

Unfair Business Practices Forbidden By Consumer Protection Law

Including Statutory Rights Protecting Consumers From Improper Conduct Including False Representations, among other things

Helpful Guide to Understanding Consumer Protections and Rights Within Business Dealings



The *Consumer Protection Act, 2002*, [S.O. 2002, Chapter 30, Schedule A](#) (the "*Act*") statutorily prohibits practices prescribed as "unfair practices" relating to false, misleading, or deceptive misrepresentations, within the relations between sellers of goods and services and consumers. As per [s. 14\(2\)](#), examples of false, misleading, or deceptive misrepresentations include, among other things:

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.

Punitive Damages Are Possibly Awarded

Where a court finds that a seller has engaged in an "unfair practice", in addition to awarding the consumer with any other compensatory remedy available in law, the court may also punish the seller by awarding [exemplary or punitive damages](#) in favour of the consumer; per [section 18\(11\)](#) of the *Act*:

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

Joint & Several Liability

Of further significant benefit to the consumer are the protections provided by the '[joint and several](#)' liability provision statutorily imposed in [s.18\(12\)](#) of the *Act* provides that each person having engaged in an "unfair practice" must share or contribute, even if disproportionately, to any award in favour of the consumer. This

provision is especially helpful in ensuring that consumers obtain their rightful compensation from the individual persons who engaged in an "unfair practice" rather than being limited to obtaining compensation from the person or entity with whom the consumer entered into contract.

While a common law right in tort law provides that a consumer who is harmfully enticed into bad dealings may bring legal action against any person, or persons, who made [fraudulent misrepresentations](#), this statutory imposition of the joint and several liability doctrine should add clarity to a right of action, especially when the "unfair practice" was committed by directors and officers of a corporation who may attempt to confuse courts by seeking protections under the false guise of a 'corporate veil'.

This can, and does, happen where unscrupulous corporate business owners engage in "unfair practices" or otherwise make fraudulent misrepresentations in the course of dealings with consumers and then try to 'hide' behind the corporate veil by claiming that director or officer status provides a protection against personal liability for wrongdoing occurring while acting on behalf of the corporation. While this is an inaccurate interpretation of the limited personal liability protection afforded to directors and officers who directly engage in [tortious conduct](#), confusion within the courts can occur. Accordingly, by statutorily imposing the joint and several liability doctrine, the *Consumer Protection Act* clearly prevents a director or officer who engaged 'hands-on' in "unfair practices" from avoiding personal liability alongside the corporation that has directly entered into a contract with the consumer.

Summary Comment

The *Act* provides extensive protections in favour of consumers and so to ensure that businesses, and business people, engage fairly with consumers. While many of the protections serve to override the caveat emptor (buyer beware) doctrine generally found within the common law, consumers should remain diligent and prudent within business dealings. Equally benefiting, honourable businesses and business people benefit from the *Act* whereas the consumer protections help to ensure overall conduct within the business community is kept to a level playing field.