

Under the basic premise of common law, *caveat emptor* or buyer beware is the rule that applies to all purchases and contracts. This means that the responsibility for knowing all that should be known about a product lies with the consumer.

Because this principle of common law can at times be too sweeping, most jurisdictions in Canada—including Saskatchewan—have passed laws to mitigate *caveat emptor*.

In Saskatchewan, *The Consumer Protection and Business Practices Act* is the legislation which outlines seller and manufacturer responsibilities for all consumer products sold in the province. The act gives consumers certain “statutory warranties” that the seller or manufacturer cannot legally limit or avoid. However, these warranties do not apply to private sales.

Some statutory warranties created by *The Consumer Protection and Business Practices Act* include:

- The seller has a right to sell the goods
- The goods will not have any liens against them, unless the buyer has been told about them
- The goods must match their description
- The goods must be of acceptable quality, except for defects that the consumer was told about, or that the consumer had an opportunity to discover
- The product must be durable for a reasonable period of time
- Spare parts and repair facilities must be available for a reasonable time after the date of purchase

Second-hand dealers can exclude or change any of the statutory warranties if they let the consumer know about these exclusions or changes before the purchase is made. Guarantees by second-hand dealers are best made in writing.

In addition to the warranties spelled out in the law, there are such things as express warranties. Express warranties are defined broadly to include promises, representations and statements of fact or opinion that can reasonably be interpreted by a consumer as a promise relating to the sale, quality, quantity, condition, performance, efficacy, use or maintenance of the product. For example, if a salesperson tells you that the boots you are buying are waterproof, then this would be considered an express warranty.

Sales Puffs are not considered an express warranty. A Sales Puff is an opinion, not a fact. For example, if a salesperson says “These neon pink boots are the best-looking footwear on the market,” they are merely stating an opinion. It is a Sales Puff.

Some products are also protected by written warranties. Written warranties may be given by a seller or manufacturer that are in addition to any of the statutory warranties that consumers have by law. These warranties cannot exclude or place limits on the statutory warranties given by law. However, retail sellers can opt out of additional warranties if they notify the purchaser in writing before the sale that they do not adopt the additional warranty.

## REMEDIES

If a warranty is breached consumers are entitled to certain remedies.

If the product is repairable, the consumer must give the seller reasonable time to repair it, at no cost to the consumer.

If the product or services are substantially different from what a consumer could reasonably expect given things like the purchase price or description a consumer can choose to return the product for a refund instead of getting it repaired.

If a product cannot be repaired, the consumer can reject the item and get a refund (less the value of any use received from the goods). This applies even where there is a store policy of No Refunds.

If the seller won't repair the product, the consumer can get someone else to repair it and sue for reimbursement from the seller, including damages for any expenses incurred as a result.

If a seller or manufacturer wilfully breaches a statutory warranty, a court may award extra damages to the consumer.

Warrantors (the manufacturers or sellers giving the warranty) are responsible for the costs of taking the product apart and putting it together again, unless the consumer agrees to pay those costs. The consumer is responsible for getting the product to the manufacturer or seller so that it can be repaired. However, if the size, weight or installation of the product means that the removal or transport would be a "significant cost" to the consumer, the seller or manufacturer must pay these costs.

## THE DIRECT SELLERS ACT

Special consumer protections apply to sales made by what are called direct sellers. In Saskatchewan, direct sellers are considered persons who sell items by going door-to-door, by calling over the phone, or by holding a home party to sell goods.

## CONSUMER CASE STUDY ONE: RYDER v. MOUNTAIN ED'S BIKE SHOP

Jason Ryder bought a brand new mountain bike. He was planning to ride on some rugged trails, and maybe enter some races. The salesperson at Mountain Ed's Bike Shop told him it was a solid, well-made bike that would be good for trail riding. On Jason's first major trek of the spring, one of the pedals on his new bike flew off. Then the front wheel came loose, causing Jason to wipe out and suffer bruises and scrapes.

Jason took Mountain Ed to Small Claims Court to get a new bike and claim damages for his injuries.

### TALKING POINTS

1. Should Jason get a new bike from the dealer?
2. Would it have made a difference if the salesperson had not said what he did about the bike?
3. Is Mountain Ed responsible for Jason's injuries? What about the manufacturer?

### THE JUDGE'S DECISION

The judge ordered that Mountain Ed replace Jason's bike free of charge. She found that the bike was defective and not suitable for its purpose—that is, off-road and trail riding.

Saskatchewan law says that if a consumer product is not of reasonable quality, the buyer is entitled to have it replaced or repaired by the manufacturer or dealer in a reasonable period of time. The law also says that a consumer product must be fit for the purpose for which it was intended. The judge said that Jason was using the bike as it was intended to be used and the bike did not function properly. Because the bike was so badly damaged, Jason was entitled to a new bike.

The judge also ordered the manufacturer of the bike to pay Jason \$200 for the damages he suffered. She said the manufacturer has a duty to make sure its bikes do not fall apart when people are riding them and to realise that if they do, the riders will get hurt.

## CONSUMER CASE STUDY TWO: **B. v. LEATHER RANCH**

Mr. B. bought a leather coat at The Leather Ranch for his wife. He told the sales clerk that the coat was a gift. The clerk told him that if the coat didn't fit, or if his wife didn't like it, it could be exchanged for anything in the store. At the front counter a large sign stated "no money refunded" and this was also printed on the invoice.

Mrs. B. later came to the store and chose a different coat, which cost \$600 less. When she learned that she would receive a credit note for the difference in price, not cash, she refused to purchase the coat. She returned the original coat and received a credit note.

Mr. B. sued. The coat was not faulty. However, he claimed that the store breached warranties that entitled him to reject the coat and receive a refund of the purchase price.

### TALKING POINTS

1. Is Mr. B. entitled to a refund?
2. Would the result be different if Mrs. B. wanted to return the jacket because it wasn't warm enough for her standards?

### THE JUDGE'S DECISION

The judge found that a term of the contract was that there would be no cash refund. The judge found that Mr. B. had not asked whether he could return the coat and receive a cash refund, nor had the store said that they would refund his money.

There was no express warranty as to the quality of the jacket. Simply displaying the coat in the store window does not trigger a warranty under *The Consumer Protection and Business Practices Act*. Nor was there an implied warranty that the coat was fit for a "particular purpose." That phrase contemplates an article which will be put to a specific use. Here, Mr. B. was looking for a gift for his wife, not for a specific article. The judge stated that anything could constitute a gift. Even if there was a breach, it was not of a substantial character, which would have entitled Mr. B. to receive his money back.

## CONSUMER CASE STUDY THREE: **S. v. G.**

Carol bought a used Pontiac Sunbird from Jane for \$1,700. Soon she began to have trouble with the vehicle. The car was old, with high mileage. Some defects were apparent even when she first inspected it. Nonetheless, Carol expected that she was buying a car that was in drivable condition and that would perform satisfactorily for a period of time

Not long after buying the car, a mechanic told her that it was not in drivable condition. The brakes were in a dangerous state, and the car had other significant problems. Later still, a complete engine rebuild was required.

Carol sued Jane for a portion of the cost of repairs to the brakes and the timing belt. Carol alleged that Jane assured her that these parts were in good working order. Jane had written "as is" on the bill of sale.

### TALKING POINTS

1. Who is ordinarily responsible for checking the condition of a car that is being sold privately (ie. not by a car dealer)?
2. Does *The Consumer Protection and Business Practices Act* apply to a private sale?
3. Does the fact that Jane wrote "as is" on the bill of sale mean that Carol is out of luck?

### THE JUDGE'S DECISION

The sale was a private sale and *The Consumer Protection Act and Business Practices Act* did not apply. The act only applies when a dealer sells a used car. Thus, Carol could not take advantage of the warranties available under that legislation.

A buyer is responsible for checking the state of a used car. The phrase that describes the buyer's position is *caveat emptor* (buyer beware). However, Jane made an oral representation that the brakes were in good condition, which in reality was a misrepresentation. That representation overrode the words "as is" that were written on the bill of sale. The judge ruled that Jane was therefore responsible for part of the cost of repairing the brakes and the timing belt.

## CONSUMER CASE STUDY FOUR: T. v. V.

Mr. and Ms. T. bought a vacuum cleaner from a door-to-door salesperson. It cost \$2,434.33. Ms. T. testified that the salesperson was extremely persistent and would not take no for an answer. He refused to leave their home. Finally, they decided they would buy the vacuum cleaner to get rid of the salesperson and then cancel the sale.

The contract contained a notice under *The Direct Sellers Act* informing the buyer that the buyer has a right to cancel the contract within 10 days, and that no reason is necessary to cancel. The notice also gave details of how to cancel the contract, saying that it must be by a method that will allow you to prove that you gave notice.

Over the next few days they said they had phoned the Winnipeg telephone number shown on the contract several times, but got no answer.

After using the vacuum cleaner a few times it began to malfunction and they packed it away.

About a year later Ms. T. sent the powerhead to Mr. V. (whose company sold the vacuums) for repairs. He put a new belt on it and returned it. Soon after, Ms. T. sent the entire unit to Mr. V. who refused to accept it. It was at this point when Ms. T. filed a lawsuit.

### TALKING POINTS

1. Did Ms. T. take the necessary steps to cancel the contract?
2. Are Mr. and Ms. T. entitled to compensation because the vacuum broke down after being used just a few times? How soon after it broke down would they have to complain to be compensated?
3. Should the owner of the company and/or the salesperson be penalised for using forceful sales tactics that resulted in Mr. and Ms. T. buying a vacuum just to get rid of the salesperson?

### THE JUDGE'S DECISION

Mr. and Ms. T.'s claim under *The Direct Sellers Act* failed. They did not send a registered letter or use another method of delivery that would allow them to prove that they gave notice of cancelling the contract. The judge wrote "The provisions of the Act regarding notice of cancellation were enacted to provide a simple, low-cost method for a buyer to cancel a direct sale, no questions asked. Ms. T. did not take the simple steps open to her in the days immediately after the sale, nor did she take timely or reasonable steps thereafter to deal with the matter." This part of their claim was dismissed.

Mr. and Ms. T. also had a claim under *The Consumer Protection Act*, which provides a warranty that products are to be durable for a reasonable period. The judge noted that a machine costing \$2,400 should be "of great durability and outstanding performance." It was not. However, a buyer must act within a reasonable period of time. The judge considered that a reasonable time, in the circumstances, would be three months. Because Mr. and Ms. T. did not take any steps to have the vacuum cleaner repaired within three months, this claim also failed.

Concerning a third issue, Mr. V. was found to have permitted "unfair practices" because his salesperson refused to leave without making a sale. The judge noted that Mr. V. demonstrated that he attempts to operate ethically, but held him responsible nevertheless for the undue pressure exerted by his salesperson. The judge ordered Mr. V. to pay Mr. and Ms. T. \$300 in punitive damages. The judge noted that if the claim had been brought when the problem first arose the contract might have been cancelled or greater punitive damages ordered.