57. The Defendants are jointly and severally liable together with their authorized Ford dealerships to the Plaintiff and the Class Members.

C. UNJUST ENRICHMENT

58. The Defendants caused the Class Members to pay money for a product, which was contrary to the *Competition Act*, the ~~BPCPA~~ Ontario's Consumer Protection Act and such other Equivalent Consumer Protection Statutes as courts have held to supply a wrongful act for the purpose of the unjust enrichment analysis, the Class Members should not have paid for or, in the alternative, for which they should have paid less than they did.
59. As a result of this conduct, the Defendants were enriched by the payment or overpayment.
60. The Class Members suffered a deprivation corresponding to the Defendants' enrichment.
61. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The breaches of the *Competition Act* negate any juristic reason, including contract, for the enrichment; such contracts are void or voidable.

The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the Defendants' unjust enrichment.

D. DAMAGES

62. As a result of the conduct pleaded above, the Plaintiff and Class Members have suffered loss corresponding to the added fuel costs of the Vehicles. During its life span, each of the Vehicles will cost the Class Members approximately 10-15% more in fuel costs than represented by the Defendants.
63. In addition, the Plaintiff and Class Members paid more for their Vehicles than they should have if the Defendants had properly represented the true fuel economy of the Vehicles. The Defendants' misrepresentations also caused a reduction in the resale value of the Vehicles.
64. The Plaintiff and Class Members are entitled to punitive damages at common law and under Ontario's *Consumer Protection Act* and Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B") and at common law to relieve the Defendants of their wrongful profits.
65. ~~Due~~ Further or alternatively, due to the egregious nature of the Defendants' conduct, including, without limiting the generality of the foregoing, secretly deceiving the marketplace as to the fuel efficiency and environmental friendliness of the Defendants and their Vehicles, the Plaintiff and Class Members are entitled to recover aggravated, punitive and exemplary damages. The Defendants' conduct offends the moral standards of the community and warrants the condemnation of this Court.

E. ~~WAIVER OF TORT~~ DISGORGEMENT OF PROFITS

66. In the alternative to damages, the Plaintiff claims ~~waiver of tort and thereby an accounting or such other restitutionary remedy~~ for disgorgement of the revenues generated by the Defendants as a result of their unlawful conduct, pursuant to the Equivalent Consumer Protection Statutes (as set out in Schedules “A” and “B”) and at common law.
67. ~~This remedy~~ Disgorgement is appropriate for the following reasons, among others:
- (a) revenue was acquired in such a manner that the Defendants cannot in good conscience retain it;
 - (b) the integrity of the marketplace would be undermined if ~~an accounting was not required~~ the Defendants were to profit from their wrongdoing; and
 - (c) absent the Defendants’ tortious conduct the Vehicles could not have been marketed at their prices nor would the Defendants have received the same revenue for them in Canada;
 - (d) disgorgement of profits retained by the Defendants would serve a compensatory purpose;
 - (e) ordinary remedies of contract law are inadequate to protect and vindicate the contractual rights of the Plaintiff and Class members; and
 - (f) disgorgement of profits is an appropriate way to measure the punitive damages claimed herein.

F. STATUTES RELIED UPON

68. The Plaintiff and class plead and rely upon the following statutes, as set out in Schedules “A” and “B”:

- (a) *Business Practices Act*, CCSM c B120, as amended, sections 2, 3, 4, 5, 6, 8, and 23, and the regulations thereto the provisions of which are set out in Schedule “B”;
- (b) *Consumer Protection Act*, CCSM c C200, as amended, sections 1, 58, 58.1, 58.2, 136.1, as set out in Schedule “B”;
- (c) *Business Practices Act*, RSPEI 1988, c B-7, as amended, sections 1, 2, 3 and 4, and the regulations thereto as set out in Schedule “B”;
- (d) *Consumer Protection Act*, RSPEI c C-19, as amended, sections 1 and 14, as set out in Schedule “B”;
- (e) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, as amended, sections 4, 5, 8, 9, 10, 171, and 172, and the regulations thereto;
- (f) *Civil Code of Québec*, CQLR c CCQ-1991, as amended, and the regulations thereto;
- (g) *Class Proceedings Act*, RSBC 1996, c 50, as amended;
- (h) *Competition Act*, RSC 1985, c C-34, as amended, sections 36(1) and 52(1), and the regulations thereto as set out in Schedule “B”;

- (i) *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, as amended, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19, and the regulations thereto as set out in Schedule “B”;
- (j) *Consumer Protection Act*, CQLR c P-40.1, as amended, sections 215, 218, 219, 220, 221, 222, 228, 239, 252, 253, 271, and 272, and the regulations thereto as set out in Schedule “B”;
- (k) *Consumer Protection Act*, RSNS 1989, c 92, as amended, sections 2, 26 and 28, and the regulations thereto as set out in Schedule “B”;
- (l) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, sections 2, 7, 8, 9, and 10, and the regulations thereto as set out in Schedule “B”;
- (m) *Consumer Protection and Business Practices Act*, SS 20134, c C-30.2, sections 2, 4, 6-16, 189-22, 24-33, 35, 36, 37, 39, 91 and 93, and the regulations thereto as set out in Schedule “B”;
- (n) *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, as amended;
- (o) *Court Order Interest Act*, RSBC 1996, c 79, as amended;
- (p) *Energy Efficiency Act*, SC 1992, c 36, as amended, and the regulations thereto; and

- (q) Consumer Protection Act~~Fair Trading Act~~, RSA 2000, c C-26.3F-2, as amended, sections 1, 5, 6, 7, 7.2, 7.3, and 13, and the regulations thereto as set out in Schedule "B";
- (r) Consumer Product Warranty and Liability Act, SNB 1978, c C-18.1, as amended, sections 1, 4, 10-13, 15-17 and 27, and the regulations thereto as set out in Schedule "B";
- (s) Consumers Protection Act, RSY 2002, c 40, as amended, sections 1 and 58(1)-(7), and the regulations thereto as set out in Schedule "B";
- (t) Consumer Protection Act, RSNWT 1988, c C-17 as amended, sections 1, 70(e)-(f) and (h), and the regulations thereto as set out in Schedule "B";
- (u) Consumer Protection Act, RSNWT (Nu) 1988, c C-17 as amended, sections 1, 70(e)-(f) and (h), and the regulations thereto as set out in Schedule "B".

Plaintiff's address for service:

Sotos LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Courier address:

Mathew P Good Law Corporation
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Fax number address for service (if any):

416-977-0717

E-mail address for service (if any):

dsterns@sotosllp.com

Place of trial:

Vancouver Law Courts

The address of the registry is:

800 Smithe Street

Vancouver, BC V6Z 2E1

Date: April 5, 2022

Mathew Good

Signature of Plaintiff
 Lawyer for Plaintiff

Mathew P Good

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

69. The Plaintiff claims the right to serve this pleading/petition on the Defendants outside British Columbia on the grounds that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and members of the Class plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (“**CJPTA**”) in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e) - (h) of the *CJPTA* because this proceeding:

- (a) concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- (b) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (c) concerns a tort committed in British Columbia; and
- (d) concerns a business carried on in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

SCHEDULE "A": PLEADING OF EXTRAPROVINCIAL STATUTES

Ontario

1. The Defendants have breached the *Ontario CPA*. Class Members in Ontario are "consumers" within the meaning of the *Ontario CPA*, s 1. The Vehicles are "goods" within the meaning of the *Ontario CPA*. The Defendants are each a "supplier" within the meaning of the *Ontario CPA*. The purchase of Vehicles is a "consumer transaction", and involves a "consumer agreement" within the meaning of the *Ontario CPA*.
2. By reason of the Defendants' conduct, the Defendants have breached the *Ontario CPA*, ss 14-15 and 17. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the *Ontario CPA* the Class Members in Ontario are entitled to an award of damages, or alternatively rescission under the *Ontario CPA*, s 18(1). Further, the Class Members in Ontario are entitled to damages and exemplary or punitive damages under the *Ontario CPA*, ss 18(2) and (11).
3. The Defendants are jointly and severally liable pursuant to the *Ontario CPA*, s 18(12).
4. It is in the interest of justice to waive any notice requirement under *Ontario's CPA*, pursuant to s 18(15).

Alberta

5. The Defendants have breached the *Alberta CPA*. The Class Members in Alberta are "consumers" within the meaning of the *Alberta CPA*, s 1. The Vehicles are "goods" within the meaning of the *Alberta CPA*. The Defendants are "suppliers" within the meaning of the *Alberta CPA*. The purchase of Vehicles is a "consumer transaction" within the meaning of the *Alberta CPA*.
6. By reason of the Defendants' conduct, the Defendants have breached the *Alberta CPA*, ss 5-6. The Defendants' actions constitute unfair practices. As a result of the Defendants' breaches of the *Alberta CPA* the Class Members in Alberta are entitled to an award of damages, or alternatively rescission under the *Alberta CPA*, s 7(1). Alternatively, the Class Members are entitled restitution under the *Alberta CPA*, s 7(3). Further, the Class Members are entitled to exemplary or punitive damages pursuant to the *Alberta CPA*, s 7.2.
7. The Defendants are jointly and severally liable for engaging in an unfair practice pursuant to the *Alberta CPA*, s 7.3.
8. It is in the interest of justice to waive any notice requirement under the *Alberta CPA*, pursuant to s 7.2(3).

Quebec

9. The Defendants have breached the *Quebec CPA*. The Class Members in Quebec are "consumers" ("consommateurs") within the meaning of the *Quebec CPA*. The Vehicles are "goods" ("biens") within the meaning of the *Quebec CPA*. The Defendants are each a "manufacturer" ("fabricant") and a "merchant"

("commerçant") within the meaning of the Quebec CPA. The purchase of Vehicles is a "contract for goods or services entered into between a consumer and a merchant in the course of his business" ("contrat conclu entre un consommateur et un commerçant dans le cours des activités de son commerce et ayant pour objet un bien ou un service") within the meaning of the Quebec CPA.

10. By reason of the Defendants' conduct, the Defendants have breached the Quebec CPA articles 219, 220, 221, 222, 228, 229, 233, and 253. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the Quebec CPA the Class Members in Quebec are entitled to an award of damages and punitive damages under the Quebec CPA article 272. In that alternative, the Class Members are entitled to rescission under the Quebec CPA, s. 272(d).

Saskatchewan

11. The Defendants have breached The CPABPA of Saskatchewan. The Class Members in Saskatchewan are "consumers" within the meaning of The CPABPA of Saskatchewan, ss 2 and 10(1). The Vehicles are "goods" within the meaning of s 2 of The CPABPA of Saskatchewan and "consumer products" within the meaning of s 10(1). The Defendants are each a "supplier" within the meaning of s 2 of The CPABPA of Saskatchewan, a "manufacturer" within the meaning of s 10(1) of The CPABPA of Saskatchewan, and a "retail seller" within the meaning of s 10(1) of The CPABPA of Saskatchewan. The purchase of Vehicles further

constitutes a "sale" within the meaning of s 10(1) of *The CPABPA* of Saskatchewan.

12. By reason of the Defendants' conduct, the Defendants have breached *The CPABPA* of Saskatchewan, ss 6-10, 16, 18-22, and 24-25. The Defendants' actions constitute unfair practices and the Defendants breached implied, express, and statutory warranties. As a result of the Defendants' breaches of *The CPABPA* of Saskatchewan the Class Members in Saskatchewan are entitled to an award of damages and exemplary or punitive damages, including those provided for under ss 28 and 35-36 of *The CPABPA* of Saskatchewan. Further or alternatively, the Class Members in Saskatchewan are entitled to restitution under *The CPABPA* of Saskatchewan, s 93.

Manitoba

13. The Defendants have breached *The CPA* of Manitoba. The Class Members in Manitoba are "buyers" within the meaning of *The CPA* of Manitoba, s 1. The Vehicles are "goods" within the meaning of *The CPA* of Manitoba. The Defendants are each a "seller" within the meaning *The CPA* of Manitoba. The payment for Vehicles is a "retail sale" or "sale" within the meaning of *The CPA* of Manitoba.
14. By reason of the Defendants' conduct, the Defendants have breached *The CPA* of Manitoba, ss 58(1)(e)-(f), 58(4)-(5), and 58(7)-(8). The Defendants' breached the *Act* because the Vehicles are not of merchantable quality and the Defendants misrepresented the quality of the Vehicles. As a result of the Defendants' breaches of *The CPA* of Manitoba, the Class Members in Manitoba are entitled to an award

of damages under *The CPA* of Manitoba, 58.1 and 58.2(1). Alternatively, the Class Members in Manitoba are entitled to restitution under *The CPA* of Manitoba, s 136.1(2)-(4).

15. Further, the Defendants', by reason of their conduct, have breached the *Manitoba BPA*, s 2-6 and 8. The Defendants' actions constitute unfair business practices. As a result, the Class Members in Manitoba are entitled to an award of damages under *Manitoba BPA*, s 23(2)(a) and exemplary or punitive damages under s 23(4). Alternatively, the Class Members in Manitoba are entitled to rescission under *Manitoba BPA*, s 23(2)(b).

Nova Scotia

16. The Defendants have breached the *Nova Scotia CPA*. The Class Members in Nova Scotia are "buyers" within the meaning of the *Nova Scotia CPA*, s 2 or "purchasers" within the meaning of s 26(2). The Vehicles are "goods" within the meaning of the *Nova Scotia CPA*, s 2. The Defendants are each a "seller" within the meaning of the *Nova Scotia CPA*, s 2. The purchase of Vehicles is a "consumer sale" within the meaning of s 26(1) of the *Nova Scotia CPA*.
17. By reason of the Defendants' conduct, the Defendants have breached the *Nova Scotia CPA*, ss 26(3)(d) and (f) and 26(5). The Defendants breached the *Act* because the Defendants' Vehicles did not fit their descriptions and were not of merchantable quality. As a result of the Defendants' breaches of the *Nova Scotia CPA* the Class Members in Nova Scotia are entitled to an award of damages.

Newfoundland

18. The Defendants have breached the Newfoundland CPABPA. The Class Members in Newfoundland and Labrador are "consumers" within the meaning of the Newfoundland CPABPA, s 2. The Vehicles are "goods" within the meaning of the Newfoundland CPABPA. The Defendants are "suppliers" within the meaning of the Newfoundland CPABPA.

19. By reason of the Defendants' conduct, the Defendants have breached the Newfoundland CPABPA, ss 7-9. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the Newfoundland CPABPA, the Class Members in Newfoundland and Labrador are entitled to an award of damages and exemplary or punitive damages under the Newfoundland CPABPA, s 10. Alternatively, the Class Members in Newfoundland and Labrador are entitled to rescission under the Newfoundland CPABPA, s. 10.

New Brunswick

20. The Defendants have breached the New Brunswick CPWLA. Class Members in New Brunswick are "buyers" within the meaning of the New Brunswick CPWLA, s 1. The Vehicles are "consumer products" within the meaning of the New Brunswick CPWLA. The Defendants are each a "distributor" and "seller" within the meaning of the New Brunswick CPWLA. The purchase of Vehicles is a "contract for the sale or supply of a consumer product", and involves a "contract" within the meaning of the New Brunswick CPWLA.

21. By reason of the Defendants' conduct, the Defendants have breached the *New Brunswick CPWLA*, ss 4, 10-12, and 27. The Defendants' made warranties about their Vehicles that were not true and the Vehicles were dangerously defective. As a result of the Defendants' breaches of the *New Brunswick CPWLA* the Class Members in New Brunswick are entitled to an award of damages and exemplary damages under the *New Brunswick CPWLA*, ss 13 and 15-17.

Prince Edward Island

22. The Defendants have breached the *Prince Edward Island CPA*. The Class Members in Prince Edward Island are "buyers" within the meaning of the *Prince Edward Island CPA*, s. 1 or "consumers" under the *Prince Edward Island BPA*. The Vehicles are "goods" within the meaning of the *Prince Edward Island CPA*, s 1 and the *Prince Edward Island BPA*, s 1. The Defendants are each a "seller" within the meaning of the *Prince Edward Island CPA*, s 1.
23. By reason of the Defendants' conduct, the Defendants have breached the *Prince Edward Island CPA*, s 14 and the *Prince Edward Island BPA*, ss 2(a)(i), 2(a)(iii), 2(a)(xiii) and 3(1). The Defendants breached the *Act* because the Defendants' Vehicles did not fit their descriptions and were false, misleading or deceptive representations. As a result of the Defendants' breaches of the *Prince Edward Island CPA* and *BPA*, the Class Members in Prince Edward Island are entitled to damages, or alternatively rescission under the *Prince Edward Island BPA*, s 4. Further, the Class Members in Prince Edward Island are entitled to exemplary or punitive damages pursuant to s 4(2).

24. The Defendants are jointly and severally liable pursuant to the *Prince Edward Island CPA*, s 4(3).

Yukon

25. The Defendants have breached the *Yukon CPA*. The Class Members in Yukon are "buyers" within the meaning of the *Yukon CPA*, s 1. The Vehicles are "goods" within the meaning of the *Yukon CPA*. The Defendants are each a "seller" within the meaning of the *Yukon CPA*. The purchase of Vehicles is a "sale" or "retail sale", and involves a "sale of goods" within the meaning of the *Yukon CPA*.
26. By reason of the Defendants' conduct, the Defendants have breached the *Yukon CPA*, ss 58(1)(e)-(f) and (h) and 58(2)-(7). The Defendants' Vehicles are not of merchantable quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Yukon CPA* the Class Members in Yukon are entitled to an award of damages under the *Yukon CPA*.

Nunavut

27. The Defendants have breached the *Nunavut CPA*. The Class Members in Nunavut are "buyers" within the meaning of the *Nunavut CPA*, s 1. The Vehicles are "goods" within the meaning of the *Nunavut CPA*. The Defendants are each a "seller" within the meaning of the *Nunavut CPA*. The purchase of a Sunscreen Product is a "sale", "retail sale", or "sale of goods" within the meaning of the *Nunavut CPA*.
28. By reason of the Defendants' conduct, the Defendants have breached the *Nunavut CPA*, s 70(1)(e)-(f) and (h). The Defendants' Vehicles are not of merchantable

quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Nunavut CPA* the Class Members in Nunavut are entitled to an award of damages under the *Nunavut CPA*.

Northwest Territories

29. The Defendants have breached the *Northwest Territories CPA*. The Class Members in Northwest Territories are "buyers" within the meaning of the *Northwest Territories CPA*, s 1. The Vehicles are "goods" within the meaning of the *Northwest Territories CPA*. The Defendants are each a "seller" within the meaning of the *Northwest Territories CPA*. The purchase of Vehicles is a "sale", "retail sale", or "sale of goods" within the meaning of the *Northwest Territories CPA*.

30. By reason of the Defendants' conduct, the Defendants have breached the *Northwest Territories CPA*, s 70(1)(e)-(f) and (h). The Defendants' Vehicles are not of merchantable quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Northwest Territories CPA* the Class Members in Northwest Territories are entitled to an award of damages under the *Northwest Territories CPA*.

SCHEDULE "B": EXTRAPROVINCIAL STATUTORY PROVISIONS

Business Practices Act, CCSM c B120, ss. 2-6, 8, and 23.

Deceiving or misleading

2 (1) It is an unfair business practice for a supplier

- (a) to do or say anything or to fail to do or say anything if, as a result, a consumer might reasonably be deceived or misled: or**
- (b) to make a false claim or representation.**

General impression

2 (2) In determining whether anything is an unfair business practice within the meaning of subsection (1), the factors to be considered shall include the general impression given.

Deemed unfair business practices

2 (3) Without limiting the generality of subsection (1), any of the following representations, acts or omissions, when made or engaged in by a supplier in relation to goods or to a consumer transaction, is deemed for the purposes of this Act to be an unfair business practice within the meaning of that subsection:

- (a) a representation that the goods have sponsorship, approval, performance characteristics, accessories, ingredients, components, quantities, uses or benefits that they do not have;**
- (b) a representation that the supplier has sponsorship, approval, status, affiliation or connection that the supplier does not have;**
- (c) a representation that the goods are of a particular standard, quality, grade, style or model when they are not;**
- (d) a representation that the goods are new or unused when they are not, or when they are in a deteriorated state, or have been altered or reconditioned, or have been reclaimed from a previous purchaser;**
- (e) a false representation as to the extent to which the goods have been used;**
- (f) a false representation as to the history or usage of the goods;**
- (g) a false representation as to the reason the goods are available;**
- (h) a false representation that the goods have been made available in accordance with a previous representation;**
- (i) a representation that might reasonably lead a consumer to conclude that the goods are available in greater quantities than are in fact available from the supplier;**
- (j) a representation that the goods are available, when the supplier has no intention of supplying or otherwise disposing of the goods as represented;**

- (k) a false representation that a service, part or replacement of the goods, or the addition of new goods, or the repair of the goods, is necessary or desirable;
- (l) a representation that a price benefit or advantage exists with respect to the goods or with respect to the consumer transaction when it does not;
- (m) a representation that a solicitation of or any communication with a consumer is for a certain purpose or intent when it is not for that purpose or intent;
- (n) a false representation that the consumer transaction involves or does not involve rights, remedies or obligations;
- (o) a representation that a salesperson, representative, employee or agent has authority to negotiate the final terms of the consumer transaction when that person does not have that authority;
- (p) the use of exaggeration, innuendo or ambiguity as to a material fact, or the failure to disclose a material fact, with respect to the goods or with respect to the consumer transaction;
- (q) where the supplier gives a consumer an estimate of the price of the goods, demanding from the consumer a price that is materially higher than the estimate unless, prior to providing the goods, the supplier has obtained the consumer's express consent to that higher price;
- (r) where the price of a part of the consumer transaction is given in an advertisement, display or representation, not giving in that advertisement, display or representation reasonable prominence to the total price of the consumer transaction;
- (s) [repealed] S.M. 2013, c. 34, s. 5;
- (t) (t) a false representation as to the purpose of a charge or proposed charge;
- (u) (u) a false representation or the use of exaggeration as to the benefits that are likely to flow to a consumer if the consumer helps the supplier to obtain new or potential customers.

Taking advantage, using undue pressure

3 (1) It is an unfair business practice for a supplier

- (a) to take advantage of a consumer if the supplier knows or ought to have known that the consumer is not in a position to protect his or her own interests; or
- (b) to subject a consumer to undue pressure to enter into a consumer transaction.

Deemed unfair business practices

3 (2) Without limiting the generality of subsection (1), it is deemed to be an unfair business practice within the meaning of that subsection when

- (a) a supplier takes advantage of a consumer if the supplier knows or ought to have known that the consumer was unable to protect, or incapable of

protecting, his or her own interests because of the consumer's physical or mental infirmity, illiteracy, age or inability to understand the character, nature or language of the consumer transaction, or any other matter related to the transaction; or

- (b) the terms or conditions on which, or subject to which, the consumer entered into the consumer transaction are so adverse or so harsh to the consumer as to be inequitable.

Factors to consider

3 (3) In determining whether anything not described in subsection (2) is an unfair business practice within the meaning of subsection (1), all relevant circumstances shall be considered including, but not limited to, the following factors, if applicable:

- (a) whether there is a reasonable probability of full payment of the total price by the consumer;
- (b) whether the total price grossly exceeded the total price at which similar goods are readily obtainable in a similar transaction by like consumers.

Renegotiation of price, etc.

3.1 It is an unfair business practice for a supplier to use its possession of or control over a consumer's goods to pressure the consumer into renegotiating a term or condition of a consumer transaction.

Privity of contract

4 Any of the unfair business practices described in sections 2, 3 and 3.1 is an unfair business practice for the purposes of this Act, notwithstanding

- (a) that the unfair business practice is not directed at a specific consumer and does not occur in the course of or for the purposes of a specific consumer transaction but is directed to the public at large; and
- (b) that there is no privity of contract between the supplier and any specific consumer affected by the unfair business practice.

Unfair business practices prohibited

5 No supplier shall commit an unfair business practice.

Unfair business practices of employees

6 (1) Anything that would be an unfair business practice if committed by a supplier, is an unfair business practice if committed by the supplier's employee, and any court action or proceeding or order that may be taken or made against a supplier under this Act may be taken or made against the supplier's employee.

Unfair business practices of employees prohibited

6 (2) No employee of a supplier shall commit an unfair business practice.

Liability of both supplier and employee

6 (3) Both the supplier and the employee are liable for any unfair business practice committed by the supplier's employee.

...

Time of occurrence

8 A single representation, failure, act or thing within the meaning of section 2, 3 or 3.1 constitutes an unfair business practice for the purposes of this Act.

...

Action by consumer

23 (1) A consumer may commence a court action against a supplier for relief from an unfair business practice.

Court order

23 (2) Where the court finds in an action under subsection (1) that an unfair business practice has occurred, it may, subject to subsections (3) and (4),

- (a) award damages for any loss suffered by the consumer;
- (b) rescind the consumer transaction, if any;
- (c) grant an injunction restraining the supplier from continuing the unfair business practice;
- (d) order the supplier to repay all or part of any amount paid to the supplier by the consumer or relieve the consumer from the payment to the supplier of any amount or any further amount, as the case may be, in respect of the consumer transaction, if any;
- (e) make an order of specific performance against the supplier;
- (f) give such other directions and grant such other relief as the court deems proper.

Factor to be considered

23 (3) In determining whether to grant any relief under this section and the nature and extent thereof, the court shall consider whether or not the consumer made a reasonable effort to minimize any damage resulting from the unfair business practice and to resolve the dispute with the supplier before commencing the court action.

Exemplary or punitive damages

23 (4) A judgment under subsection (2) may include an award of exemplary or punitive damages against the supplier, except where the supplier took reasonable precautions and exercised due diligence to avoid the unfair business practice.

Consumer Protection Act, CCSM c C200, ss. 1, 58, 58.1, 58.2, 136.1.

Definitions

1(1) In this Act

"buyer", except in Part XV (Prepaid Services), includes a hirer on a retail hire-purchase; (« acheteur »)

"goods" means tangible personal property other than money; (« biens » ou « objets »)

"retail sale" of goods or of services or of both means any contract of sale of goods or services or both made by a seller in the course of his business except

- (a) any contract of sale of goods or services which are intended for resale by the buyer in the course of his business unless the buyer intends to resell or re-let the goods or services, or both, in a manner to which Part VII applies; and
- (b) any contract of sale to a retailer of a vending machine or a bottle cooler to be installed in his retail establishment;
- (c) any contract of sale of farm machinery and equipment to which The Farm Machinery and Equipment Act applies;
- (d) any contract of sale to a corporation; and
- (e) any contract of sale of goods or services intended to be used or used by the purchaser for the primary purpose of carrying on a business, unless the goods or services are intended for resale or re-let in a manner to which Part VII applies: (« vente au détail »)

"sale" includes any transaction whereby the whole or part of the price is paid or satisfied by the exchange of other property, real or personal; (« vente »)

"seller", except in Part XV (Prepaid Services), includes a person who lets goods on hire by a retail hire-purchase; (« vendeur »)

Warranties on sale

58 (1) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire-purchase of goods:

- (a) In the case of an immediate sale, a condition that he has the right to sell the goods, or, in the case of a credit sale, a condition that he has the right to agree to sell or to let on hire the goods, and will have the right to sell them at the time when the property is to pass to the buyer.
- (b) In the case of an immediate sale, a warranty that the buyer shall have and enjoy quiet possession of the goods, or, in the case of a credit sale, a warranty that the buyer, so long as he fulfils his obligations under the credit sale agreement, shall have and enjoy quiet possession of the goods.
- (c) A warranty that the goods are free from any charge or encumbrance in favour of any third party except only for any that the buyer has specifically agreed in writing to accept.

- (d) A condition that the goods are new and unused unless otherwise described; but in the case of a motor vehicle a description showing that it is more than one year old is sufficient to describe it as used.
- (e) A condition that the goods are of merchantable quality, except for such defects as are described.
- (f) A condition that the goods correspond with the description under which they are sold.
- (g) Where the goods are sold by sample, a condition that the bulk shall correspond with the sample and that the goods are free from any defect that renders them unmerchantable, and that would not be apparent on reasonable examination of the sample, and a condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (h) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, whether he is the manufacturer or not, a condition that the goods are reasonably fit for the purpose; but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

Statement of conditions

58 (2) For the purposes of clause (1)(e), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

Statements relating to goods on credit sales

58 (3) Any statement

- (a) that the goods are not new and unused; or
- (b) of the age of a motor vehicle; or
- (c) of defects in the goods; or
- (d) of the general condition or quality of the goods;

shall be a part of the description of the goods for the purposes of sections 25, 34.3 and 34.5; and, where one or more of them applies, none of those statements has any effect unless it is included in the required description of the goods in the agreement or writing; but the statement shall be deemed to be included in the agreement or writing if it is contained in a document that

- (a) is clearly identified as an appendix or schedule to the agreement or writing;
- (b) is signed by the buyer and the seller;
- (c) is attached to and forms a part of the agreement; and
- (d) is delivered to the buyer with a copy of the agreement before delivery of the goods.

Statements relating to goods in cash sales

58 (4) Where sections 25, 34.3 and 34.5 do not apply, a statement of a kind referred to in subsection (3) has no effect unless it is made in writing and

- (a) is contained in a notice that is readily visible to the buyer at or before the time of the sale and is so displayed as to make it clear that it refers to the goods; or
- (b) is contained in a document that is delivered to the buyer before he accepts the goods.

Merchantable quality

58 (5) Where the goods are described as used in the manner required by this section, there shall be taken into account, in deciding whether they are of merchantable quality,

- (a) the fact that they are used; and
- (b) the age of the goods as specified in their description, or, if no age is specified, the age of the goods as understood by the buyer at the time of the sale.

Condition as to services

58 (6) Unless otherwise expressly agreed in writing signed by the buyer, there shall be implied in every retail sale of services a condition, on the part of the seller, that the services sold shall be provided in a satisfactory manner.

Effect on other conditions

58 (7) Nothing in this section excludes or affects any other condition or warranty relating to the goods or services, whether expressed or implied, as between the buyer and the seller or any person claiming through the seller who would, apart from this Act, be held to be bound thereby.

Express warranty

58 (8) Every oral or written statement made by a seller, or by a person on behalf of a seller regarding the quality, condition, quantity, performance or efficacy of goods or services that is

- (a) contained in an advertisement; or
- (b) made to a buyer;

shall be deemed to be an express warranty respecting those goods or services.

...

Personal liability of seller

58.1 In every retail sale or retail hire-purchase of goods or services, the seller is personally liable to the buyer for all duties, liabilities, obligations and warranties applicable to the sale or hire-purchase by this Act or by contract and the seller shall

bear all expenses incidental to having the goods serviced under any warranty whether given by the manufacturer, seller or a third party.

Warranty contract liability

58.2 (1) Notwithstanding any provision in a contract to service or repair goods including an extended warranty contract, and subject to subsection (2), the seller of the contract is liable to the buyer for the performance of all obligations under the contract to service or repair the goods, whether or not the seller is a party to the contract and whether or not the seller received a fee, commission or other remuneration for selling the contract.

...

Restitution

136.1 (2) If a person is convicted of an offence under subsection (1), the court must, on the application of the Minister of Justice and Attorney General or of a person affected by the offence or their representative,

- (a) consider whether the defendant should pay restitution to an affected person for loss of or damage to property suffered as a result of the commission of the offence; and
- (b) if the court considers an order to be just in the circumstances, order the defendant to pay an amount as restitution if the amount is readily ascertainable.

...

Person must pay restitution ordered

136.1 (4) Every person who is ordered to pay restitution under subsection (2) must make the payment in accordance with the order.

Business Practices Act, RSPEI 1988, c B-7, as amended, ss. 1-4.

Definitions

1 In this Act,

(b) “consumer” means a natural partnership or association of individuals acting in the course of carrying on business;

(f) “goods” means chattels personal or any right or interest therein other than things in action and money, including chattels that become fixtures but not including securities as defined in the Securities Act R.S.P.E.I. 1988, Cap. S-3.1;

Unfair practices

2 For the purposes of this Act, the following shall be deemed to be unfair practices:

- (a) a false, misleading or deceptive consumer representation including, but without limiting the generality of the foregoing,
- (i) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or quantities they do not have,
 - (ii) a representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection he does not have,
 - (iii) a representation that the goods are of a particular standard, quality, grade, style or model, if they are not,
 - (iv) a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, provided that the reasonable use of goods to enable the seller to service, prepare, test and deliver the goods for the purpose of sale shall not be deemed to make the goods used for the purposes of this subclause,
 - (v) a representation that the goods have been used to an extent that is materially different from the fact,
 - (vi) a representation that the goods or services are available for a reason that does not exist,
 - (vii) a representation that the goods or services have been supplied in accordance with a previous representation, if they have not,
 - (viii) a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied,
 - (ix) a representation that a service, part, replacement or repair is needed, if it is not,
 - (x) a representation that a specific price advantage exists, if it does not,
 - (xi) a representation that misrepresents the authority of a salesman, representative, employee or agent to negotiate the final terms of the proposed transaction,
 - (xii) a representation that the proposed transaction involves or does not involve rights, remedies or obligations if the representation is false or misleading,
 - (xiii) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive, or
 - (xiv) a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer;
- (b) an unconscionable consumer representation made in respect of a particular transaction and in determining whether or not a consumer representation is unconscionable there may be taken into account that the person making the representation or his employer or principal knows or ought to know

- (i) that the consumer is not reasonably able to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factors.
 - (ii) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers.
 - (iii) that the consumer is unable to receive a substantial benefit from the subject matter of the consumer representation.
 - (iv) that there is no reasonable probability of payment of the obligation in full by the consumer.
 - (v) that the proposed transaction is excessively one-sided in favour of someone other than the consumer.
 - (vi) that the terms or conditions of the proposed transaction are so adverse to the consumer as to be inequitable.
 - (vii) that he is making a misleading statement of opinion on which the consumer is likely to rely to his detriment, or
 - (viii) that he is subjecting the consumer to undue pressure to enter into the transaction;
- (c) such other consumer representations under clause (a) as are prescribed by the regulations made in accordance with section 17.

Unfair practices prohibited

3 (1) No person shall engage in an unfair practice.

One act deemed practice

3 (2) A person who performs one act referred to in section 2 shall be deemed to be engaging in an unfair practice.

Rescission

4 (1) Any agreement, whether written, oral or implied, entered into by a consumer after a consumer representation that is an unfair practice and that induced the consumer to enter into the agreement, may be rescinded by the consumer and the consumer is entitled to any remedy therefor that is at law available, including damages, but where rescission is not possible because restitution is no longer possible, or because rescission would deprive a third party of a right in the subject-matter of the agreement that he has acquired in good faith and for value, the consumer is entitled to recover the amount by which the amount paid under the agreement exceeds the fair value of the goods or services received under the agreement or damages, or both.

Exemplary damages

4 (2) Where the unfair practice that induced the consumer to enter into the agreement comes within clause 2(b), the court may award exemplary or punitive damages.

Liability

4 (3) Each person who makes the consumer representation referred to in subsection (1) is liable jointly and severally with the person who entered into the agreement with the consumer for any amount that the consumer is entitled to under subsections (1) and (2).

Liability of assignee

4 (4) The liability of an assignee of an agreement under subsection (1) or any right to payment thereunder is limited to the amount paid to the assignee under the agreement.

Time for rescission

4 (5) A remedy conferred by subsection (1) may be claimed by the giving of notice of the claim by the consumer in writing to each other party to the agreement within six months after the agreement is entered into.

Delivery of Notice

4 (6) A notice under subsection (5) may be delivered personally or sent by registered mail addressed to the person to whom delivery is required to be made, and delivery by registered mail shall be deemed to have been made at the time of mailing.

Evidence

4 (7) In the trial of an issue under subsection (1), oral evidence respecting an unfair practice is admissible notwithstanding that the evidence pertains to a representation of a term, condition or undertaking that is or is not provided for in the agreement.

Application

7 (8) This section applies notwithstanding any agreement or waiver to the contrary.

Advertisers excepted from subsection (3)

(9) Subsection (3) does not apply to a person who, on behalf of another person, prints, publishes, distributes, broadcasts or telecasts a representation or an advertisement that he accepts in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of his business

Consumer Protection Act, RSPEI c C-19, ss. 1, 14.

Definitions

1 In this Act,

(b) “buyer” means a person who purchases goods or services on credit and includes his agent, but does not include a person of a class to whom this Act is declared by the regulations not to apply;

(g) “goods” includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;

(o) “seller” means a person who is in the business of selling goods or services to buyers and includes his agent, but does not include a person or class of persons to whom this Act is by the regulations declared not to apply;

Effect of using false statements, etc.

14 Where any person is making false, misleading or deceptive statements relating to the extension of credit in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material.

Competition Act, RSC 1985, c C-34, ss. 36(1), 52(1).

Recovery of damages

36 (1) Any person who has suffered loss or damage as a result of

- (a) conduct that is contrary to any provision of Part VI, or
- (b) the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

...

False or misleading representations

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Consumer Protection Act, 2002, SO 2002, c 30, ss. 1, 2, 5, 9(1), 9(2), 14-19.

Interpretation

1 In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; (“consommateur”)

“consumer agreement” means an agreement between a supplier and a consumer in which,

- (a) the supplier agrees to supply goods or services for payment, or
- (b) the supplier agrees to provide rewards points to the consumer, on the supplier’s own behalf or on behalf of another supplier, when the consumer purchases goods or services or otherwise acts in a manner specified in the agreement: (“convention de consommation”)

“consumer transaction” means any act or instance of conducting business or other dealings with a consumer, including a consumer agreement: (“opération de consommation”)

“goods” means any type of property: (“marchandises”)

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, including the supply of rewards points, and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier: (“fournisseur”)

Application

2 (1) Subject to this section, this Act applies in respect of all consumer transactions if the consumer or the person engaging in the transaction with the consumer is located in Ontario when the transaction takes place.

Exceptions

2 (2) This Act does not apply in respect of,

- (a) consumer transactions regulated under the *Securities Act*;
- (b) financial services related to investment products or income securities;
- (c) financial products or services regulated under the *Insurance Act*, the *Credit Unions and Caisses Populaires Act, 1994*, the *Loan and Trust Corporations Act* or the *Mortgage Brokerages, Lenders and Administrators Act, 2006*;
- (d) consumer transactions regulated under the *Commodity Futures Act*;
- (e) prescribed professional services that are regulated under a statute of Ontario;
- (f) consumer transactions for the purchase, sale or lease of real property, except transactions with respect to time share agreements as defined in section 20; and
- (g) consumer transactions regulated under the *Residential Tenancies Act, 2006*.

2 (3) This Act does not apply to the supply of a public utility or to any charge for the transmission, distribution or storage of gas as defined in the *Ontario Energy Board Act, 1998* if such charge has been approved by the Ontario Energy Board.

2 (4) Repealed: 2010, c. 8, s. 36 (1).

Definition

2 (5) In this section,

“public utility” means water, artificial or natural gas, electrical power or energy, steam or hot water. (“service public”).

Agreement for supply of appliances

2 (6) For greater certainty, despite clause (2) (f), this Act applies to a consumer agreement under which a supplier supplies goods to a consumer that are not part of real property at the time the parties enter into the agreement but that subsequently become so under the agreement.

...

Disclosure of information

5 (1) If a supplier is required to disclose information under this Act, the disclosure must be clear, comprehensible and prominent.

Delivery of information

5 (2) If a supplier is required to deliver information to a consumer under this Act, the information must, in addition to satisfying the requirements in subsection (1), be delivered in a form in which it can be retained by the consumer.

...

Quality of services

9 (1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality.

Quality of goods

9 (2) The implied conditions and warranties applying to the sale of goods by virtue of the Sale of Goods Act are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

...

False, misleading or deceptive representation

14 (1) It is an unfair practice for a person to make a false, misleading or deceptive representation.

Examples of false, misleading or deceptive representations

14 (2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:

1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have.
2. A representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have.
3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not.
4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.
5. A representation that the goods have been used to an extent that is materially different from the fact.
6. A representation that the goods or services are available for a reason that does not exist.
7. A representation that the goods or services have been supplied in accordance with a previous representation, if they have not.
8. A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.
9. A representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.
10. A representation that a service, part, replacement or repair is needed or advisable, if it is not.
11. A representation that a specific price advantage exists, if it does not.
12. A representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement.
13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
15. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
16. A representation that misrepresents the purpose of any charge or proposed charge.

17. A representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers.

Unconscionable representation

15 (1) It is an unfair practice to make an unconscionable representation.

15 (2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,

- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
- (d) that there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
- (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
- (h) that the consumer is being subjected to undue pressure to enter into a consumer transaction.

Renegotiation of price

16 It is an unfair practice for a person to use his, her or its custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer transaction.

Unfair practices prohibited

17 (1) No person shall engage in an unfair practice.

One act deemed practice

17 (2) A person who performs one act referred to in section 14, 15 or 16 shall be deemed to be engaging in an unfair practice.

Advertising expected

17 (3) It is not an unfair practice for a person, on behalf of another person, to print, publish, distribute, broadcast or telecast a representation that the person accepted

in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business.

Rescinding agreement

18 (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages.

Remedy if rescission not possible

18 (2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

- (a) because the return or restitution of the goods or services is no longer possible; or
- (b) because rescission would deprive a third party of a right in the subject-matter of the agreement that the third party has acquired in good faith and for value.

Notice

18 (3) A consumer must give notice within one year after entering into the agreement if,

- (a) the consumer seeks to rescind an agreement under subsection (1); or
- (b) the consumer seeks recovery under subsection (2), if rescission is not possible.

Form of Notice

18 (4) The consumer may express notice in any way as long as it indicates the intention of the consumer to rescind the agreement or to seek recovery where rescission is not possible and the reasons for so doing and the notice meets any requirements that may be prescribed.

Delivery of notice

18 (5) Notice may be delivered by any means.

When notice given

18 (6) If notice is delivered other than by personal service, the notice shall be deemed to have been given when sent.

Address

18 (7) The consumer may send or deliver the notice to the person with whom the consumer contracted at the address set out in the agreement or, if the consumer did not receive a written copy of the agreement or the address of the person was not set out in the agreement, the consumer may send or deliver the notice.

- (a) to any address of the person on record with the Government of Ontario or the Government of Canada; or
- (b) to an address of the person known by the consumer.

Commencement of an action

18 (8) If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action.

18 (9) If a consumer has a right to commence an action under this section, the consumer may commence the action in the Superior Court of Justice, 2002, c. 30, Sched. A, s. 18 (9).

Evidence

18 (10) In the trial of an issue under this section, oral evidence respecting an unfair practice is admissible despite the existence of a written agreement and despite the fact that the evidence pertains to a representation in respect of a term, condition or undertaking that is or is not provided for in the agreement.

Exemplary Damages

18 (11) A court may award exemplary or punitive damages in addition to any other remedy in an action commenced under this section.

Liability

18 (12) Each person who engaged in an unfair practice is liable jointly and severally with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled under this section.

Limited liability of assignee

18 (13) If an agreement to which subsection (1) or (2) applies has been assigned or if any right to payment under such an agreement has been assigned, the liability of the person to whom it has been assigned is limited to the amount paid to that person by the consumer.

Effect of rescission

18 (14) When a consumer rescinds an agreement under subsection (1), such rescission operates to cancel, as if they never existed,

- (a) the agreement;
- (b) all related agreements;
- (c) all guarantees given in respect of money payable under the agreement;
- (d) all security given by the consumer or a guarantor in respect of money payable under the agreement; and
- (e) all credit agreements, as defined in Part VII, and other payment instruments, including promissory notes,
 - (i) extended, arranged or facilitated by the person with whom the consumer reached the agreement, or

- (ii) otherwise related to the agreement.

Waiver of notice

18 (15) If a consumer is required to give notice under this Part in order to obtain a remedy, a court may disregard the requirement to give the notice or any requirement relating to the notice if it is in the interest of justice to do so.

Transition

19 (1) This Part applies to consumer transactions that occur on or after the day this section is proclaimed in force.

19 (2) The *Business Practices Act*, as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to consumer transactions that occurred before its repeal.

Consumer Protection Act, CQLR c P-40.1, ss. 1-2, 215, 218-222, 228-229, 233, 239, 252-253, 271-272

1 In this Act, unless the context indicates otherwise,

(d) “goods” means any movable property and, to the extent required for the application of section 6.1, any immovable property;

(e) “consumer” means a natural person, except a merchant who obtains goods or services for the purposes of his business;

(g) “manufacturer” means a person in the business of assembling, producing or processing goods, and, in particular,

- i. a person who represents himself to the public as the manufacturer of goods;
- ii. where the manufacturer has no establishment in Canada, a person who imports or distributes goods manufactured outside Canada or a person who allows his trademark to be used on goods;

In this Act, the word “merchant” includes any person doing business or extending credit in the course of his business.

2. This Act applies to every contract for goods or services entered into between a consumer and a merchant in the course of his business.

...

215 Any practice contemplated in sections 219 to 251.2 or, in case of the sale, lease or construction of an immovable, in sections 219 to 222, 224 to 230, 232, 235, 236 and 238 to <https://www.canlii.org/en/qc/laws/stat/cqlr-c-p-40.1/latest/cqlr-c-p-40.1.html> - sec243 smooth 243 constitutes a prohibited practice for the purposes of this title.

...

218 To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account.

219 No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

220 No merchant, manufacturer or advertiser may, falsely, by any means whatever.

- (a) ascribe certain special advantages to goods or services:
- (b) hold out that the acquisition or use of goods or services will result in pecuniary benefit:
- (c) hold out that the acquisition or use of goods or services confers or insures rights, recourses or obligations.

221 No merchant, manufacturer or advertiser may, falsely, by any means whatever.

- (a) hold out that goods or services include certain parts, components or ingredients:
- (b) hold out that goods have a particular dimension, weight, size or volume:
- (c) hold out that goods are of a specified standard:
- (d) represent that goods are of a particular category, type, model or year of manufacture:
- (e) hold out that goods are new, reconditioned or used to a specified degree:
- (f) hold out that goods have particular antecedents or have been used for a particular purpose:
- (g) ascribe certain characteristics of performance to goods or services.

222 No merchant, manufacturer or advertiser may, falsely, by any means whatever.

- (a) invoke specific circumstances to offer goods or services:
- (b) discredit goods or services offered by others:
- (c) hold out that goods or services have been furnished:
- (d) hold out that goods are made according to a specified method of manufacture:
- (e) hold out that goods or services are necessary in order to replace a part or make a repair:
- (f) hold out that goods or services have a specified geographic origin:
- (g) indicate the quantity of goods or services at his disposal.

...

228 No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

229. No merchant, manufacturer or advertiser may, by any means whatever, when soliciting or making a contract, make false representations concerning the profitability or any other aspect of a business opportunity offered to a consumer.

...

233 No merchant, manufacturer or advertiser may offer a gift, a prize or a rebate on any goods in connection with a contest or a drawing without clearly disclosing all the terms and conditions for obtaining it.

...

239 No merchant, manufacturer or advertiser may, by any means whatever,

(a) distort the meaning of any information, opinion or testimony;

(b) rely upon data or analyses falsely presented as scientific.

...

252 For the purposes of sections 231, 246, 247, 247.1, 248 and 250, “to advertise” or “to make use of advertising” means to prepare, utilize, distribute, publish or broadcast an advertisement, or to cause it to be distributed, published or broadcast.

253 Where a merchant, manufacturer or advertiser makes use of a prohibited practice in case of the sale, lease or construction of an immovable or, in any other case, of a prohibited practice referred to in paragraph a or b of section 220, a, b, c, d, e or g of section 221, d, e or f of section 222, c of section 224 or a or b of section 225, or in section 227, 228, 229, 237 or 239, it is presumed that had the consumer been aware of such practice, he would not have agreed to the contract or would not have paid such a high price.

...

271 If any rule provided in sections 25 to 28 governing the making of contracts is not observed or if a contract does not conform to the requirements of this Act or the regulations, the consumer may demand the nullity of the contract.

In the case of a contract of credit, if any of the terms and conditions of payment, or the computation or any indication of the credit charges or the credit rate does not conform to this Act or the regulations, the consumer may at his option demand the nullity of the contract or demand that the credit charges be cancelled and that any part of them already paid be restored.

The court shall grant the demand of the consumer unless the merchant shows that the consumer suffered no prejudice from the fact that one of the above mentioned rules or requirements was not respected.

272 If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act.

- (a) the specific performance of the obligation;
- (b) the authorization to execute it at the merchant's or manufacturer's expense;
- (c) that his obligations be reduced;
- (d) that the contract be rescinded;
- (e) that the contract be set aside; or
- (f) that the contract be annulled.

without prejudice to his claim in damages, in all cases. He may also claim punitive damages.

Consumer Protection Act, RSNS 1989, c 92, s. 2, 26, 28.

Interpretation

2 In this Act,

- (b) "buyer" means a person who purchases goods or services on credit and includes his agent, but does not include a person of a class or classes to whom this Act is declared by the regulations not to apply;
- (f) "goods" includes tokens, coupons or other documents or things issued or sold by a seller to a buyer that are exchangeable or redeemable for goods or services;
- (n) "seller" means a person who is in the business of selling goods or services to buyers and includes his agent, but does not include a person or class of persons to whom this Act is by the regulations declared not to apply;

...

Implied conditions or warranties

26 (1) In this Section and Section 27, "consumer sale" means a contract of sale of goods or services including an agreement of sale as well as a sale and a conditional sale of goods made in the ordinary course of business to a purchaser for his consumption or use but does not include a sale

- (a) to a purchaser for resale;
- (b) to a purchaser whose purchase is in the course of carrying on business;
- (c) to an association of individuals, a partnership or a corporation; or
- (d) by a trustee in bankruptcy, a receiver, a liquidator or a person acting under the order of a court.

26 (2) In this Section and Section 27, "purchaser" means a person who buys or agrees to buy goods or services.

26 (3) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every consumer sale:

(d) where there is a contract for the sale of goods by description, there is a condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description;

...

26 (5) There shall be implied in every consumer sale of services a condition, on the part of the seller, that the services sold shall be performed in a skilful, efficient and competent manner.

Void Terms

28 (1) Any written term or acknowledgment, whether part of a contract of sale or not, that purports to negative or vary any of the conditions or warranties set out in this Act or states that the provisions of this Act or the regulations do not apply or that a benefit or remedy under this Act or the regulations is not available, or that in any way limits or abrogates, or in effect limits, modifies, or abrogates, a benefit or remedy under this Act or the regulations, or that in any way limits, modifies or abrogates any liability of the seller including any limitation, modification or abrogation of damages for breach of any of the conditions or warranties set out in this Act or the regulations, is void.

28 (2) If a written term or agreement contrary to this Act or the regulations is a term of the contract, it shall be severable therefrom.

28 (3) A written term or acknowledgement contrary to this Act or the regulations shall not be evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply.

28 (4) Money paid under or by reason of a written term or acknowledgement contrary to this Act or the regulations is recoverable in a court of law.

28 (5) This Section applies to contracts entered into on or after the fifteenth day of August.

Consumer Protection and Business Practices Act, SNL 2009, c C-31.1, ss. 2, 7-10.

Definitions

2 In this Act

(a) "consumer" means a natural person acting for personal, family or household purposes but does not include a person who is acting for business purposes;

(e) "goods" means personal property or a right or interest in personal property that is used or ordinarily used primarily for personal, family or household purposes including personal property that becomes fixtures subsequent to a consumer transaction but does not include securities as defined in the Securities Act :

(i) "supplier" means a person who, as a principal or agent, in the course of his or her business

(i) offers or advertises the sale of goods or services to a consumer.

(ii) engages in a consumer transaction with a consumer, or

(iii) manufactures, imports, produces or assembles goods.

and includes an assignee of the rights and obligations of a supplier.

...

Unfair consumer practices

7 (1) In this Part, an unfair business practice is a representation, conduct or failure to disclose material facts that has the effect, or might reasonably have the effect, of deceiving or misleading a consumer, and includes

(a) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have;

(b) a representation that the supplier has sponsorship, approval, status, affiliation or connection that he or she does not have;

(c) a representation that the goods or services are of a particular standard, quality or grade where they are not;

(d) a representation that the goods are of a particular style, model or origin where they are not;

(e) a representation that the goods have been used to an extent that is different from their actual use;

(f) a representation that the goods are new or unused where they are not or where they are reconditioned, reclaimed, altered or deteriorated;

(g) a representation that the goods have a particular prior history or use where they have not;

(h) a representation that the goods or services have been made available in accordance with a previous representation where they have not;

(i) a representation that the goods or services are available, or are available at a reduced price, for a reason that is different from the fact;

(j) a representation that the goods or services have been supplied in accordance with a previous representation, where they have not;

(k) a representation that the goods or services are available when the supplier knows or ought to know that they are not or has no intention of supplying them;

- (l) a representation that a specific price advantage exists where it does not;
- (m) a representation that a part, replacement, repair or adjustment is needed where it is not;
- (n) a representation that repairs have been made or parts installed where that is not the case;
- (o) a representation that the supplier is soliciting or communicating with consumers with a certain interest or purpose where he or she is not;
- (p) a representation that a consumer transaction involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading;
- (q) a representation such that a consumer might reasonably conclude that the goods are available in greater quantities than are in fact available from the supplier;
- (r) a representation as to the authority of a salesperson, representative, employee or agent to negotiate the final terms of a consumer transaction where the representation is not accurate;
- (s) the giving of an estimate or evaluation of the price of goods or services that is materially less than the price subsequently determined or demanded, where the supplier has proceeded with the performance of the consumer transaction without the express prior consent of the consumer;
- (t) the giving of less prominence in an advertisement or display to the total price of goods or services than to the price of a part of the goods or services;
- (u) the giving of less prominence in a representation, advertisement or display to the amount of an instalment to be paid for goods or services than to the total price of the goods or services;
- (v) a representation that goods or services are free when that is not the case; and
- (w) a representation using exaggeration, innuendo or ambiguity as to a material fact.

7 (2) An unfair business practice may occur before, during or after a consumer transaction notwithstanding that the consumer transaction is not completed or a consumer has not suffered loss or damage.

7 (3) With the exception of paragraphs (1)(t) and (u), subsection (1) does not apply to a supplier who, on behalf of another supplier, broadcasts by radio or television, or prints, publishes or distributes an advertisement that he or she has accepted in good faith.

Unconscionable acts

8 (1) In determining whether an act or practice is unconscionable the court shall consider the circumstances that the supplier knew or ought to have known, including

- (a) that at the time the consumer transaction was entered into there was no reasonable probability of full payment of the purchase price by the consumer;
- (b) that the consumer was unable to receive a substantial benefit from the consumer transaction;
- (c) that at the time the consumer transaction was entered into the price grossly exceeded the price at which similar goods or services were available to similar consumers;
- (d) that the terms and conditions of the consumer transaction were so one-sided, harsh or adverse to the consumer as to be inequitable;
- (e) that the supplier used trickery or undue pressure in order to induce the consumer to enter into the consumer transaction; or
- (f) that the supplier took advantage of the extreme necessity or helplessness of the consumer or the inability of the consumer to protect his or her interests because of his or her physical or mental disability, his or her ignorance, illiteracy, age or emotional state, or his or her inability to understand the character, nature or language of the consumer transaction.

8 (2) An unconscionable act or practice may occur before, during or after a consumer transaction.

Prohibition

9 (1) A person shall not engage in an unfair business practice or unconscionable act or practice.

9 (2) Where it is alleged that a supplier is engaging in or has engaged in an unfair business practice or an unconscionable act or practice, the burden of proof that the supplier is not engaging in or has not engaged in an unfair business practice or an unconscionable act or practice rests with the supplier.

Remedies of consumers

10 (1) Where a consumer has suffered damage as a result of an unfair business practice or unconscionable act or practice, he or she may start an action against a supplier.

10 (2) In an action started under this section, or in another action concerning a supplier where it appears to the court that an unfair business practice or unconscionable act or practice has occurred, the court may

- (a) make an order declaring the act or practice to be an unfair business practice or unconscionable act or practice;
- (b) award damages for a loss suffered including exemplary or punitive damages;
- (c) make an order rescinding the transaction;
- (d) grant an interim or permanent injunction restraining the supplier from continuing the unfair business practice or unconscionable act or practice;

- (e) reopen the transaction and repay the amount paid to the supplier by the consumer or relieve the consumer from the payment of an amount in excess of the amount judged by the court to be a fair price for the transaction; and
- (f) make other directions and grant other relief that the court considers appropriate.

10 (3) Where a consumer begins an action under this section, he or she shall serve the director with a copy of the statement of claim and upon the request of the director to the court the director shall be added as a party to the action.

10 (4) Nothing in this section limits a remedy a consumer may have with respect to a transaction under the common law or another Part.

Consumer Protection and Business Practices Act, SS 2013, c C-30.2, ss. 2, 4, 6-16, 18-22, 24-33, 35-37, 39, 91, 93.

Interpretation

2 In this Act:

(b) “consumer”, subject to sections 10, 44 and 102 and other than in Part VII, means an individual who participates or may participate in a transaction involving goods or services;

(e) “goods”, subject to the regulations and other than in Part VII, means personal property, including fixtures, ordinarily used for personal, family or household purposes that has been or may be sold, leased or otherwise provided by a supplier to a consumer;

(i) “supplier” means a person who, as principal or agent, carries on the business of:

- (i) selling, leasing or otherwise providing goods or services on a retail basis;
- (ii) manufacturing, importing, producing or assembling goods; or
- (iii) distributing goods or services; and includes a person who issues or sells a prepaid purchase card and a licensee as defined in Part VII;

Part I – Marketplace Practices

Interpretation of Part

4 In this Part and in Part IX, “unfair practice” means an unfair practice within the meaning of section 6.

...

Unfair practices

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

- (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer:
 - (i) is not in a position to protect his or her own interests; or
 - (ii) is not reasonably able to understand the nature of the transaction or proposed transaction; or

without limiting the generality of clauses (a) to (c), do anything mentioned in section 7.

Specific unfair practices

7 The following are unfair practices:

- (a) representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have;
- (b) representing that the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have;
- (c) representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture if they are not;
- (d) representing that goods are new or unused if they are not or if they have deteriorated or been altered, reconditioned or reclaimed;
- (e) representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so;
- (f) representing that goods or services are available if the supplier does not supply nor intend to supply or otherwise dispose of the goods or services as represented;
- (g) representing that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitations;
- (h) representing that a service, part, repair or replacement is needed if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided if that is not so;
- (i) representing that a price benefit or advantage exists respecting goods or services if a price benefit or advantage does not exist;

- (j) charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance;
- (k) representing that a transaction involving goods or services involves or does not involve rights, remedies or obligations if that representation is deceptive or misleading;
- (l) representing anything that gives a part of the price of specific goods or services but does not give reasonable prominence to the total price of the goods or services;
- (m) representing that a salesperson, representative, employee or agent has the authority to negotiate the final terms of a transaction involving goods or services if that is not so;
- (n) representing that the purpose or intent of a solicitation or communication with a consumer by a supplier is for a purpose or intent different from the fact;
- (o) using exaggeration, innuendo or ambiguity in representing a material fact, or failing to disclose a material fact, if the representation or failure is deceptive or misleading;
- (p) representing that goods or services have been made available in accordance with a previous representation if they have not;
- (q) taking advantage of a consumer by including in a consumer agreement terms or conditions that are harsh, oppressive or excessively one-sided;
- (r) taking advantage of a consumer by entering into an agreement if the price of the goods or services grossly exceeds the price at which similar goods or services are readily obtainable in a similar transaction by like consumers;
- (s) taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.

Unfair practices prohibited

8 (1) No supplier shall commit an unfair practice.

8 (2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

8 (3) A supplier and the supplier's employee, agent, salesperson or representative are liable for an unfair practice of the employee, agent, salesperson or representative.

8 (4) In determining whether or not a person has committed an unfair practice, the general impression given by the alleged unfair practice may be considered.

8 (5) In determining whether or not a person has committed an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered.

Circumstances surrounding unfair practice

9 (1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

9 (2) An unfair practice may consist of a single act or omission.

9 (3) An unfair practice is an unfair practice for the purposes of this Part notwithstanding that:

- (a)** it is not directed at a specific consumer and does not occur in the course of or for the purposes of a specific transaction involving goods or services but is directed to the public at large; and
- (b)** there is no privity of contract between the supplier and any specific consumer affected by the unfair practice.

Part III – Consumer Product Warranties

Interpretation of Part

10 (1) In this Part and in section 102:

(d) “consumer” means a person who acquires a consumer product from a retail seller and includes a non-profit organization, whether incorporated or not, that has objects of a benevolent, charitable, educational, cultural or recreational nature and that acquires a consumer product from a retail seller, but no person who:

- (i)** acquires a consumer product for the purpose of resale is a consumer respecting that product; or
- (ii)** subject to subsection (2), intends to use a consumer product in a business or who intends to use the product predominantly for business purposes and also for personal, family or household purposes is a consumer respecting that product;

(e) “consumer product”:

- (i)** means any goods ordinarily used for personal, family or household purposes and, without restricting the generality of the foregoing, includes any goods ordinarily used for personal, family or household purposes that are designed to be attached to or installed in any real or personal property, whether or not they are so attached or installed; and
- (ii)** includes any goods bought for agricultural or fishing purposes by an individual or by a family farming corporation but does not include any implement the sale of which is governed by *The Agricultural Implements Act*.

(h) “manufacturer” means a person who carries on the business of assembling, processing or manufacturing consumer products and includes:

- (i)** any person who attaches his or her brand name or causes or permits his or her brand name to be attached to consumer products;

- (ii) any person who describes himself or herself or holds himself or herself out to the public as the manufacturer of consumer products; and
- (iii) if consumer products are manufactured outside Canada and the foreign manufacturer of the products does not have a regular place of business in Canada, a person who imports or distributes those products;

(k) “retail seller” means a person who sells consumer products to consumers in the ordinary course of the person’s business but, subject to subsection 21(1), does not include a trustee in bankruptcy, receiver, liquidator, sheriff, auctioneer or person acting under an order of a court;

(l) “sale” means a transaction in which the retail seller transfers or agrees to transfer the general property in a consumer product to a consumer for a valuable consideration and includes but is not restricted to:

- (i) a conditional sale;
- (ii) a contract of lease or hire;
- (iii) a transaction under which a consumer product is supplied to a consumer along with services;

and any reference in this Part to “buy”, “buying”, “bought”, “sell”, “sold” or “selling” is to be construed accordingly;

10 (2) For the purposes of clause (1)(d), a person is a consumer respecting goods that are consumer products if:

- (a) the goods are used by that person in a business, or are intended to be used by that person predominantly for business purposes, and also for personal, family or household purposes; and
- (b) the goods are consumer products within the meaning of subclause (1)(e)(ii).

Part not self-contained code

11 (1) The rights and remedies provided in this Part are in addition to any other rights or remedies under any other law in force in Saskatchewan unless a right or remedy under that law is expressly or impliedly contradicted by this Part.

11 (2) No provisions of this Part are to be construed as repealing, invalidating or superseding the provisions of any other law in force in Saskatchewan unless this Part by express provision or by necessary implication clearly intends those provisions to be so construed.

Subsequent owners

12 (1) Subject to subsection (2), persons who derive their property or interest in a consumer product from or through the consumer, whether by purchase, gift, operation of law or otherwise, are, regardless of their place in the sequence of dealings respecting the consumer product, deemed:

- (a) to be given by the retail seller or manufacturer the same statutory warranties that the consumer was deemed to have been given pursuant to sections 19 and 21; and
- (b) to receive from the warrantor the same additional written warranties that the consumer received and, for the purposes of any provision of this Part, unless otherwise provided in this Part:
 - (i) to have rights and remedies against the retail seller, manufacturer or warrantor equal to but not greater than the rights and remedies the consumer has pursuant to this Part; and
 - (ii) to be subject to any defences or rights of set-off that could be raised against the consumer pursuant to this Part.

12 (2) No retail seller who acquires a consumer product from or through a consumer for the purposes of resale or for use predominantly in a business has any rights pursuant to subsection (1) respecting that consumer product.

Second-hand or substandard consumer products

13 Subject to section 14, this Part applies to sales of second-hand, substandard or otherwise inferior consumer products and, if a consumer product is described as being second-hand, substandard or otherwise inferior, the description and the purchase price are material facts in determining the characteristics and qualities that consumers can reasonably expect that consumer product to have.

Second-hand dealers

14 (1) A second-hand dealer is entitled to rely on a provision in a contract for the sale of a second-hand consumer product that excludes or modifies any or all of the statutory warranties mentioned in clauses 19(d), (e) and (g) if the second-hand dealer proves that, before he or she entered into the contract, the provision was:

- (a) brought to the notice of the consumer; and
- (b) made clear to the consumer respecting its effect.

14 (2) An exclusion or modification mentioned in subsection (1) does not, in any way, limit or affect a manufacturer's liability pursuant to subsection 21(2) respecting that consumer product.

Waiver of benefits ineffective: inclusion of certain clauses forbidden

15 (1) Subject to subsection 14(1), every agreement or bargain, verbal or written, express or implied that states or implies any of the following is void:

- (a) that the provisions of this Part or the regulations made pursuant to this Part do not apply;
- (b) that any right or remedy provided by this Part or the regulations made pursuant to this Part does not apply;
- (c) that any right or remedy provided by this Part or the regulations made pursuant to this Part is in any way limited, modified or abrogated.

15 (2) Notwithstanding subsection (1), if the parties to a dispute pursuant to this Part are able to resolve their dispute through mediation, arbitration or another process, the parties' rights pursuant to this Part are extinguished respecting that dispute.

Express warranties

16 (1) Any promise, representation, affirmation of fact or expression of opinion or any action that reasonably can be interpreted by a consumer as a promise or affirmation relating to the sale or to the quality, quantity, condition, performance or efficacy of a consumer product or relating to its use or maintenance is deemed to be an express warranty if it would usually induce a reasonable consumer to buy the consumer product, whether or not the consumer actually relies on the warranty.

16 (2) Subsection (1) applies to a promise, representation, affirmation of fact or expression of opinion made verbally or in writing directly to a consumer or through advertising by: (a) a retail seller or manufacturer; or (b) an agent or employee of a retail seller or manufacturer who has actual, apparent or usual authority to act on his or her behalf. (3) No express warranty is to disclaim, exclude or limit a statutory warranty set out in section 19.

...

Express warranties in labels or packages, in advertising, deemed part of description

18 (1) A retail seller is a party to express warranties contained on labels or packages accompanying or attached to a consumer product sold by the retail seller to a consumer unless the retail seller has made it clear to the consumer before the sale that the retail seller does not adopt the express warranties.

18 (2) Subject to subsection (3), no retail seller is a party to any express warranties contained in any advertisement originating from or carried out by a manufacturer unless the retail seller expressly or impliedly adopts those warranties.

18 (3) Notwithstanding that a retail seller does not adopt the express warranties mentioned in subsections (1) and (2), any descriptive statements that appear on the label or container or otherwise accompany the consumer product are deemed, for the purposes of clause 19(c), to be part of the description of the consumer product.

Statutory warranties

19 If a consumer product is sold by a retail seller, the following warranties are deemed to be given by the retail seller to the consumer:

- (a) that the retail seller has a right to sell the consumer product;
- (b) that:
 - (i) at the time of delivery to the consumer, the consumer product is and will remain free from any security interest, lien, charge or encumbrance not expressly disclosed or actually known to the consumer before the sale is made; and

- (ii) the consumer will enjoy quiet possession of the consumer product except to the extent that it may be disturbed by any person entitled to any security interest, lien, charge or encumbrance disclosed or actually known to the consumer before the sale is made;
- (c) if the sale of the consumer product is a sale by description, that the consumer product corresponds with the description;
- (d) that the consumer product supplied under the contract is of acceptable quality, except that this warranty is deemed not to be given:
 - (i) respecting defects specifically drawn to the consumer's attention before the contract is made; or
 - (ii) if the consumer examines the consumer product before the contract is made, respecting defects that the examination ought to have revealed;
- (e) if the consumer expressly or by implication makes known to the retail seller any particular purpose for which the consumer product is being bought, that the consumer product supplied under the contract is reasonably fit for that purpose, whether or not that is a purpose for which the consumer product is commonly supplied, except that this warranty is deemed not to be given if the circumstances show that:
 - (i) the consumer does not rely on the retail seller's skill or judgment; or
 - (ii) it is unreasonable for the consumer to rely on the retail seller's skill or judgment;
- (f) if the sale of the consumer product is a sale by sample:
 - (i) that the bulk of the consumer product corresponds in quality with the sample;
 - (ii) that the consumer is to have a reasonable opportunity to compare the bulk of the consumer product with the sample;
 - (iii) that the consumer product is free from any defect that renders it not of acceptable quality and that would not be apparent on reasonable examination of the sample;
- (g) that the consumer product and all its components are to be durable for a reasonable period, having regard to all the relevant circumstances of the sale, including:
 - (i) the description and nature of the consumer product;
 - (ii) the purchase price;
 - (iii) the express warranties of the retail seller or manufacturer; and
 - (iv) the necessary maintenance the consumer product normally requires and the manner in which it has been used;
- (h) if the consumer product normally requires repairs, that spare parts and repair facilities will be reasonably available for a reasonable period after the date of sale of the consumer product.

Sale by description

20 No sale of consumer products is precluded from being a sale by description by reason only that it is a sale of specific consumer products or that the consumer products being exposed for sale are selected by the consumer.

Manufacturers deemed to give statutory warranties

21 (1) For the purposes of subsection (2), “retail seller” includes those persons who are excluded from the definition of retail seller in clause 10(1)(k).

21 (2) Subject to subsection (3), the manufacturer of consumer products is deemed to give to consumers of those consumer products the same statutory warranties respecting those consumer products as the retail seller is deemed to have given pursuant to clauses 19(b) to (h).

21 (3) A manufacturer of consumer products is liable only for the manufacturer’s own breach of the statutory warranties or of any express or additional written warranties that the manufacturer has given to consumers and, without limiting the generality of the foregoing, the application of subsection (2) is subject to the following:

- (a)** no provision of clause 19(b) applies respecting any security interest that is not created by the manufacturer or any lien, charge or encumbrance not arising as the result of any act or default on the manufacturer’s part;
- (b)** no manufacturer is bound by any description applied by the retail seller to the consumer products without the authority or consent of the manufacturer;
- (c)** for the purposes of clause 19(d), the consumer is deemed to have notice of a defect if disclosure of the defect was made directly or indirectly to the retail seller and was intended by the manufacturer to reach the consumer and in the normal course of events could reasonably be expected by the manufacturer to reach the consumer;
- (d)** no provision of clause 19(e) applies if, without the consent of the manufacturer, any consumer product:
 - (i)** is sold by a retail seller to a consumer as being fit for a purpose that is not the ordinary purpose of the product; or
 - (ii)** at the time of sale, is in a state, age or condition that makes it unreasonable for the consumer to conclude that the consumer is fit for the purpose for which it is commonly supplied.

Onus of proof

22 (1) There is a presumption of breach of warranties by a manufacturer if:

- (a)** a consumer, a person mentioned in subsection 12(1) who derives his or her property or interest in a consumer product from or through a consumer or a person mentioned in section 35 brings an action against a manufacturer for breach of one or more statutory warranties set out in clauses 19(d) and (e);

- (b) the consumer or person mentioned in clause (a) proves the poor quality, malfunctioning or breakdown of the consumer product but cannot prove the exact cause of the poor quality, malfunctioning or breakdown; and
- (c) the facts of the case make it reasonable to draw an inference of a breach by the manufacturer of those statutory warranties.

22 (2) The presumption in subsection (1) can be rebutted by proof that:

- (a) the poor quality, malfunctioning or breakdown of the consumer product was due to a cause not attributable to the manufacturer; or
- (b) the consumer product was acceptable or fit for the purpose for which it was bought when it went out of the manufacturer's control.

...

Retail seller deemed warrantor

24(1) If an additional written warranty accompanies or is attached to a consumer product sold by a retail seller, the retail seller is deemed to be a warrantor respecting the additional written warranty regardless of whether or not the additional written warranty is given by another warrantor.

24 (2) Subsection (1) does not apply if the retail seller has, in writing before the sale, made it clear to the consumer that the retail seller does not adopt the additional written warranty as the retail seller's own.

24 (3) In any action brought to enforce the terms of an additional written warranty, the fact that at the time of the sale of the consumer product the consumer was or was not aware of the existence of the additional written warranty or the consumer did or did not rely on the additional written warranty is irrelevant.

Additional written warranty with statutory warranty

25 No provision of this Part is to be construed as requiring that the terms of an additional written warranty be consecutive to or added to the terms of a statutory warranty.

No privity of contract required

26 In any action brought pursuant to this Part against a manufacturer, retail seller or warrantor for breach of a statutory, express or additional written warranty, lack of privity of contract between the person bringing the action and the retail seller, manufacturer or warrantor is not a defence, and the retail seller, manufacturer or warrantor is conclusively presumed to have received consideration.

Remedies are additional

27 Sections 28 to 34:

- (a) apply in addition to any other remedies to which a consumer may be entitled under the terms of an additional written warranty; and
- (b) except respecting any reference to express warranties, apply with any necessary modification to any person mentioned in subsection 12(1) who

derives his or her property or interest in a consumer product from or through the consumer.

Remedies for breach of statutory or express warranties

28 (1) If there is a breach by a manufacturer or retail seller of a statutory warranty mentioned in section 19 or of an express warranty mentioned in section 16 and if:

- (a)** the breach is remediable and not of a substantial character:
 - (i)** the party in breach shall, within a reasonable period, make good the breach free of charge to the consumer but, if the breach has not been remedied within a reasonable period, the consumer is entitled to have the breach remedied elsewhere and to recover from the party in breach all reasonable costs incurred in having the breach remedied; and
 - (ii)** the consumer is entitled to recover damages for losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach regardless of whether the breach is remedied;
- (b)** the breach is of a substantial character or is not remediable, the consumer, at his or her option, may exercise the remedies pursuant to clause (a) or, subject to subsections (2) and (3), the consumer may:
 - (i)** reject the consumer product; and
 - (ii)** if he or she exercises his or her right to reject, he or she is entitled to recover the purchase price from the party in breach and to recover damages for any other losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach.

28 (2) The consumer shall exercise his or her right to reject the consumer product pursuant to clause (1)(b) within a reasonable period pursuant to subsection (3), except where the consumer delays the exercise of his or her right to reject because he or she has relied on assurances made by the party in breach or the party's agent that the breach would be remedied and the breach was not remedied.

28 (3) For the purposes of subsection (2), regardless of whether the right to reject is being exercised by the consumer or a person mentioned in subsection 12(1), a reasonable period:

- (a)** runs from the time of delivery of the consumer product to the consumer; and
- (b)** consists of a period sufficient to permit any testing, trial or examination of the consumer product that may be normally required by consumers of that consumer product and as may be appropriate considering the nature of the consumer product, for the purpose of determining the conformity of the consumer product to the obligations imposed pursuant to this Part on the party in breach.

If subsequent owner claims purchase price

29 (1) Subject to subsection (2), if a person mentioned in subsection 12(1) rejects a consumer product pursuant to clause 28(1)(b), the purchase price he or she is entitled to claim:

- (a) is the total value of the consideration or the part that has been paid by him or her for the consumer product; and
- (b) includes those finance charges or other credit costs that he or she has reasonably incurred respecting the consumer product.

29 (2) A person mentioned in subsection 12(1) is not entitled in any case to claim a purchase price greater than the purchase price paid by the consumer to the retail seller or his or her assignee.

If party in breach must repair consumer product

30(1) If subsection 28(1) applies so that the party in breach is required to repair the consumer product, the consumer shall return the product to the place of business of, or to any repair facility or service outlet operated by:

- (a) the retail seller, if the retail seller is the party in breach;
- (b) the manufacturer, if the manufacturer is the party in breach; or
- (c) either of them, if both are in breach.

30 (2) No consumer is obliged to return the consumer product pursuant to subsection (1) to the party in breach if, by reason of the nature of the breach or the size, weight or method of attachment or installation of the consumer product, it cannot be removed or transported without significant cost to the consumer.

30 (3) In the circumstances mentioned in subsection (2), the party in breach shall collect and arrange for the transportation and return of the consumer product at his or her own expense or shall cause the repair to be made at the site where the consumer product is located.

30 (4) For the purposes of subclause 28(1)(a)(i), the reasonable period runs from the time when the party in breach receives the consumer product but, if subsection (2) applies, the reasonable period runs from the time when the consumer advises the party in breach of the defect in the consumer product.

If consumer rejects consumer product

31 If a consumer rejects a consumer product pursuant to clause 28(1)(b):

- (a) in the case where the party in breach is the manufacturer, the manufacturer is liable to refund the purchase price of the consumer product to the consumer even though the purchase price was paid or is payable to the retail seller or any other person;
- (b) the consumer has no responsibility to deliver the consumer product to the party in breach and it is sufficient if the consumer informs the party in breach that he or she rejects it;

- (c) the party in breach is entitled to recover from the consumer, or set off against the refund of the purchase price of the consumer product, an amount that is equitable for the use of the consumer product and, in determining that amount, no regard is to be taken of the depreciation of the consumer product unless it is otherwise provided for by the regulations;
- (d) the consumer is entitled to retain possession of the rejected consumer product as against:
 - (i) the manufacturer and retail seller until he or she recovers the purchase price he or she paid; and
 - (ii) an assignee until he or she recovers the amount he or she paid to the assignee; and (e) in the case where the party in breach pays the purchase price to the consumer as provided by this section, the consumer shall ensure that the consumer product is free of any encumbrances for which he or she is responsible.

Remedy for breach of additional written warranty to repair or replace

32 If a consumer makes a valid claim under an additional written warranty for repair or replacement of a consumer product and the warrantor does not, within a reasonable period after the claim is made, perform the repair or replacement in accordance with the terms of the additional written warranty, the consumer is entitled:

- (a) to have the defect remedied elsewhere; and
- (b) to recover reasonable repair costs from the warrantor as well as damages for losses that the consumer suffered and that were reasonably foreseeable as liable to result from the failure of the warrantor to honour the warranty. 2013, c.C-30.2, s.32.

Additional repair costs

33 If an additional written warranty covers only a certain part or certain parts of a consumer product or if an additional written warranty specifies that it covers only certain repair costs that may arise with respect to the consumer product, no consumer of the consumer product is obliged to pay any additional repair costs unless the consumer has agreed in writing to pay for the additional repair costs not covered by the warranty.

...

User may recover damages

35 A person who may reasonably be expected to use, consume or be affected by a consumer product and who suffers a personal injury as a result of a breach, by a retail seller or manufacturer, of a statutory warranty mentioned in clauses 19(c) to (f) is entitled, as against the retail seller or manufacturer, to recover damages arising from the personal injury that he or she has suffered and that was reasonably foreseeable as liable to result from the breach.

Exemplary damages

36 (1) In addition to any other remedy provided by this Part or any other law, a consumer or a person mentioned in subsection 12(1) or in section 35 may recover exemplary damages from any manufacturer, retail seller or warrantor who has committed a wilful contravention of this Part.

36 (2) In an action in which exemplary damages are claimed, evidence respecting the existence of similar conduct in transactions between the manufacturer, retail seller or warrantor and other consumers is admissible for the purposes of proving that the contravention of this Part was wilful or of proving the degree of wilfulness of the contravention.

Party-party costs

37 (1) No costs shall be awarded against a consumer, a person mentioned in subsection 12(1) or a person mentioned in section 35 who:

- (a) brings an action against a manufacturer, retail seller or warrantor for breach of a warranty pursuant to this Part: or
- (b) in an action brought by a manufacturer, retail seller or warrantor, defends or counterclaims on the grounds that the manufacturer, retail seller or warrantor has been guilty of a breach of warranty pursuant to this Part.

37 (2) Subsection (1) applies regardless of whether the consumer or other person is successful in his or her action, defence or counterclaim unless, in the opinion of the court, the action, defence or counterclaim was frivolous or vexatious.

...

Effect of breach of standards

39 (1) In any action arising pursuant to this Part, proof that a consumer product does not comply with mandatory health or safety standards set pursuant to an Act or an Act of the Parliament of Canada or with quality standards set by regulation is evidence that the consumer product is not of acceptable quality or fit for the purpose for which it was bought.

39 (2) Proof that a consumer product complies with the standards mentioned in subsection (1) is not evidence that the consumer product is of acceptable quality or fit for the purpose for which it was bought.

39 (3) Subsection (1) does not apply if non-compliance with the mandatory health or safety standards described in that subsection is not in any way related to or otherwise connected with the quality or fitness of the consumer product.

...

Consumer may commence action

91 (1) In this section and sections 92 and 93, "court" includes the Provincial Court of Saskatchewan, but only if the action or relief sought is within the jurisdiction of that court pursuant to The Small Claims Act, 2016.

91 (2) A consumer who has suffered a loss as a result of a contravention of this Act or the regulations may commence an action in the court against a supplier.

91 (3) A consumer shall not commence an action if the director has applied to the court on the consumer's behalf pursuant to section 92 respecting the same supplier and transaction.

...

Court order

93 (1) If the court finds that a supplier has committed an unfair practice or contravened this Act, the regulations, a voluntary compliance agreement entered into pursuant to section 80 or a compliance order issued pursuant to section 81, the court may:

- (a) order restitution of any money, property or other consideration given or furnished by the consumer;
- (b) award the consumer damages in the amount of any loss suffered because of the unfair practice or the contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order, including punitive or exemplary damages;
- (c) grant an injunction restraining the supplier from continuing the unfair practice or from continuing to contravene this Act, the regulations, the voluntary compliance agreement or the compliance order;
- (d) make an order of specific performance against the supplier;
- (e) order the supplier to comply with the voluntary compliance agreement or the compliance order; or
- (f) make any other order the court considers appropriate.

93 (2) An order pursuant to clause (1)(b) for exemplary or punitive damages may not be made against the supplier if the supplier took reasonable precautions and exercised due diligence to avoid the unfair practice or contravention.

93 (3) If the court finds that an unfair practice or that a contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order has occurred, for the purposes of making an order pursuant to this section, the court shall consider whether or not the consumer made a reasonable effort:

- (a) to minimize any loss resulting from the unfair practice or the contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order; and
- (b) to resolve the dispute with the supplier before commencing the action.

Consumer Protection Act, RSA 2000, c C-26.3, ss. 5-7, 7.2, 7.3, 13.

Interpretation

1 (1) In this Act.

(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:

(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:

(e) “goods”, except in Part 12, means, subject to the regulations under subsection (2).

- (i) any personal property that is used or ordinarily used primarily for personal, family or household purposes,
- (ii) a voucher, or
- (iii) a new residential dwelling whether or not the dwelling is affixed to land:

(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:

Application

5 This Act applies to the following unfair practices:

- (a) an unfair practice in which the supplier or consumer is a resident of Alberta;
- (b) unfair practice involving a consumer transaction in which the offer or acceptance is made in or is sent from Alberta;

- (c) an unfair practice made or received in Alberta involving a supplier's representative;
- (d) an unfair practice specified in the regulations.

Unfair Practices

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.

6 (1.1) It is an offence for a supplier to engage in an unfair practice.

6 (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.

6 (3) It is an unfair practice for a supplier

- (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
- (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;

- (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;
- (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

6 (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
- (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
- (c) a supplier's representation that goods or services have sponsorship, approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;
- (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
- (e) a supplier's representation that goods or services are of a particular standard, quality, grade, style or model if they are not;
- (f) a supplier's representation that goods have or have not been used to an extent that is different from the fact;
- (g) a supplier's representation that goods are new if they are used, deteriorated, altered or reconditioned;
- (h) a supplier's representation that goods have or do not have a particular prior history or usage if that is different from the fact;
- (i) a supplier's representation that goods or services are available for a reason that is different from the fact;
- (j) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;
- (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;
- (l) a supplier's representation involving a voucher that another supplier will provide goods or a service or will provide goods or a service at a discounted or reduced price if the first-mentioned supplier knows or ought to know that the second-mentioned supplier will not;
- (m) a supplier's representation that goods are available in a particular quantity if they are not;
- (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not;
- (o) a supplier's representation that a specific price benefit or advantage exists if it does not;

- (p) a supplier's representation that a part, replacement, repair or adjustment is needed or desirable if it is not;
- (q) a supplier's representation that the supplier is requesting information, conducting a survey or making a solicitation for a particular purpose if that is not the case;
- (r) a supplier's representation that a person does or does not have the authority to negotiate the terms of a consumer transaction if the representation is different from the fact;
- (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;
- (t) when the amount of any instalment to be paid in respect 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 and services than to the amount of the instalment;
- (t.1) a supplier's representation regarding an agreement for continuing provision of services if the supplier fails to provide prominent and full disclosure of the details of the agreement, including duration, changes in price, renewals, extensions or amendments, or if the supplier fails to obtain the consumer's express consent to renewals, extensions or amendments of the agreement
- (u) a supplier's giving an estimate of the price of goods or services if the goods or services cannot be provided for that price;
- (v) a supplier's representation of the price of goods or services in such a way that a consumer might reasonably believe that the price refers to a larger package of goods or services than is the case;
- (w) a supplier's representation that a consumer will obtain a benefit for helping the supplier to find other potential customers if it is unlikely that the consumer will obtain such a benefit;
- (x) a supplier's representation about the performance, capability or length of life of goods or services unless
 - (i) the representation is based on adequate and proper independent testing that was done before the representation is made,
 - (ii) the testing substantiates the claim, and
 - (iii) the representation accurately and fairly reflects the results of the testing;
- (y) a supplier's representation that goods or services are available at an advantageous price if reasonable quantities of them are not available at such a price, unless it is made clear that quantities are limited;

- (z) a supplier's representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion;
- (aa) anything specified in the regulations.

Cancelling Agreement

7 (1) A consumer may cancel at no cost or penalty to the consumer a consumer transaction, whether written or oral, that was entered into by the consumer and a supplier who engaged in an unfair practice regarding the consumer transaction, whether the unfair practice occurred before, during or after the time when the consumer transaction was entered into, and in addition the consumer is entitled to any remedy that is available at law, including damages.

7 (2) Where a supplier has been found to have engaged in an unfair practice, any consumer who entered into a consumer transaction that was subject to the unfair practice with the supplier who engaged in the unfair practice may cancel the consumer transaction at no cost or penalty to the consumer.

7 (3) A consumer is entitled to recover the amount by which the consumer's payment under the consumer transaction exceeds the value of the goods or services to the consumer, or to recover damages, or both, if cancellation of the consumer transaction under subsection (1) or (2) is not possible because

- (a) the return or restitution of the goods or cancellation of the services is no longer possible, or
- (b) cancellation would deprive a third party of a right in the subject-matter of the consumer transaction that the third party has acquired in good faith and for value.

7 (4) When a consumer cancels a consumer transaction under subsection (1) or (2), the cancellation operates to cancel, as if they never existed,

- (a) the consumer transaction,
- (b) all related consumer transactions,
- (c) all guarantees given in respect of money payable under the consumer transaction,
- (d) all security given by the consumer or a guarantor in respect of money payable under the consumer transaction, and
- (e) all credit agreements and other payment instruments, including promissory notes,
 - (i) extended, arranged or facilitated by the supplier with whom the consumer made the consumer transaction, or
 - (ii) otherwise related to the consumer transaction.

...

Powers of Court

7.2 (1) In an action commenced under this Division, the Court of Queen's Bench may award exemplary or punitive damages in addition to any other remedy the Court considers proper.

7.2 (2) In the trial of an issue under this Division, oral evidence respecting an unfair practice is admissible despite the existence of a written agreement under the consumer transaction and despite the fact that the oral evidence pertains to a representation in respect of a term, condition or undertaking that is not provided for in the agreement.

7.2 (3) The Court of Queen's Bench may disregard the requirement that the consumer give notice under section 7.1 or any requirement relating to the notice if the Court considers that it is in the interest of justice to do so.

Liability

7.3(1) Each person who engages in an unfair practice is jointly and severally liable with the supplier who entered into a consumer transaction that was subject to the unfair practice with a consumer for any amount to which the consumer is entitled under section 7 or 7.2.

7.3 (2) If an agreement under a consumer transaction to which section 7 applies has been assigned, or if any right to payment under such a consumer transaction has been assigned, the liability of the person to whom it has been assigned is limited to the amount paid to that person by the consumer.

...

Court Action by Consumer

13 When a consumer

- (a)** has entered into a consumer transaction, and
- (b)** in respect of that consumer transaction, has suffered damage or loss due to an unfair practice.

that consumer may commence an action in the Court of Queen's Bench for relief from that damage or loss against any supplier or any principal, director, manager, employee or agent of a supplier who engaged in or acquiesced in the unfair practice that caused that damage or loss.

13 (2) In an action under this section, the Court of Queen's Bench may

- (a)** declare that the practice is an unfair practice;
- (b)** award damages for damage or loss suffered;
- (c)** award punitive or exemplary damages;
- (d)** make an order for
 - (i)** specific performance of the consumer transaction.
 - (ii)** restitution of property or funds, or
 - (iii)** rescission of the consumer transaction;

- (e) grant an order in the nature of an injunction restraining the supplier from engaging in the unfair practice;
- (f) make any directions and grant any other relief the Court considers proper.

13 (3) In determining whether to grant any relief under this section and the nature and extent of the relief, the Court of Queen's Bench must consider whether the consumer made a reasonable effort to minimize any damage resulting from the unfair practice and to resolve the dispute with the supplier before commencing the action in the Court.

13 (4) The Court of Queen's Bench may award costs in accordance with the Alberta Rules of Court.

Consumer Product Warranty and Liability Act, SNB 1978, c C-18.1, ss. 1, 4, 10-13, 15-17, 27.

Definitions and interpretation

1 (1) In this Act

"buyer" means a person who is supplied under a contract for the sale or supply of a consumer product; (acheteur)

"consumer product" means any tangible personal property, new or used, of a kind that is commonly used for personal, family or household purposes; (produit de consommation)

"contract" means a contract for the sale or supply of a consumer product; (contrat)

"contract for the sale or supply of a consumer product" means (contrat de vente ou de fourniture de produits de consommation)

- (a) a contract of sale of a consumer product, including a conditional sale agreement;
- (b) a contract of barter or exchange of a consumer product;
- (c) a contract of lease or hire of a consumer product, whether or not there is an option to purchase it; or
- (d) a contract for services or for labour and materials if a consumer product is supplied along with the services or labour;

"distributor" means a person who supplies consumer products as part of his regular business and, without limiting the generality of the foregoing, includes a producer, processor, manufacturer, importer, wholesaler, retailer or dealer; (distributeur)

"seller" means the person who is the supplier under a contract for the sale or supply of a consumer product; (vendeur)

...

Express warranties made by seller

4 (1) In every contract for the sale or supply of a consumer product the following statements are express warranties given by the seller to the buyer:

- (a) any oral statement in relation to the product that the seller makes to the buyer, unless the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's statement;**
- (b) any written statement in relation to the product that the seller makes to the buyer, whether or not the buyer relies on the statement, unless the circumstances show that it would be unreasonable for him to rely on the statement; and**
- (c) any statement in relation to the product, however made, that the seller makes to the public or a portion thereof, whether or not the buyer relies on the statement, unless the circumstances show that it would be unreasonable for the buyer to rely on the statement.**

4 (2) The seller shall be deemed to have made any statement

- (a) made by his agent or employee, unless he proves that the agent or employee was not acting within the scope of his actual, usual or apparent authority; or**
- (b) made in writing on the product or its container or in a label, tag, sign or document attached to, in close proximity to, or accompanying the product, unless he proves that the statement was made by another person who was not a distributor of the product and that he neither knew nor ought to have known that the statement was made.**

4 (3) Where a statement was made in a manner or circumstances that it appears that the statement was made by the seller, it shall be presumed that the statement was made by the seller unless he proves that it was not his statement.

4 (4) In this section

- (a) "makes" includes causes to be made;**
- (b) "statement" means a promise or representation of fact or intention that is made before or at the time of the contract.**

...

Implied warranty as to quality

10 (1) Subject to subsection (2), in every contract for the sale or supply of a consumer product there is an implied warranty given by the seller to the buyer

- (a) that the product is of such quality, in such state or condition, and as fit for the purpose or purposes for which products of that kind are normally used as it is reasonable to expect having regard to the seller's description of the product, if any, the price, when relevant, and all other relevant circumstances; and**

- (b) that the product complies with all mandatory federal and provincial standards in relation to health, safety and quality.

10 (2) There is no implied warranty under paragraph (1)(a)

- (a) as regards any defect that is known to the buyer before the contract is made;
- (b) as regards any defect that the seller has reason to believe exists and that he discloses to the buyer before the contract is made;
- (c) if the product is a used product and the buyer examines it before the contract is made, as regards any defect that that examination ought to reveal; or
- (d) if there is a sale or supply by sample, as regards any defect that a reasonable examination of the sample ought to reveal.

Implied warranty as to fitness

11 Where before the contract is made the buyer expressly or by implication makes known to the seller any particular purpose for which the product is to be used, there is an implied warranty given by the seller to the buyer that the product is reasonably fit for that purpose, whether or not that is a purpose for which such a product is normally used, unless the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgment.

Implied warranty as to durability

12 (1) In every contract for the sale or supply of a consumer product there is an implied warranty given by the seller to the buyer that the product and any components thereof will be durable for a reasonable period of time.

12 (2) In determining a reasonable period of time for the purposes of subsection (1), regard shall be had to all relevant circumstances, including the nature of the product, whether it was new or used, its use as contemplated by the seller and buyer at the time of the contract, its actual use and whether it was properly maintained.

Application of remedies provisions

13 Where

- (a) there is a contract for the sale or supply of a consumer product and the buyer makes or holds himself out as making the contract in the course of a business; or
- (b) there is a contract for services or for labour and materials and a consumer product is supplied along with the services or labour;
- (c) the remedies in sections 14 to 22 for breach of a warranty provided by this Act do not apply, but the remedies that would normally be available under the law for breach of the warranty shall be deemed to be remedies provided by this Act.

the remedies in sections 14 to 22 for breach of a warranty provided by this Act do not apply, but the remedies that would normally be available under the law for breach of the warranty shall be deemed to be remedies provided by this Act.

...

Buyer's right to damages

15 Where the seller is in breach of a warranty provided by this Act, the buyer may recover damages for any loss that he has suffered because of the breach and that was reasonably foreseeable at the time of the contract as liable to result from the breach.

Buyer's right to reject

16 (1) Where the seller is in breach of a warranty provided by this Act and does not rectify the breach pursuant to any opportunity that the buyer gives him under section 14 or otherwise, the buyer may reject the product if he does so within a reasonable time after he discovers the breach and he discovers the breach not later than sixty days after delivery of the product.

16 (2) Notwithstanding that the buyer discovers the breach later than sixty days after delivery of the product, where the breach is a major breach the buyer may reject the product if he does so within a reasonable time after he ought to have discovered the breach.

16 (3) The buyer's rejection is not effective until the seller knows or ought to know that the buyer does not accept the product.

Rights upon rejection

17 (1) Subject to subsections (2) and (3), where the buyer rejects the product pursuant to section 16, he is released from his obligations under the contract and may recover from the seller any payments that he has made on the price and damages for any other loss that he has suffered because of the breach and that was reasonably foreseeable at the time of the contract as liable to result from the breach.

17 (2) The seller may deduct from the refund of any payments on the price or recover from the buyer, or both, an amount that is equitable in the circumstances for the benefit, if any, that the buyer derived from use of the product.

17 (3) Where before rejection the product has deteriorated to a state beyond that attributable to reasonable wear and tear for the period of time that the product was used by the buyer, or has been damaged by causes that are not attributable to the seller's breach, the seller may deduct from the refund of any payments on the price or recover from the buyer, or both, an amount for compensation for the difference between the value of the product as it is and the value that it would have but for that deterioration or damage.

...

Liability for dangerously defective products

27 (1) A supplier of a consumer product that is unreasonably dangerous to person or property because of a defect in design, materials or workmanship is liable to any person who suffers a consumer loss in the Province because of the defect, if the loss was reasonably foreseeable at the time of the supply as liable to result from the defect and

- (a) the supplier has supplied the consumer product in the Province;
- (b) the supplier has supplied the consumer product outside the Province but has done something in the Province that contributes to the consumer loss suffered in the Province;
- (c) the supplier has supplied the consumer product outside the Province but the defect arose in whole or in part because of the supplier's failure to comply with any mandatory federal standards in relation to health or safety, or the defect caused the consumer product to fail to comply with any such standards; or
- (d) the supplier has supplied the consumer product outside the Province but at the time of the supply it was reasonably foreseeable that the product would be used or consumed in the Province.

27 (2) For the purposes of paragraph (1)(b), where a person has done anything in the Province to further the supply of any consumer product that is similar in kind to the consumer product that caused the loss, it shall be presumed that he has done something in the Province that contributed to the consumer loss suffered in the Province, unless he proves irrefragably that what he did in the Province did not in any way contribute to that loss.

27 (3) A person is not liable under this section

- (a) for any loss that is caused by a defect that is not present in the consumer product at the time he supplies it; or
- (b) for any loss that is caused by a defect that he has reason to believe exists and that he discloses to the person to whom he supplies the consumer product before the loss is suffered, if the defect does not arise in whole or in part because of his failure to comply with any mandatory federal or provincial standards in relation to health or safety and the defect does not cause the consumer product to fail to comply with any such standards.

27 (4) The liability of a person under this section does not depend on any contract or negligence.

Consumers Protection Act, RSY 2002, c 40, ss. 1, 58(1)-(7).

Interpretation

1 In this Act,

“buyer” includes a hirer on a retail hire-purchase: « acheteur »

“goods” means chattels personal other than things in action or money, and includes, emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, and chattels which are to be affixed to land on or after delivery thereof: « objets »

“retail sale” of goods or of services or of both means any contract of sale of goods or services or both made by a seller in the course of the seller’s business except

- (a) any contract of sale of goods which are intended for resale by the buyer in the course of the buyer’s business.
- (b) any contract of sale to a retailer of a vending machine or a bottle cooler to be installed in the retailer’s retail establishment.
- (c) any contract of sale to a corporation, and
- (d) a sale in which the cash price of the goods or services or both exceeds \$8,500: « vente au détail »

“sale” includes any transaction whereby all or part of the price is paid or satisfied by the exchange of other property, real or personal: « vente »

“sale of goods” includes any transaction in which goods are sold, whether separately or together with services: « vente d’objets »

“seller” includes a person who lets goods on hire by a retail hire-purchase: « vendeur »

...

Warranties on sale

58 (1) Despite any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire purchase of goods

- (e) a condition that the goods are of merchantable quality, except for any defects that are described;
- (f) a condition that the goods correspond with the description under which they are sold;
- (h) if the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply, whether the seller is the manufacturer or not, a condition that the goods are reasonably fit for the purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

58 (2) For the purposes of paragraph (1)(e), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

58 (3) Any statement

- (a) that the goods are not new and unused;**
- (b) of the age of a motor vehicle;**
- (c) of defects in the goods; or**
- (d) of the general condition or quality of the goods shall be a part of the description of the goods**

for the purposes of sections 4, 5, 40 and 42, and of subsection 14(3), and if one or more of them applies, none of those statements has any effect unless it is included in the required description of the goods in the agreement or writing but the statement shall be deemed to be included in the agreement or writing if it is contained in a document that

- (e) is clearly identified as an appendix or schedule to the agreement or writing;**
- (f) is signed by the buyer and the seller;**
- (g) is attached to and forms part of the agreement; and (h) is delivered to the buyer with a copy of the agreement before delivery of the goods.**

58 (4) If section 4, 5, 40 or 42, or subsection 14(3) does not apply, a statement of a kind referred to in subsection (3) has no effect unless it is made in writing and

- (a) is contained in a notice that is readily visible to the buyer at or before the time of the sale and is so displayed as to make it clear that it refers to the goods; or**
- (b) is contained in a document that is delivered to the buyer before the buyer accepts the goods**

58 (5) If the goods are described as used in the manner required by this section, there shall be taken into account in deciding whether they are of merchantable quality

- (a) the fact that they are used; and**
- (b) the age of the goods as specified in their description, or if no age is specified, the age of the goods as understood by the buyer at the time of sale.**

58 (6) Unless otherwise expressly agreed in writing signed by the buyer, there shall be implied in every retail sale of services a condition on the part of the seller that the services sold shall be performed in a skillful manner.

58 (7) Nothing in this section excludes or affects any other condition or warranty relating to the goods or services, whether expressed or implied, as between the buyer and the seller or any person claiming through the seller who would, apart from this Act, be held to be bound thereby.

Consumer Protection Act, RSNWT 1988, c C-17, ss. 1, 70(1)(e)-(f) and (h).

Definitions

1 In this Act,

"buyer" includes a hirer on a retail hire-purchase: (acheteur)

"goods" means chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale, and chattels other than building materials that are to be affixed to land on or after delivery of the land: (objets)

"retail sale" in relation to goods or services or both, means any contract of sale of goods or services or both made by a seller in the course of his or her business except

- (a) a contract of sale of goods that are intended for resale by the buyer in the course of his or her business.
- (b) a contract of sale to a retailer of a vending machine or a bottle cooler to be installed in his or her retail establishment.
- (c) a contract of sale to a corporation, and
- (d) a sale in which the cash price of the goods or services or both exceeds \$7,500: (vente au détail)

"sale" includes any transaction by which means the whole or part of the price is paid or satisfied by the exchange of other real or personal property: (vente)

"sale of goods" includes any transaction in which goods are sold, whether separately or together with services: (vente d'objets)

"seller" includes a person who lets goods on hire by a retail hire-purchase: (vendeur)

...

Warranties on sale

70 (1) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire-purchase of goods:

- (e) a condition that the goods are of merchantable quality, except for the defects that are described;
- (f) a condition that the goods correspond with the description under which they are sold;
- (h) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgment of the seller, and the goods are of a description that it is in the course of the business of the seller to supply, whether the seller is the manufacturer or not, a condition that the goods are reasonably fit for the purpose, but in the case of a contract for the sale of a

specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

Consumer Protection Act, RSNWT (Nu) 1988, c C-17, ss. 1, 70(1)(e)-(f) and (h).

Definitions

1 In this Act,

"buyer" includes a hirer on a retail hire-purchase: (acheteur)

"goods" means chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale, and chattels other than building materials that are to be affixed to land on or after delivery of the land: (objets)

"retail sale" in relation to goods or services or both, means any contract of sale of goods or services or both made by a seller in the course of his or her business excep

- (a) a contract of sale of goods that are intended for resale by the buyer in the course of his or her business.**
- (b) a contract of sale to a retailer of a vending machine or a bottle cooler to be installed in his or her retail establishment.**
- (c) a contract of sale to a corporation, and**
- (d) a sale in which the cash price of the goods or services or both exceeds \$7,500: (vente au détail)**

"sale" includes any transaction by which means the whole or part of the price is paid or satisfied by the exchange of other real or personal property: (vente)

"sale of goods" includes any transaction in which goods are sold, whether separately or together with services: (vente d'objets)

"seller" includes a person who lets goods on hire by a retail hire-purchase: (vendeur)

...

Warranties on sale

70 (1) Despite any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire-purchase of goods:

- (e) a condition that the goods are of merchantable quality, except for the defects that are described:**
- (f) a condition that the goods correspond with the description under which they are sold:**

- (h) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgment of the seller, and the goods are of a description that it is in the course of the business of the seller to supply, whether the seller is the manufacturer or not, a condition that the goods are reasonably fit for the purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from the Defendants' misrepresentation of the fuel economy of 2019 and ~~2020~~ Ford Ranger and ~~2018-2019~~ 2018, 2019 and 2020 Ford F-150 trucks (the "Vehicles").

~~A Vehicle's fuel economy is determined in laboratory and "real world" road testing. The road tests provide measures of a Vehicle's rolling resistance and drag, in order to configure laboratory simulations accurately. The Defendants used inaccurate road load figures to boost the Vehicles' purported fuel economy.~~

~~As a result,~~ The Defendants misrepresented the fuel economy of the Vehicles and reaped substantial benefits from the marketing and sale of the Vehicles to the Plaintiff and the Class. The Plaintiff and the Class suffered losses caused by the Defendants' conduct.

~~This case seeks to represent all persons in Canada who purchased or leased any of the following vehicles: 2019 and 2020 Ford Rangers or 2018-2019 2018, 2019 and 2020 Ford F-150s.~~

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice

another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

- Builders Lien Act
- Divorce Act
- Family Relations Act
- Insurance (Motor Vehicle) Act

- Insurance (Vehicle) Act
- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act

OR

1. *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
2. *Class Proceedings Act*, RSBC 1996, c 50; and
3. *Competition Act*, RSC 1985, c C-34.