



## Consumer Protection Act Part II

### Marketplace Practices

This publication or any of its contents should not be considered a statement of law. The relevant sections of **The Consumer Protection Act (Part II)** should be consulted for any legal interpretation or application.

Saskatchewan's *Consumer Protection Act* provides increased protection for both consumers and businesses by making it illegal for a business to intentionally mislead or deceive consumers about a product or service, or take advantage of vulnerable consumers.

The *Act* only deals with transactions between a consumer and a business and does not reduce the consumer's responsibilities of shopping around and protecting their self interests.

The *Act* is based on the central idea that it is in the public interest, and in the interest of the parties, in a dispute, to attempt to resolve the problem between themselves without legal intervention.

Outlined below are some of the key elements of the *Act* for your ease of reference when considering your own particular situation.

**Section 5** is important as it defines an "unfair practice". In reading this section, it is important to understand a lot depends on the particulars of the situation as to

whether an actual "unfair practice" has occurred.

**Section 6** outlines some specific actions that fall within the definition of an unfair practice.

**Section 7** provides the statement of law the *Act* is based upon. Please note **Section 7(5)** states the Court will consider the "reasonableness" of the actions of both the supplier or the consumer in determining whether an unfair practice has occurred.

### Section 5 - Unfair practices

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 supplier 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
- (d) without limiting the generality of clauses (a) to (c), do anything mentioned in section 6.

### Section 6 - Specific unfair practices

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 where 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 and services involves or does not involve rights, remedies or obligations where 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 where the price of the goods and 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.

## Section 7 - Unfair practices prohibited

(1) No supplier shall commit an unfair practice.

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

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

(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.

(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.

## Remedies

**Sections 14 and 16** of the Act outline what action may be taken against a supplier by a consumer when feeling they have suffered a loss due to an unfair practice.

**Section 14(2)** provides the consumer with the option of taking action in the court against the supplier.

**Section 16** outlines what the court may order if finding that a supplier has committed an unfair practice. Please note **Section 16(3)** states the court, when finding an unfair practice has been committed, will consider whether the supplier took reasonable precautions and tried diligently to avoid an unfair practice. As well, the court will consider whether or not the consumer made a reasonable effort to minimize any loss resulting from the unfair practice and tried to resolve the dispute with the supplier before commencing any action.

## Section 14 - Consumer may commence action

(1) In this section and sections 15 and 16, "**court**" includes the Provincial Court of Saskatchewan, but only where the action or relief sought is within the jurisdiction of that court pursuant to *The Small Claims Act*.

(2) A consumer who has suffered a loss as a result of an unfair practice may commence an action in the court against a supplier.

(3) A consumer shall not commence an action where the director has made application to the court on the consumer's behalf pursuant to section 15 respecting the same supplier and transaction.

## Section 16 - Court order

(1) Where the court finds that a supplier has committed an unfair practice, 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, including punitive or exemplary damages;

(c) grant an injunction restraining the supplier from continuing the unfair practice;

- (d) make an order of specific performance against the supplier;
- (e) order the supplier to comply with a voluntary compliance agreement entered into by the supplier; or
- (f) make any other order the court considers appropriate.

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

(3) Where the court finds that an unfair practice 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; and
- (b) to resolve the dispute with the supplier before commencing the action.

A printed copy of *The Consumer Protection Act* is available free of charge on the Internet or for a nominal fee by contacting:

Office of the Queen's Printer  
Saskatchewan Justice  
Telephone: (306) 787-6894  
Toll free: (within Saskatchewan) -  
1-800-226-7302  
E-Mail: [qprinter@justice.gov.sk.ca](mailto:qprinter@justice.gov.sk.ca)  
Internet: <http://www.qp.gov.sk.ca>

For information on commencing court action against a supplier, see the attached material prepared by Small Claims Court. More detailed information is available from the local Provincial Court.

For more information contact:

**Ministry of Justice  
and Attorney General  
Consumer Protection Branch  
Suite 500  
1919 Saskatchewan Dr.  
Regina, SK S4P 4H2  
Phone (306) 787-5550  
Toll free: 1-888-374-4636  
(Within Saskatchewan)  
Fax: (306) 787-9779**

Email:  
[consumerprotection@justice.gov.sk.ca](mailto:consumerprotection@justice.gov.sk.ca)

<http://www.justice.gov.sk.ca/cpb>

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A current version of these and other consumer tips is available at the Consumer Protection Branch website at <http://www.justice.gov.sk.ca/cpb>  
Most public libraries have Internet access available if you do not have Internet at home.

This tips sheet is available for print or copy free of charge. Please check the website or contact our office to make sure you have the most up to date copy.

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## **Bring the following information for the small claims clerk:**

- The correct name and address of the defendant (who you are suing).
- Full details of the events, dates, location, etc.
- The original documents, your demand letter, invoices, contracts, cancelled cheques, estimates, or any other documents that you intend to use to prove your claim. If you have a “NSF” cheque(s), bring the cheque(s), the receipt from the bank and the bank envelope in which the cheque(s) was returned to you.
- If you are suing a corporation, bring proof of corporate status. Contact Corporations Branch, Saskatchewan Justice, 1871 Smith Street, Regina, SK S4P 3V7, telephone: (306) 787-2962.

## **Representing yourself in court:**

1. Identify the central question, issue or loss. Types of actions heard in Small Claims Court are for debts or damages, recovery of personal property and consumer claims.
2. Determine what solution you are seeking from the court.
3. Research and define legal or other arguments that support your claim including relevant consumer legislation. Information on Consumer Law can be obtained from your lawyer or from the Consumer Protection Branch at 1-888-374-4636 or [www.saskjustice.gov.sk.ca/cpb](http://www.saskjustice.gov.sk.ca/cpb). Also Queen’s Printer provides free access to up-to-date version of all Government of Saskatchewan Act and Regulations at 1-800-226-7302 or “Free Law” on this website or [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca). For additional consumer information you can also link to Public Legal Education Association (PLEA) from this website or [www.plea.org](http://www.plea.org). Be organized when presenting your case, have all documents, evidence (photographs, if applicable), expert witness(s) and your facts easily accessible and in a logical order.
4. Write out your presentation and practice beforehand by speaking into a mirror or to an acquaintance.
5. Try and anticipate questions you may be asked.
6. The Provincial Court has released a Practice Directive and created a Small Claims Process flowchart which includes links to required documents and forms. The Practice Directive and flowchart can be found at <http://www.sasklawcourts.ca>.

## **What not to do:**

1. Present irrelevant information or sound off concerning issues that do not specifically pertain to the case as this will confuse or annoy the adjudicator.
2. Be unorganized, as this will also annoy the adjudicator.
3. Become emotional or angry during your presentation.

## **How much will this cost?**

1. Small Claims can decide legal dispute involving the monetary limit of (\$20,000.00).
2. Court fees for filing a claim
  - Up to \$2,000.00 \$20.00
  - If claim is over \$2,000.00 1% of the amount of the claim rounded off to the nearest whole dollar.
3. Should your claim be over the \$20,000.00, you may still proceed with Small Claims Court but you would need to abandon the additional amount over the \$20,000.00.
4. If you are not claiming a specific sum of money, the fee is approximately \$30.00.

## **Demand letter:**

The following points will help you write an effective letter of complaint.

- Type your letter. Keep it short. Letter should be marked “**Without Prejudice**” Send the letter by a method that will prove the letter was received. Keep copy of the letter and proof that the letter was delivered.
- Ensure you complain to the person who has the authority to do something about your complaint.
- Identify the date and location of the purchase.
- Explain the problem, in your own words.
- Outline the action you have taken to date.
- Specify the solution you expect and provide a reasonable time period to have the problem(s) rectified (2 weeks is usually sufficient time).
- Provide a daytime phone number
- Enclose copies of the relevant documents, keep the originals.

## **Further consumer law references**

- Consumer Protection Act [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca)
  - Unfair Practices (Part II)
  - Warranties (Part III)
  - Unsolicited Goods and Credit Cards (Part IV)
- Public Legal Education Association (PLEA) [www.plea.org](http://www.plea.org).
- Handbook - Information on Small Claims Court Actions
- Small Claims Information Package – as prepared by Jan Kernaghan
- Recent provincial court judgments in Saskatchewan  
[www.canlii.org/sk/cas/skpc](http://www.canlii.org/sk/cas/skpc)