

This tipsheet is intended to provide general information and is not a substitute for legal advice.

The Fair Trading Act and associated regulations came into effect September 1, 1999. The Act consolidated the following seven Acts and now covers a number of new types of businesses and methods of doing business.

- *Unfair Trade Practices Act*
- *Collection Practices Act*
- *Consumer Credit Transactions Act*
- *Direct Sales Cancellation Act*
- *Licensing of Trades and Businesses Act*
- *Public Auctions Act*
- *Wage Assignments Act*

For general information, see the tipsheet *Fair Trading Act: What's New*.

After reading this tipsheet you will know:

- who is affected by the Act
- what are unfair practices
- the penalties under the Act
- how to prevent problems
- how to resolve problems
- where to get more information

Key Principles

The following principles apply to the *Fair Trading Act*.

- A person cannot waive his or her rights under the Act.
- The Act doesn't restrict other rights consumers may have under other legislation.
- If a consumer contract is vague, the terms of the contract are interpreted in favour of the consumer.

Application

The Act applies to unfair practices if:

- the supplier or consumer lives in Alberta;
- the offer or acceptance is made in or sent from Alberta; or

- the unfair practice is made or received in Alberta and involves a suppliers' representative.

Definitions

The *Fair Trading Act* applies to more transactions because the definitions of supplier, goods, and services have been expanded. The Act and regulations can cover consumer transactions now and in the future.

Consumer: A person who pays for goods or services that have been bought or leased; received as a gift, to be given as a gift, or as a contest prize.

Consumer transaction: Any sale, lease or other transfer of goods or services for payment. This includes a contest prize, and goods or services given to someone else.

Goods: Generally, material things which are used primarily for personal, family or household purposes, and also a new residential dwelling whether or not it is attached to land. Vouchers, defined as a promise of goods or services in the future, are included in the definition.

Services: The definition of services has expanded. It now includes any service for primarily personal, family or household purposes, including:

- services to maintain, improve, or repair goods or private homes;
- services involving membership in any club or organization if the club or organization is in a business to make a profit for its owners;
- the right to use property under a time share contract.

Supplier: A person who receives money as a result of a consumer transaction. This includes people who manufacture, produce, distribute, advertise or sell goods or services. The definition has been expanded to include any salesperson, representative or agent of the supplier.

Unfair Practices

The following are some examples of unfair practices. It is an offence under the Fair Trading Act for a supplier to commit an unfair practice. An unfair practice can occur before, during or after a consumer transaction. An unfair practice can occur even if a consumer transaction was not entered into or concluded.

- subjecting a consumer to undue pressure or influence to buy.
Example: A salesperson spends four hours in an elderly consumer's home trying to sell a vacuum cleaner.
- taking advantage of a consumer's inability to understand a consumer transaction.
Example: A seller convinces a consumer who can't speak or read English to sign a multi-page contract.
- charging a price that grossly exceeds the price that similar goods are readily available without informing the consumer of the difference, and the reason for the difference.
Example: A contractor doesn't tell a homeowner that the roofing contract they paid \$7500 for could be done by a competitor for \$2500.
- charging a price that is materially higher than the estimate unless the consumer has specifically agreed to the increase.
Example: A repair shop says it will cost \$150 to fix an item but the final bill is \$400.
- or connection that it doesn't.
Example: A home renovator says he is a master electrician when in fact he has no training or certification.

- representing that goods or services are of a particular standard, quality, grade, style or model, if that representation is untrue.
Example: A furniture dealer says a coffee table is solid wood, when in fact it is particleboard.
- representing that goods have or have not been used to an extent that is different from the fact.
Example: The seller tells a consumer that a car has 100,000 kilometers on it and the true mileage is 200,000 kilometers.
- representing that goods are new when they are used, deteriorated, altered or reconditioned.
Example: A computer is sold as new but the seller has reconditioned it.
- making an untrue statement about the good's prior history or use.
Example: The seller told the consumer that a car was driven by the owner of a dealership, when in fact it was a lease-back from a rental company.
- representing that goods or services are available in accordance with a prior representation when they are not.
Example: The seller says the goods were seized from customs when in fact they were purchased as regular inventory.
- representing that a voucher from another supplier can be used for goods or services at regular or discount price, if the first supplier knows (or ought to know) that the second supplier will not do so.
Example: A coupon-book seller sells the book knowing that the some of the businesses will not honour the coupons.
- representing that goods are available in a particular quantity if they are not.
Example: A store advertises it has 35 stereos for sale when in fact it has one stereo for sale.
- representing that goods or services will be supplied within a stated period if the supplier

knows (or ought to know) they will not be available.

Example: A hot tub sales company promises the tub will be installed on Christmas eve when it knows the installation staff will not be available.

- representing that a specific price benefit exists if it does not.
Example: A business advertises that an item is 'on sale' or '20% off' if the item has never been sold at the regular price.
- representing that a part, replacement, repair or adjustment is needed or desirable, if it is not.
Example: A shop replaces a dryer motor when only the belts needed replacing.
- representing that the supplier is asking for information, conducting a survey or making a solicitation that is not the fact.
Example: A direct seller asks a consumer to fill out a home-environment survey when in fact he or she wants to do a product demonstration.
- giving an estimated price for goods or services if they cannot be provided for that price.
Example: A renovation company tells a homeowner that it can replace the garage door for \$500 when it know the price for parts alone is \$700.
- representing the price of goods or services in a manner that a consumer might reasonably believe the price refers to a larger package of goods or services.
Example: A company advertises it will build a complete fence for a home for \$2,000 when the fence project is for the rear of the house only. Adding two more sides would cost \$1,500 more.
- representing that a consumer will obtain a benefit for finding other customers if it is unlikely that the consumer will obtain such a benefit.
Example: A multilevel marketer agrees to give you a reduced price on your next order when

you refer a friend to the company. The company never gives you a reduction, or charges you the same price.

- representing that a product will perform, has capability or length of life of goods or services unless:
 - *adequate and proper independent tests are done before the representation is made;*
 - *testing substantiates the claim; and*
 - *the representation is accurate and fairly reflects the results of testing.*

Advertisers cannot print, publish, broadcast, telecast or distribute an ad that contains an unfair practice. This doesn't apply if the advertiser acts in good faith and in the ordinary course of its business.

Penalties

The *Fair Trading Act* includes new penalties to fit the changing marketplace. Offences may result in:

- up to two years in jail;
- fines of up to \$100,000 or three times the amount gained as a result of the offence, which ever is greater; or
- both a jail term and a fine.

The Act allows the Courts to issue restitution orders. Not paying an order is also an offence.

How to Prevent Problems

You can prevent many consumer problems by following the rules listed below.

- Make sure you understand what the advertising says and what the salesperson tells you.
- Get answers to your questions before you buy.
- Never sign a contract unless you have read and understood it.
- Never sign a blank contract that a salesperson says will be filled in later.
- If a retailer's statements about the item (*Example: that the car has never been in an accident*) are an important reason why you

are buying it, ask that the statements be written into the sales agreement.

- Write down any verbal claims that a salesperson makes about the goods or services, if the claims are not listed in the contract or sales agreement.
- Always keep your bills of sale, contracts, warranties, instructions and cancelled cheques.

Resolving a Problem

Many consumer complaints can be settled by talking with the business or supplier. This is the first step to resolving a problem.

Consumers who have lost money as a result of an unfair practice can start an action in the Court of Queen's Bench. The action can be against any supplier who was part of the transaction.

As a result of the action the Court may:

- declare a practice unfair;
- award damages for the loss;
- award punitive damages;
- make awards for
 - ◆ specific performance,
 - ◆ restitution, or
 - ◆ rescission of the contract;
- grant a restraining order against the business.

Consumers have a responsibility to minimize any damage that could result from an unfair practice. They must also try to resolve the problem with the supplier before going to Court. The Court must ask if the consumer has taken these actions. The answers will affect its decision about how much it could award in damages.

If the claim is for under \$25,000 it can be heard before the Provincial Court of Alberta, Civil Division. This level of court can only award damages for losses suffered. The Director does not have to be notified of this type of action.

A consumer organization or a group of consumers can also start an action in the Court of Queen's Bench against a supplier.

If there is a serious violation of the Act, Alberta Government Services staff will investigate. The Director of Fair Trading has the authority to ask the supplier to sign an "undertaking". An undertaking is a voluntary promise to abide by the Act and to repay consumers who suffered as a result of the unfair practice.

If the supplier refuses to sign an undertaking, the Director can take court action, which may result in more serious penalties against the supplier. If the supplier signs an undertaking, and then breaks its terms, the court may also order the supplier to pay the Crown punitive damages.

A note about motor vehicle complaints

The Alberta Motor Vehicle Industry Council (AMVIC) is now responsible for investigating unfair practices when motor vehicles are repaired, leased or sold (including consignment sales) to consumers.

Alberta Motor Vehicle Industry Council
Box 11, Suite 303
9945 - 50 Street
Edmonton, Alberta T6A 0L4
Edmonton (780) 466-1140
Toll-free in Alberta 1-877-313-3833
Fax: (780) 462-0633
www.amvic.org

For more information

Alberta Government Services
Edmonton (780) 427-4088
Toll-free in Alberta 1-877-427-4088
www.gov.ab.ca/gs

A current version of this document is available on the Alberta Government Services' Web site at www.gov.ab.ca/gs

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