

# HANDOUT

## ***THE CONSUMER PROTECTION ACT***

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 of this, most jurisdictions in Canada, including Saskatchewan, have passed special statutes to mitigate caveat emptor.

In Saskatchewan, *The Consumer Protection Act* is the legislation which outlines sellers’ and manufacturers’ responsibilities for all consumer products sold in the province. The Act gives consumers certain warranties that the seller or manufacturer cannot legally limit or avoid. However, these warranties do not apply to private sales. Some of those warranties are as follows:

- 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.
- Goods purchased by description (such as from a catalogue) 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.

The acceptable quality of second-hand goods is determined by what you reasonably would expect of goods of that description, age, and price. Guarantees by second-hand dealers are best made in writing.

### **PRIVITY OF CONTRACT**

In Saskatchewan, privity of contract – the legal rule that only those who are party to a contract can sue if problems arise – does not apply under *The Consumer Protection Act*. If someone is injured while properly using a product, that person can sue the manufacturer *or* seller for any personal injury that occurred as a result of the defective product.

Say you went to your favorite restaurant and purchased a muffin, only to break your tooth because there was a stone inside the muffin. Even if the restaurant purchased the muffin from a bakery for resale, you would still have the option of suing the restaurant for any costs associated with fixing your tooth. This is because *The Consumer Protection Act* allows for individuals to sue retailers because of the products they sell, even if the problem was caused by the manufacturer.

If the product is repairable, the consumer must give the seller reasonable time to repair it, at no cost to the consumer. If a product cannot be repaired, the consumer can reject the item and get a refund.

“Sales Puffs” are not considered warranties. For example, if you purchase a neon pink sweater because the salesperson says “It is the best-looking sweater on the market” you would not have recourse if you later disagreed. It is merely an opinion which is not part of the bargain.

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Because the law in Saskatchewan applies the “Right of First Remedy”, one cannot directly take a supplier of a good or service to court if they are dissatisfied. Instead, the person or group that sold you the good must be first given a change to rectify the situation. If the seller does not meet your satisfaction, then you as a consumer have the option of taking further actions.

## CONSUMER CASES

### Ryder v. Mountain Ed’s Bike Shop

Jason Ryder bought a brand new mountain bike and 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 some pretty bad bruises and scrapes. Jason took Mountain Ed to Small Claims Court to get a new bike and damages for his injuries.

#### *Questions for Thought*

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?

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## **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. 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. He claimed that the store breached warranties that entitled him to reject the coat and receive a refund of the purchase price.

### *Questions for Thought*

1. Is Mr. B. entitled to a refund?
2. Would the result be different if Mrs. B. was unable to find a coat that fit?
3. Concerning the question of whether there was a warranty, would there have been a warranty if Mr. B. had been shopping for a coat of a certain style for Mrs. B.'s role in a play?...a leather jacket suitable for riding a motorcycle?



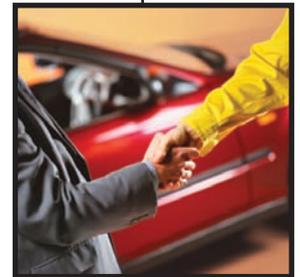
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**S. v. G.**

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. Carol expected that she was buying a car that was in drivable condition and that would perform satisfactorily for a period of time, but 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. In this Small Claims Court action 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.

*Questions for Thought*

1. Who is ordinarily responsible for checking the condition of a car that is being sold privately (i.e. not by a car dealer)?
2. Does *The Consumer Protection 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?



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## 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. 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. Then Ms. T. started this lawsuit.

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. *The Direct Sellers Act* only applies to door-to-door salespersons and telephone solicitors.

### Questions for Thought

1. Did Ms. T. take the necessary steps to cancel the contract?
2. Are Mr. and Ms. T. entitled to compensation because the expensive 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 penalized for using forceful sales tactics that resulted in Mr. and Mrs. T. buying a vacuum just to get rid of the salesperson?

