

focus

on Technology



FRASER MILNER CASGRAIN LLP

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NEW E-COMMERCE CONSUMER PROTECTION LEGISLATION IN ONTARIO

On December 13, 2002 the *Consumer Protection Act, 2002* (the "Act") received Royal Assent, however, it has not yet been proclaimed in force. The Act amends several statutes in relation to consumer protection, and the provisions which regulate online agreements will be of particular interest to suppliers of goods or services over the internet.

Online agreements with consumers are regulated and, subject to certain requirements that are to be prescribed in the regulations, a supplier of goods or services over the internet is required to: (a) allow the consumer the opportunity to accept or decline the agreement and allow the consumer to correct information provided; (b) allow the consumer to access the agreement and retain and print the agreement; (c) deliver a written copy of the agreement to the consumer within a prescribed period following the entering into of the agreement (deemed delivery will be prescribed in the regulations); and (d) disclose certain information to the consumer to be prescribed in the regulations. Failure by a supplier to comply with the above requirements will result in the consumer having the right to cancel the agreement within 7 days of delivery of the agreement by the supplier. As well, a consumer may cancel an internet agreement within 30 days after the agreement is entered into if the supplier fails to provide the consumer with a copy of the agreement.

The following are some other key provisions of the Act which apply to both online and traditional paper agreements with consumers:

- Consumers now have the right to cancel a contract if goods are not provided or services are not commenced within 30 days of the date specified in the contract, unless the consumer grants permission for delayed delivery;
- Consumers are now protected against misleading estimates and against practices such as holding their goods to renegotiate

contracts and the final price must be within 10 per cent of the estimate; and

- Negative option marketing (i.e. demanding payment for unsolicited goods or services) is prohibited.

For further information on this legislation please contact Tom Reaume of our Ottawa office at (613) 783-9610.

APPLICATION OF THE *COMPETITION ACT* TO REPRESENTATIONS ON THE INTERNET

In order to address consumer concerns respecting misleading representations and deceptive marketing practices made over the Internet, the Competition Bureau (the "**Bureau**") has issued an information bulletin entitled "*Application of the Competition Act to Representations on the Internet*" (the "**Bulletin**"). The Bulletin focuses on the application of the misleading representations and deceptive marketing practices provisions of the *Competition Act* (the "**Act**") to the Internet.

The Bulletin sets out the general rule that the party that has decision-making authority over the representations will be considered responsible for false or misleading representations. Those who design, host or provide Internet access to web sites will only be liable for misleading representations if there is a high degree of control exercised over the content by such parties. The Bulletin suggests that the business itself will likely be the focus of any investigation; however, determining whether additional parties played a role in such breach will be determined on a case-by-case basis. The Bulletin confirms that the provisions and penalties for breaching such provisions will apply to on-line false and misleading representations.

The Bulletin provides practical advice to businesses on how to comply with the misleading representations and deceptive marketing provisions of the Act, including:

- strategies for displaying disclaimers to ensure that they are "noticeable and likely to be read";
- ensuring that pricing differences are highlighted where Internet pricing differs from in-store pricing;
- tips for making representations about products; and
- issues relating to presenting information about businesses.

The Bulletin addresses jurisdictional issues as a result of global accessibility of the Internet and confirms that representations made on-line from Canada that are accessible on-line in Canada are required to comply with the Act. The Bulletin recommends that those making representations either in Canada or from outside Canada that are accessible on-line from Canada should seek legal advice on their liability in Canada.

For information on this topic, please contact Rachael Solursh of our Toronto office at (416) 863-4569.

CALLING ALL BC ANGELS

The British Columbia Government has recently introduced the *Small Business Venture Capital Amendment Act, 2003* (the "SBVCAA") which is expected to deliver a significant boost to angel investment in British Columbia. It is anticipated that the SBVCAA will become law by April 1, 2003, if not sooner.

The *Small Business Venture Capital Act* provides for the management of British Columbia's Equity Capital Program. This Program provides a 30% tax credit to British Columbia residents who invest in small, British Columbia based companies, subject to certain restrictions. The SBVCAA introduces several changes to the Program, one of the most important of which is the introduction of a "direct investment model".

Under the existing legislation, investors wishing to take advantage of the Program have to invest through a special purpose vehicle known as a "venture capital corporation". The SBVCAA provides another option. Under the direct investment model, arm's length investors will be able to invest directly in eligible small businesses and still claim the 30% tax credit.

It is expected that the direct investment model will decrease costs and red tape for eligible small businesses, as companies will no longer have to establish a venture capital corporation to access tax credits for their investors. The direct investment model was developed with angel investment in mind and it is expected these amendments will have a significant impact on the availability of angel funding.

For information on this topic, please contact Blair Horn at (604) 443 7116 or Sarah Westwood at (604) 622 5167 of our Vancouver office.

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