

Legislation Excerpts

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1. Competition Act – sections 52(1), (2) (4) and 74.01 – 74.07

Part VI

Offences in Relation to Competition

False or misleading representations

52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Proof of deception not required

(1.1) For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that any person was deceived or misled.

Permitted representations

(1.2) For greater certainty, a reference to the making of a representation, in this section or in section 52.1, 74.01 or 74.02, includes permitting a representation to be made.

Representations accompanying products

(2) For the purposes of this section, a representation that is

- (a) expressed on an article offered or displayed for sale or its wrapper or container,
- (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,
- (c) expressed on an in-store or other point-of-purchase display,
- (d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or
- (e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

Deemed representation to public

(3) Subject to subsection (2), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) is deemed to have made that representation to the public.

General impression to be considered

(4) In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

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Offence and punishment

(5) Any person who contravenes subsection (1) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Defence

60. Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

Part VII.1 Deceptive Marketing Practices *Reviewable Matters*

Misrepresentations to public

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect;

(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

(c) makes a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

Ordinary price: suppliers generally

(2) Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

(a) have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

(b) have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

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Ordinary price: supplier's own

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

(a) has not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

(b) has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

References to time in subsections (2) and (3)

(4) For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

(a) the price at which products have been or are supplied; or

(b) the price at which products will be supplied.

Saving

(5) Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

General impression to be considered

(6) In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

1999, c. 2, s. 22.

Representation as to reasonable test and publication of testimonials

74.02 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that

(a) such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or

(b) such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

1999, c. 2, s. 22.

Representations accompanying products

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74.03 (1) For the purposes of sections 74.01 and 74.02, a representation that is

(a) expressed on an article offered or displayed for sale or its wrapper or container,

(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

(c) expressed on an in-store or other point-of-purchase display,

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

Representations from outside Canada

(2) Where a person referred to in subsection (1) is outside Canada, a representation described in paragraph (1)(a), (b), (c) or (e) is, for the purposes of sections 74.01 and 74.02, deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

Deemed representation to public

(3) Subject to subsection (1), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in section 74.01 is deemed to make that representation to the public.

1999, c. 2, s. 22.

Definition of "bargain price"

74.04 (1) For the purposes of this section, "bargain price" means

(a) a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or

(b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily supplied.

Bait and switch selling

(2) A person engages in reviewable conduct who advertises at a bargain price a product that the person does not supply in reasonable quantities having regard to the nature of the market in which the person carries on business, the nature and size of the person's business and the nature of the advertisement.

Saving

(3) Subsection (2) does not apply to a person who establishes that

(a) the person took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond the person's control that could not reasonably have been anticipated;

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(b) the person obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed the person's reasonable expectations; or

(c) after becoming unable to supply the product in accordance with the advertisement, the person undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied with it during the time when the bargain price applied, and the person fulfilled the undertaking.

Sale above advertised price

74.05 (1) A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.

Saving

(2) This section does not apply

(a) in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained in it are subject to error if the person establishes that the price advertised is in error;

(b) in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement;

(c) in respect of the supply of a security obtained on the open market during a period when the prospectus relating to that security is still current; or

(d) in respect of the supply of a product by or on behalf of a person who is not engaged in the business of dealing in that product.

Application

(3) For the purpose of this section, the market to which an advertisement relates is the market that the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise.

Promotional contests

74.06 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where

(a) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;

(b) distribution of the prizes is unduly delayed; or

(c) selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

Saving

74.07 (1) Sections 74.01 to 74.06 do not apply to a person who prints or publishes or otherwise disseminates a representation, including an advertisement, on behalf of another person in Canada, where the person establishes that

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the person obtained and recorded the name and address of that other person and accepted the representation in good faith for printing, publishing or other dissemination in the ordinary course of that person's business.

Non-application

(2) Sections 74.01 to 74.06 do not apply in respect of conduct prohibited by sections 52.1, 53, 55 and 55.1.

Civil rights not affected

74.08 Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of a civil right of action.

Definition of "court"

74.09 In sections 74.1 to 74.14 and 74.18, "court" means the Tribunal, the Federal Court or the superior court of a province.

Determination of reviewable conduct and judicial order

74.1 (1) Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

(a) not to engage in the conduct or substantially similar reviewable conduct;

(b) to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including

(i) a description of the reviewable conduct,

(ii) the time period and geographical area to which the conduct relates, and

(iii) a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed; and

(c) to pay an administrative monetary penalty, in such manner as the court may specify, in an amount not exceeding

(i) in the case of an individual, \$50,000 and, for each subsequent order, \$100,000, or

(ii) in the case of a corporation, \$100,000 and, for each subsequent order, \$200,000.

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2. Business Practices and Consumer Protection Act – section 4

4 (1) In this Division:

"deceptive act or practice" means, in relation to a consumer transaction,

- (a) an oral, written, visual, descriptive or other representation by a supplier, or
- (b) any conduct by a supplier

that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;

"representation" includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.

(2) A deceptive act or practice by a supplier may occur before, during or after the consumer transaction.

(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

- (a) a representation by a supplier that goods or services
 - (i) have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have,
 - (ii) are of a particular standard, quality, grade, style or model if they are not,
 - (iii) have a particular prior history or usage that they do not have, including a representation that they are new if they are not,
 - (iv) are available for a reason that differs from the fact,
 - (v) are available if they are not available as represented,
 - (vi) were available in accordance with a previous representation if they were not,
 - (vii) are available in quantities greater than is the fact, or
 - (viii) will be supplied within a stated period if the supplier knows or ought to know that they will not;

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(b) a representation by a supplier

- (i) that the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have,
- (ii) that a service, part, replacement or repair is needed if it is not,
- (iii) that the purpose or intent of a solicitation of, or a communication with, a consumer by a supplier is for a purpose or intent that differs from the fact,
- (iv) that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,
- (v) about the authority of a representative, employee or agent to negotiate the final terms of a consumer transaction if the representation differs from the fact,
- (vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,
- (vii) that a consumer will obtain a benefit for helping the supplier to find other potential customers if it is unlikely that the consumer will obtain the benefit,
- (viii) that appears in an objective form such as an editorial, documentary or scientific report if the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or promotion, or
- (ix) to arrange for the consumer an extension of credit for a fee, unless the fee is deducted from the advance, as defined in section 57 [*definitions*];

(c) a representation by a supplier about the total price of goods or services if

- (i) a person could reasonably conclude that a price benefit or advantage exists but it does not,
- (ii) the price of a unit or instalment is given in the representation, and the total price of the goods or services is not given at least the same prominence, or
- (iii) the supplier's estimate of the price is materially less than the price subsequently determined or demanded by the supplier unless the consumer has expressly consented to the higher price before the goods or services are supplied;

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3. Business Practices and Consumer Protection Act – section 5

Prohibition and burden of proof

5 (1) A supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction.

(2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

Legislation Excerpts

4. Business Practices and Consumer Protection Act – Sections 8, 9 and 10

Unconscionable acts or practices

8 (1) An unconscionable act or practice by a supplier may occur before, during or after the consumer transaction.

(2) In determining whether an act or practice is unconscionable, a court must consider all of the surrounding circumstances of which the supplier knew or ought to have known.

(3) Without limiting subsection (2), the circumstances that the court must consider include the following:

(a) that the supplier subjected the consumer or guarantor to undue pressure to enter into the consumer transaction;

(b) that the supplier took advantage of the consumer or guarantor's inability or incapacity to reasonably protect his or her own interest because of the consumer or guarantor's physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of the consumer transaction, or any other matter related to the transaction;

(c) that, at the time the consumer transaction was entered into, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers;

(d) that, at the time the consumer transaction was entered into, there was no reasonable probability of full payment of the total price by the consumer;

(e) that the terms or conditions on, or subject to, which the consumer entered into the consumer transaction were so harsh or adverse to the consumer as to be inequitable;

(f) a prescribed circumstance.

Prohibition and burden of proof

9 (1) A supplier must not commit or engage in an unconscionable act or practice in respect of a consumer transaction.

(2) If it is alleged that a supplier committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.

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Remedy for an unconscionable act or practice

10 (1) Subject to subsection (2), if an unconscionable act or practice occurred in respect of a consumer transaction, that consumer transaction is not binding on the consumer or guarantor.

(2) If a court determines that an unconscionable act or practice occurred in respect of a consumer transaction that is a mortgage loan, as defined in section 57 [*definitions*] the court may do one or more of the following:

- (a) reopen the transaction and take an account between the supplier and the consumer or guarantor;
- (b) despite any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the consumer from any obligation to pay the total cost of credit at a rate in excess of the prevailing prime rate;
- (c) order the supplier to repay any excess that has been paid or allowed by the consumer or guarantor;
- (d) set aside all or part of, or alter, any agreement made or security given in respect of the transaction and, if the supplier has parted with the security, order the supplier, to indemnify the consumer;
- (e) suspend the rights and obligations of the parties to the transaction.

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5. Motor Dealer Act – section 13 and Motor Dealer Act Regulation – sections 26, 26.1 and 27

Advertising

13 (1) A motor dealer must, in every written sale or purchase agreement that the motor dealer enters into in respect of a motor vehicle and in every advertisement or written representation, include

(a) the name of the motor dealer and the word "dealer" followed by the registration number issued to the motor dealer under this Act, and

(b) other prescribed information.

(2) A motor dealer must affix, as prescribed, to a motor vehicle exhibited or offered for sale or exchange, a selling price and other prescribed information.

Advertising new motor vehicle

26 A motor dealer exhibiting or offering for sale a new motor vehicle shall affix to it in a clear and legible manner information concerning it as follows:

(a) the serial number or vehicle identification number or numbers, make and model;

(b) the price at which it is offered for sale, inclusive of accessories and items of optional equipment that are physically attached to it, transportation charges for its delivery to the dealer and any pre-delivery and inspection service charged by the dealer;

(c) an itemized list describing each accessory and item of optional equipment that is physically attached to it.

Advertising new motor vehicle

26.1 A motor dealer must not refer in an advertisement to the price at which a new motor vehicle is offered for sale, unless the price is the total asking price and includes all elements provided for in section 26 (b).

Advertising used motor vehicles

27 A motor dealer exhibiting or offering for sale a used motor vehicle shall affix to it in a clear and legible manner information concerning it as follows:

(a) the price at which it is offered for sale;

(b) where it is a vehicle that is not suitable for transportation, the statement "Not Suitable for Transportation".

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6. Motor Dealer Act Regulation – sections 30 and 31

Disclosure in relation to leases

30 (1) In this section, "consumer" means an individual who leases or agrees to lease a motor vehicle from a motor dealer for purposes that are primarily personal, family or household.

(2) A motor dealer must disclose in writing the following information to the consumer before the consumer enters into an agreement to lease a motor vehicle from the motor dealer:

(a) a summary of costs and credits relating to any extended warranty and that is due upon signing the lease;

(b) all express warranties and guarantees made by the manufacturer or motor dealer with respect to the motor vehicle;

(c) who is responsible for the maintenance and servicing of the motor vehicle;

(d) a description of any insurance, including types and amounts of coverage, required to be provided and paid for by the consumer;

(e) any limitations on the consumer's use and enjoyment of the motor vehicle, including, without limitation, any restriction respecting authorized drivers or requirements for permission to take the motor vehicle outside of British Columbia;

(f) the amount of tax in each periodic payment to be made by the consumer under the agreement, based on the applicable tax rate at the time of disclosure;

(g) the requirement under section 31 (3) that the motor vehicle remain in the possession of the motor dealer and the consumer's rights and the motor dealer's obligations under section 31 (4) to (6).

(3) Prescribed provisions that a motor dealer must include in each lease contract that the motor dealer enters into with a consumer are provisions that incorporate the information required to be disclosed under subsection (2) (a) to (f).

Deemed provisions in a lease

31 (1) In this section, "consumer" has the same meaning as in section 30.

(2) This section is deemed to be included in a lease of a motor vehicle by a motor dealer.

(3) Subject to a waiver under subsection (6), after the motor dealer and the consumer enter into the lease, the motor vehicle leased to the consumer must remain in the possession of the motor dealer for a period of one clear day.

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(4) The consumer may cancel the lease during the period in which the motor vehicle must remain in the possession of the motor dealer under subsection (3).

(5) If the consumer cancels the lease under subsection (4),

(a) the motor dealer must reimburse to the consumer any deposit or other money paid to the motor dealer in respect of the lease, and

(b) the consumer is not liable to pay any charge, fee or penalty for cancelling the lease contract.

(6) A consumer may waive, in writing, the requirements of subsection (3).

(7) All warranties and guarantees with respect to a motor vehicle and the equipment on the motor vehicle made by the manufacturer to the motor dealer are assigned to the consumer.

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7. Business Practices and Consumer Protection Act – sections 164 to 166, and Part 12, sections 190 and 192

Administrative penalties

164 (1) After giving the person an opportunity to be heard, the director may impose an administrative penalty on the person if the person contravenes

- (a) a prescribed provision of this Act or the regulations,
- (b) a condition of a licence,
- (c) a compliance order,
- (d) a direct sales prohibition order,
- (e) a property freezing order, or
- (f) an undertaking.

(2) Before the director imposes an administrative penalty on a person, the director must consider the following:

- (a) previous enforcement actions for contraventions of a similar nature by the person;
- (b) the gravity and magnitude of the contravention;
- (c) the extent of the harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to correct the contravention.

(3) If the director imposes an administrative penalty on a person, a prosecution for an offence under this Act for the same contravention may not be brought against the person.

(4) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

(5) If a corporation contravenes

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- (a) a prescribed provision of this Act or the regulations,
- (b) a condition of a licence,
- (c) a compliance order,
- (d) a direct sales prohibition order,
- (e) a property freezing order, or
- (f) an undertaking,

an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable under this section, whether or not an administrative penalty is imposed on the corporation.

Amount of penalty

165 (1) An individual on whom an administrative penalty is imposed is liable to a penalty of not more than \$5 000.

(2) A corporation on which an administrative penalty is imposed is liable to a penalty of not more than \$50 000.

Notice of penalty

166 (1) If the director imposes an administrative penalty on a person, the director must give to the person a notice imposing the administrative penalty that specifies the following:

- (a) the contravention;
- (b) the amount of the penalty;
- (c) the date by which the penalty must be paid;
- (d) the person's right to have this decision reconsidered;
- (e) an address to which a request for a reconsideration may be given.

(2) A notice imposing an administrative penalty may be reconsidered in accordance with Division 1 of Part 12 [*reconsiderations*].

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Penalty

190 (1) An individual who commits an offence under this Act is liable to a fine of not more than \$10 000 or to imprisonment for not more than 12 months or to both.

(2) A corporation who commits an offence under this Act is liable to a fine of not more than \$100,000.

(3) Despite subsections (1) and (2), the court may increase a fine imposed under this section by an amount of up to 3 times the court's estimation of the amount of monetary benefit acquired or accrued as a result of the commission of the offence.

Compensation to consumer

192 (1) In addition to a penalty imposed under section 190 [*penalty*], a court that convicts a defendant of an offence under this Act may order, at the time the penalty is imposed, the defendant to pay to an aggrieved consumer or guarantor, as compensation for pecuniary loss suffered by the aggrieved consumer or guarantor as a result of the commission of the offence, an amount not greater than the monetary jurisdiction specified in the *Small Claims Act*.

(2) An aggrieved consumer or guarantor, or the Crown prosecutor at the request and on behalf of the aggrieved consumer or guarantor, may apply for an order under subsection (1), unless the aggrieved consumer or guarantor has commenced an action against the defendant under section 171 [*damages recoverable*] in respect of the same transaction.

(3) If the defendant does not comply with an order made under subsection (1)

(a) within the time ordered by the court, or

(b) within 30 days of the order being made, if no time is specified in the order,

the aggrieved consumer or guarantor may enter judgment in the Provincial Court by filing the order with the registrar of the Provincial Court hearing matters under the *Small Claims Act* in or near the place where the conviction was entered.

(4) A judgment entered in the Provincial Court under subsection (3) is enforceable against the defendant in the same manner as if it were a judgment rendered in that court in civil proceedings.

Legislation Excerpts

8. Indian Act

– sections 2 and 87

Social Service Tax Act

– sections 1, 5, 6, 20, 93, 40, 46, 47, 53, 67, 82 and 117

Social Service Tax Act Regulations

– sections 2.45, 2.46, 2.47, 8.4 and 8.5

See Bulletins SST 034 and SST 046

Legislation Excerpts

9. Infants Act – Part 3, sections 19 to 21

When infants' contract enforceable

19 (1) Subject to this Part, a contract made by a person who was an infant at the time the contract was made is unenforceable against him or her unless it is

- (a) a contract specified under another enactment to be enforceable against an infant,
- (b) affirmed by the infant on his or her reaching the age of majority,
- (c) performed or partially performed by the infant within one year after his or her attaining the age of majority, or
- (d) not repudiated by the infant within one year after his or her reaching the age of majority.

(2) A contract that is unenforceable against an infant under subsection (1) is enforceable by an infant against an adult party to the contract to the same extent as if the infant were an adult at the time the contract was made.

Application for relief

20 (1) If a contract is unenforceable against an infant under section 19 (1),

- (a) the infant, or
 - (b) if the infant has repudiated or is in breach of the contract, another party to the contract,
- may apply to a court of competent jurisdiction for relief against

- (c) a party to the contract, or
- (d) subject to subsection (5), any person who has acquired a right to or interest in property transferred under the contract.

(2) In an application under subsection (1), the court may order that

- (a) compensation be paid by or to any of the parties to the contract,
- (b) there be restitution of property,
- (c) the parties to the application be discharged from further obligations under the contract or with respect to property transferred under the contract, or

Legislation Excerpts

- (d) compensation be paid to a person, not a party to the contract, who has been ordered to make restitution of property.
- (3) Before making an order under subsection (2), the court must consider
- (a) the circumstances surrounding the making of the contract,
 - (b) whether the infant induced any person to enter into the contract by misrepresenting his or her age,
 - (c) the subject matter and nature of the contract,
 - (d) in the case of a contract relating to property, the nature and value of the property,
 - (e) the age and means of the infant,
 - (f) whether any party to the application has so changed the party's position that it would be unfair or inequitable to make an order against the party, and
 - (g) any other relevant circumstances.
- (4) For the purposes of subsection (3) (b), an infant does not induce a person to contract with him or her on the basis of a misrepresentation as to his or her age
- (a) if the person to whom the misrepresentation was made did not have reasonable grounds for believing that the misrepresentation was true, or
 - (b) merely because the infant signed or otherwise adopted a document relating to the transaction that
 - (i) contained a statement that the infant was 19 years of age or otherwise had contractual capacity,
 - (ii) was prepared and tendered by or on behalf of the other person, and
 - (iii) was prepared and used by the other person in similar transactions.
- (5) If property has been transferred under a contract that is unenforceable against an infant under section 19 (1), relief must not be given under this section against a person who has acquired a right to or interest in the property if
- (a) that person is not a party to the contract, and
 - (b) the property had been transferred in good faith and for value

Legislation Excerpts

(i) to that person, or

(ii) to any of the person's predecessors in title who was not a party to the contract.

(6) A disposition of property or a grant of security or other interest in property made under a contract that is unenforceable against an infant under section 19 (1) is effective to transfer the property or interest, unless and until an order respecting that transfer is made under subsection (2).

Application for capacity

21 (1) On an application on behalf of an infant, the court may make an order granting to the infant

(a) full capacity, or

(b) capacity to enter into a contract or class of contract specified in the order.

(2) The court must not make an order under subsection (1) unless the court is satisfied that the order is for the benefit of the infant and that, having regard to the circumstances of the infant, he or she is not in need of the protection offered by law to infants in matters relating to contracts.

(3) Section 19 (1) does not apply to a contract made by an infant in accordance with an order made under subsection (1).

(4) Unless the court otherwise orders, notice in writing of an application under subsection (1) must be served on the Public Guardian and Trustee and the guardian of the infant, other than the litigation guardian, not less than 10 days before the date of the hearing of the application.

Legislation Excerpts

10. Motor Dealer Act – Part 1, sections 3, 5, and 24.4

Registration required for motor dealer

3 (1) A person must not carry on business as a motor dealer

(a) unless the person

(i) is registered,

(ii) has provided the prescribed security satisfactory to the registrar,

(iii) has paid the prescribed annual renewal fee,

(iv) maintains motor vehicle repair facilities or files with the registrar a service contract providing for motor vehicle repair facilities satisfactory to the registrar,

(v) maintains a sign on the business premises identifying the registrant and the premises in the prescribed manner, and

(vi) maintains business premises that are, in the opinion of the registrar, sufficient for the purpose of displaying motor vehicles, and

(b) other than in the person's registered name or elsewhere than at or from the person's business premises.

(2) Except as provided in section 13, a person must not advertise or in any way indicate that he or she is registered or licensed under this Act.

Refusal, suspension or termination

5 If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,

(a) if the application is made under section 4, refuse to register, or refuse to renew registration, or

(b) if a person is registered,

(i) cancel the registration, or

Legislation Excerpts

(ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.

Power of the authority to set fees for matters under its administration

24.4 (1) Despite any power of the Lieutenant Governor in Council or the minister to prescribe fees for matters under the administration of the government, the authority may set fees in accordance with a process established by the authority for any matter required under the authority's administration.

(2) The process established under subsection (1) must be in accordance with criteria that are established by regulation and the administrative agreement.

(3) Despite section 24.3, for the purposes of collecting fees on behalf of the government, the authority is an agent of the government.

Legislation Excerpts

11. Motor Dealer Act – Part 3, sections 25 to 27, 35, and 35.1

Complaints

25 (1) If the registrar receives a complaint in respect of a motor dealer, the motor dealer must provide to the registrar the information respecting the matter complained of that the registrar requests in writing.

(2) The request under subsection (1) must indicate the nature of the complaint.

(3) For the purposes of subsection (1), the registrar or a person designated in writing by the registrar may, at any reasonable time during normal business hours, enter the business premises of the motor dealer to make an inspection with respect to the complaint.

Inspection

26 A motor dealer must, at a reasonable time during normal business hours, on request of the registrar or a person authorized in writing by the registrar, permit the registrar or authorized person to

(a) enter the motor dealer's place of business,

(b) inspect the records of the business,

(c) enter premises in which any motor vehicle owned, possessed or controlled by the motor dealer for his or her business is kept or stored, and

(d) inspect all vehicles on the premises.

Order to refrain from dealing with assets

27 (1) If the registrar has begun an investigation of a person under this Act and the registrar believes that it is necessary to protect individuals dealing with that person, the registrar may order, in writing or by telegram,

(a) a person having on deposit, or under his or her control, or for safekeeping, assets, trust funds or other property of the person being investigated, or a debtor of the person being investigated to hold the assets, trust funds or other property of, or money owing to, that person, in trust for a receiver, liquidator or trustee to be appointed under this Act or another enactment, or

Legislation Excerpts

- (b) the person being investigated to refrain from withdrawing assets, trust funds or other property that are on deposit with, under the control of, or in the safekeeping of, another person, unless the registrar consents in writing to the release of all or part of them.
- (2) The registrar may revoke in writing an order made under this section.
- (3) Instead of making an order under this section, the registrar may accept from the person being investigated
- (a) a personal bond, together with collateral security,
 - (b) a bond of a guarantee company approved by the registrar, or
 - (c) a bond of a guarantor, other than a guarantee company, together with collateral security,
- in a form and with terms the registrar determines under the *Bonding Act*.
- (4) A person who receives an order from the registrar under this section may,
- (a) if in doubt as to the application of the order to assets, trust funds or other property on deposit with the person or under his or her control or in his or her safekeeping, or
 - (b) if a person not named in the order claims a right, title or interest in the assets, trust funds or other property,
- pay or deliver those assets, trust funds or other property into a court.
- (5) If a person pays assets, trust funds or other property into a court under subsection (4), the person is discharged from liability to the extent of that payment or delivery.
- 35** (1) Section 5 of the *Offence Act* does not apply to this Act or the regulations.
- (2) A person who contravenes section 3, 11, 12, 13, 20 (1), 25, 26, 29 (1), 32 or 34 of this Act or a provision of the regulations commits an offence.
- (3) A person commits an offence if the person does any of the following:
- (a) supplies false or misleading information to a person acting under this Act;
 - (b) refuses or fails to provide information as required under this Act.
- (4) A person does not commit an offence under subsection (3) (a) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

Legislation Excerpts

(5) If a corporation commits an offence under this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not the corporation is prosecuted for the offence.

Penalties

35.1 (1) An individual who commits an offence under this Act or the regulations is liable

(a) to a fine of not more than \$100 000,

(b) to imprisonment for not more than 6 months, or

(c) to both the fine referred to in paragraph (a) and the imprisonment referred to in paragraph (b).

(2) A corporation that commits an offence under this Act is liable to a fine of not more than \$200 000.

Legislation Excerpts

12. Motor Dealer Act – Part 3, section 34 and Motor Dealer Act Regulation, section 25

Odometers

34 (1) Except as permitted by the regulations, a person must not

(a) disconnect or tamper with the odometer of a vehicle operated under section 38 (3) and (4) of the *Motor Vehicle Act*, or

(b) drive or operate a vehicle operated under section 38 (3) and (4) of that Act unless the odometer of the vehicle is in effective working order.

(2) A person must not alter, disconnect or replace, or cause to be altered, disconnected or replaced, a motor vehicle's odometer with the intent to mislead a prospective purchaser of the motor vehicle as to the distance travelled by the motor vehicle.

(3) A conviction of a motor dealer of an offence under subsection (1) or (2) is deemed to be cause for the suspension or cancellation of registration.

(4) If an offence under subsection (1) is committed by

(a) an employee or agent of the owner or motor dealer, or

(b) any other person entrusted by the owner or motor dealer with the possession of the motor vehicle,

the owner or motor dealer is deemed to be a party to the offence, and is personally liable to the penalties prescribed for the offence as a principal offender, but nothing in this subsection relieves from liability the person who actually committed the offence.

Replacement of odometer

25 Where it is necessary for a motor dealer to exchange or repair the odometer of the motor vehicle or any part of a motor vehicle that is directly related to the odometer, and the replacement or repair results in the odometer reading for the motor vehicle being changed, he shall record the reading that was on the odometer before the exchange or repair and the reading at the time of the sale on the sales order or purchase agreement as well as in his permanent written records.

Legislation Excerpts

13. Motor Dealer Act Regulation – sections 22 and 23

Motor vehicles not suitable for transportation

22 A motor dealer shall ensure that any written representation including every purchase order, sales agreement or form of contract used in a consumer transaction for the purchase of a motor vehicle not intended for transportation contains a statement that the motor vehicle is not suitable for transportation and is sold for parts only or purposes other than transportation.

Material facts

23 A motor dealer shall ensure that in every written representation in the form of a sale or purchase agreement respecting his offering to sell or selling a motor vehicle he discloses, to the best of his knowledge and belief:

- (a) whether the motor vehicle has been used as a taxi, police or emergency vehicle or in organized racing;
- (b) whether the motor vehicle has
 - (i) in the case of a new motor vehicle, sustained damage requiring repairs costing more than 20% of the asking price of the motor vehicle, or
 - (ii) in the case of a used motor vehicle, sustained damages requiring repairs costing more than \$2 000;
- (c) whether the motor vehicle has been used as a lease or rental vehicle;
- (d) whether a used motor vehicle has been brought into the Province specifically for the purpose of sale;
- (e) whether the odometer of the motor vehicle accurately records the true distance travelled by the motor vehicle.

Legislation Excerpts

14. Motor Dealer Customer Compensation Fund Regulation – sections 4 to 7

Who may apply for compensation?

4 An individual who, on or after the day this regulation comes into force,

(a) purchases from a registered motor dealer

(i) a motor vehicle to be used primarily for personal or family use, or

(ii) an extended warranty or service plan in respect of such a vehicle, or

(b) delivers a motor vehicle to a registered motor dealer for sale by the motor dealer as an agent on commission,

and who suffers an eligible loss referred to in section 5, may apply for compensation from the fund.

What losses are eligible for compensation?

5 (1) The following losses are eligible for compensation from the fund:

(a) with respect to the purchase of a motor vehicle, the loss of a trade-in, full payment, deposit, down payment or other liquidated amount resulting from

(i) the refusal of the motor dealer, without lawful justification, to deliver the motor vehicle contracted for or to return the trade-in, full payment, deposit, down payment or other liquidated amount,

(ii) the inability of the motor dealer to deliver the motor vehicle contracted for or to return the trade-in, full payment, deposit, down payment or other liquidated amount due to the bankruptcy, insolvency, receivership or other failure of the motor dealer,

(iii) the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer, or

(iv) the failure of the motor dealer to provide clear title to the motor vehicle or to ensure that the motor vehicle was free from a charge or encumbrance, in favour of a third party, that was not declared or known to the buyer at the time the purchase was made;

Legislation Excerpts

(b) with respect to the purchase of an extended warranty or service plan, the loss of the unexpired portion of the warranty or plan resulting from the bankruptcy, insolvency, receivership or other failure of the motor dealer;

(c) with respect to the delivery of a motor vehicle to a registered motor dealer for sale by the motor dealer as an agent on commission, the loss of the vehicle or the value of the vehicle resulting from

(i) the refusal of the motor dealer, without lawful justification, to return the unsold vehicle at the end of the agreed period, or to remit the agreed amount of proceeds from the sale within the agreed period after sale,

(ii) the inability of the motor dealer to return the unsold vehicle at the end of the agreed period, or to remit the agreed amount of proceeds from the sale within the agreed period after sale, due to the bankruptcy, insolvency, receivership or other failure of the motor dealer, or

(iii) the dishonest conduct of the motor dealer or the misappropriation or wrongful conversion of money or other property entrusted to the motor dealer.

(2) An applicant is not entitled to claim any interest with respect to the losses described in subsection (1).

Demand required

6 In order to be eligible for compensation from the fund, the applicant must first make a demand to the motor dealer

(a) in respect of the purchase of a motor vehicle, that the motor dealer return to the applicant the trade-in, full payment, deposit, down payment or other liquidated amount,

(b) in respect of the purchase of an extended warranty or service plan, that the motor dealer refund to the applicant the cost of the unexpired portion of the warranty or plan, and

(c) in respect of the delivery of a motor vehicle for sale by the motor dealer as an agent on commission, that the motor dealer return the unsold vehicle at the end of the agreed period, or remit the agreed amount of proceeds from the sale within the agreed period after sale,

that the motor dealer refuses to honour within 30 days of the demand.

Legislation Excerpts

Limitation

7 An applicant is not eligible for compensation from the fund

(a) in respect of the purchase of a motor vehicle, if the claim is based on the cost, value or quality of the motor vehicle received,

(b) in respect of the purchase of an extended warranty or service plan, if the applicant is able to recover the cost of the unexpired portion of the warranty or plan from an insurer of the warranty or plan, and

(c) in respect of that portion of the operation of a motor vehicle that is claimed as a business expense for income tax purposes.

Legislation Excerpts

15. Motor Dealer Salesperson Licensing Regulation – sections 2, 4, 6, 7 and 8

Licensing

- 2 (1) The authority may issue a licence to an individual to act as a salesperson.
- (2) A person must not act as a salesperson unless the person holds a licence.

Conditions on licence

- 4 (1) The authority may impose conditions on a licence that the authority considers necessary.
- (2) Without limiting subsection (1), the authority may impose the following conditions:
 - (a) a licensee must provide the information and records the authority requires under section 8;
 - (b) a licensee must notify the authority of any changes to the licensee's address;
 - (c) a licensee must not be employed by a motor dealer other than the motor dealer named in the licensee's licence;
 - (d) if the licensee ceases to act as a salesperson, the licensee must immediately surrender his or her licence to the authority and request cancellation of the licence.
- (3) The authority may, on giving written notice to the licensee, add to or alter the conditions on a licence.

Refusal, suspension or termination

- 6 If the conduct of an applicant or licensee is, in the opinion of the authority, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the authority may
 - (a) refuse to issue the licence, or
 - (b) if a person is licensed,
 - (i) cancel the licence, or
 - (ii) suspend the licence for a period of time and subject to conditions the authority considers necessary.

Legislation Excerpts

Hearing if requested

7 If the authority proposes to

- (a) refuse to issue a licence,
- (b) cancel a licence, or
- (c) suspend a licence,

the authority must notify the applicant or licensee by registered mail that

- (d) he or she has the right to be heard at a date and place specified in the notice, and
- (e) if the applicant or licensee does not attend at that time and place, the matter may be disposed of in the absence of the applicant or licensee.

Inquiries

8 The authority may make inquiries and require information and records the authority considers appropriate or necessary to decide whether or not to issue, cancel or suspend a licence.

Legislation Excerpts

16. Motor Vehicle Act – sections 17.1 and 20, and Motor Vehicle Act Regulations – sections 25.20 and 25.21

Irreparable and salvage vehicles

17.1 (1) In this section:

"irreparable vehicle" means a motor vehicle that,

- (a) as a result of being written off by an insurer, has its title transferred to the insurer, who in turn transfers the title to a person under an agreement that states that the person may use or resell it only for parts or scrap, or
- (b) has its title transferred to a person who is in the business of wrecking used motor vehicles and who intends to use the motor vehicle for parts or scrap;

"salvage vehicle" means a motor vehicle that is not an irreparable vehicle and that

- (a) while unsafe to drive has its title transferred, or
 - (b) has been written off by an insurer, whether or not its title has been transferred to the insurer.
- (2) In this section a motor vehicle is "written off" if, following an insurance claim, the motor vehicle's insurer has decided to pay the insured for the motor vehicle rather than replace or repair it or pay for its repair.
- (3) If on the transfer of a motor vehicle its status changes to that of an irreparable or salvage vehicle,
- (a) the transferor and transferee must sign a notice of transfer and change in status of the motor vehicle in the form required by the Insurance Corporation of British Columbia, and
 - (b) within 10 days after the transfer, the transferee must deliver the notice to the Insurance Corporation of British Columbia with the prescribed fee for its filing.
- (4) If the status of a motor vehicle changes to that of a salvage vehicle because the vehicle has been written off by an insurer who does not take title to the vehicle, the insurer of the motor vehicle must
- (a) sign a notice of change in status of the vehicle in the form required by the Insurance Corporation of British Columbia, and

Legislation Excerpts

- (b) within 10 days after the writing off, deliver the notice to the Insurance Corporation of British Columbia with the prescribed fee for its filing.
- (5) Section 17 (3) to (5) applies to the notices required by this section.
- (6) Any person who contravenes any of the requirements under subsection (3) or (4) or a provision made applicable by subsection (5) commits an offence and is liable on conviction to a fine of up to \$2 000, to imprisonment for not more than 6 months or to both.

Notice of removal or destruction of motor vehicle

20 (1) If a motor vehicle or trailer registered or licensed under this Act is

- (a) permanently removed from British Columbia,
- (b) burned or damaged so that it cannot be again repaired or used as a motor vehicle or trailer,
or
- (c) temporarily removed from use, and

the owner or licensee applies for a refund of insurance premium or licence fee, the owner or licensee of the motor vehicle or trailer must sign and transmit to the Insurance Corporation of British Columbia a notice in the form required by the corporation and must surrender the licence and licence plates for the motor vehicle or trailer.

(2) On the certificate of the Insurance Corporation of British Columbia showing the surrender of the licence for the motor vehicle or trailer covered by a notice under this section, the Minister of Finance must, out of the revenue collected under this Act, refund to the licensee that part of the licence fee that is proportionate to the part of the term of the licence that is unexpired at the time of its surrender, and in the case of a licence surrendered under subsection (1) (a) or (b), the registration of the motor vehicle or trailer under section 3 must be cancelled.

(3) Subsection (2) does not apply if the licence for a motor vehicle or trailer has been cancelled or suspended.

(4) The amount of a refund made under this section must be rounded to the nearest dollar and a refund ending in 50¢ must be raised to the next highest dollar.

(5) A refund must not be made under this section if the combined amount of

- (a) the licence fee to be refunded under this section, and
- (b) the insurance premium to be refunded under the *Insurance (Motor Vehicle) Act*, in a circumstance described in subsection (1),

Legislation Excerpts

is less than \$5.

Part 3 — Salvaged, Modified and Reconstructed Vehicles

Application

25.20 This Part applies to a vehicle that was

- (a) disposed of as salvage and subsequently rebuilt,
- (b) altered by changes to its suspension height by more than 10 cm from the original basic specification of the vehicle manufacturer,
- (c) altered so that its
 - (i) freight carrying capacity has been increased beyond the original gross vehicle weight rating of the vehicle, or by design changes other than those established by the manufacturer of the vehicle, or
 - (ii) seating capacity has been increased, or
- (d) built after January 1, 1971 from new or used parts, other than a trailer with a licensed gross vehicle weight of 1 400 kg or less, and that does not display the statement of compliance under the *Motor Vehicle Safety Act (Canada)*.

Limitation on operation

25.21 A person must not drive, operate or park a vehicle on a highway until it has been presented to a designated inspection facility and an approved certificate of mechanical condition in a form set by the director has been issued in respect of the vehicle by an authorized person.

Legislation Excerpts

17. Motor Vehicle Act – sections 219, 222 and 223

Equipment of motor vehicles

219 (1) A person must not drive or operate a motor vehicle or trailer on a highway or rent a motor vehicle or trailer unless it is equipped in all respects in compliance with this Act and the regulations.

(2) A peace officer

(a) may require a person who carries on the business of renting vehicles or who is the owner or person in charge of a vehicle

(i) to allow the peace officer to inspect a vehicle offered by the person for rental or owned by or in charge of the person, or

(ii) to move a vehicle described in subparagraph (i) to a place designated by the peace officer and to allow the vehicle to be inspected there by the peace officer, or, at the expense of the person required, to present the vehicle for inspection by a person authorized under section 217, and

(b) must remove any inspection certificate of approval affixed to the vehicle if, in the opinion of the peace officer or a person authorized under section 217, the vehicle is unsafe for use on a highway.

(3) An owner of a motor vehicle or trailer must not permit it to be driven or operated on a highway unless it is equipped in all respects in compliance with this Act and the regulations.

(4) In subsection (3), "**owner**" means

(a) the owner, or

(b) in the case of a vehicle that is leased for a term of 30 days or more, the person who leases the vehicle.

Sale of motor vehicle contrary to regulations

222 A person must not sell, offer for sale, expose or display for sale or deliver over to a purchaser for use a motor vehicle, trailer or equipment for them that is not in accordance with this Act and the regulations.

Legislation Excerpts

Canada Safety Standards

223 (1) A manufacturer or distributor of a motor vehicle or trailer manufactured in British Columbia for sale in British Columbia and a dealer must not sell, offer for sale, display for sale or deliver over to a person for use a new motor vehicle or trailer of a class prescribed by the *Motor Vehicle Safety Act* (Canada) unless the motor vehicle or trailer and its components comply with safety standards prescribed in the *Motor Vehicle Safety Act* (Canada) and the regulations under it, bear the National Safety Mark and display the statement of compliance as required by those regulations.

(2) A distributor or dealer must not modify or alter a new motor vehicle or trailer, or exchange components of a new motor vehicle or trailer of a class for which standards are prescribed, in a manner that the motor vehicle or trailer does not comply with the safety standards prescribed in the *Motor Vehicle Safety Act* (Canada) and the regulations made under it.

(3) The Lieutenant Governor in Council may make regulations prohibiting

(a) the installation of components in a motor vehicle or trailer or the removal or alteration of any components of a motor vehicle or trailer if the installation, alteration or removal affects or is likely to affect the functioning of the motor vehicle or trailer so that it no longer meets the safety standards that were, at the time of its first retail sale, applicable to it and its components under the *Motor Vehicle Safety Act* (Canada), and

(b) the operation, driving or parking on a highway of a motor vehicle or trailer in which a component has been installed or altered or from which a component has been removed contrary to a regulation made under paragraph (a).

Legislation Excerpts

18. Motor Vehicle Act Regulations – sections 19.11, 25.24, 25.25 and 25.30

Overload prohibition

19.11 (1) Unless operating under the provisions of an overload permit issued under the *Commercial Transport Act*, no person shall operate or cause to be operated a vehicle that is loaded in such a manner that the gross weight carried by any axle exceeds the gross weight rating for that axle as specified by the vehicle manufacturer, or the gross vehicle weight exceeds the gross vehicle weight rating for that vehicle as specified by the vehicle manufacturer.

(2) The weight distribution of a bus shall be such that not less than 25 per cent of the gross vehicle weight is on the front axle when measured on level ground.

(3) Subsection (1) does not apply to a vehicle

(a) manufactured before January 1, 2001, and

(b) having a gross vehicle weight rating of 5 500 kg or less.

Powers of peace officer

25.30 (1) If a peace officer has reasonable and probable grounds to believe that a vehicle is, by reason of mechanical, structural or other defect, unsafe for use on a highway, whether or not the vehicle meets the standards prescribed under the Act, he or she may order the owner or operator of the vehicle, either immediately or within such time as is specified in the order, to do one or both of the following:

(a) remove it from the highway and keep it so removed until either

(i) repairs as may be set out in the order of the peace officer have been implemented, or

(ii) the peace officer revokes the order;

(b) surrender the vehicle licence or number plates, or both, for that vehicle to the corporation or to the peace officer.

(2) If a peace officer has reasonable and probable grounds to believe that a motor vehicle is not operating under the provisions of an overload permit issued under the *Commercial Transport Act* and is unsafe for use on a highway because

Legislation Excerpts

(a) the motor vehicle is loaded in such manner that the gross weight carried by any of its axles exceeds the gross vehicle weight rating for that axle specified by the vehicle manufacturer, or

(b) the gross weight of the motor vehicle exceeds the gross vehicle weight rating for that vehicle specified by the vehicle manufacturer,

the peace officer may order the owner or operator of the vehicle to do one or both of the following things immediately, or within the time specified in the order:

(c) remove it from the highway until it meets the specifications of the manufacturer referred to in paragraphs (a) and (b);

(d) surrender the vehicle licence or number plates, or both, for that vehicle to the corporation or to the peace officer.

(3) Subsection (2) applies only to motor vehicles

(a) manufactured before January 1, 2001, and

(b) having a gross vehicle weight rating of 5 500 kg or less.

(4) An owner or operator must comply with an order made under subsection (1) or (2).

(5) An order under subsection (1) or (2) may require the owner or operator to notify the peace officer before the vehicle is operated on the highway that the repairs under subsection (1) have been carried out or the specifications under subsection (2) (c) have been met.

Division 25 – Part 4 — Inspection of Motor Vehicles Imported into British Columbia

Application

25.24 (1) This Part applies to a motor vehicle that

(a) is registered, titled or licensed, or was previously registered, titled or licensed, at a place outside British Columbia,

(b) is presented to the corporation for registration, and

(c) has a net vehicle weight of not more than 3 500 kg,

but does not include a motor vehicle described in Schedule 2 to this Division.

(2) The director may exempt a class of persons or vehicles from subsection (1) unconditionally or on conditions the director considers desirable and may substitute other requirements if the director considers it desirable for the purpose of promoting and securing road safety.

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(3) The director may

(a) exempt from subsection (1) unconditionally, or on conditions the director considers desirable, persons, vehicles and equipment that the director identifies and specifies, and

(b) substitute other requirements if the director considers it desirable for the purpose of more effectively promoting and securing road safety.

Limitation on registration

25.25 No application will be accepted by the corporation for the registration of a motor vehicle to which this Part applies until

(a) the motor vehicle has been presented to a designated inspection facility for a safety inspection to determine that

(i) the vehicle complies with the standards for motor vehicles, and

(ii) the frame or unibody of the motor vehicle has not been compromised,

(b) an inspection report, in a form and containing particulars established by the director, has been issued for the motor vehicle by an authorized person, and

(c) the motor vehicle described in the inspection report is certified as passed by the authorized person.

Legislation Excerpts

19. Sale of Goods Act – sections 18 and 20

Implied conditions as to quality or fitness

18 Subject to this and any other Act, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale or lease, except as follows:

(a) if the buyer or lessee, expressly or by implication, makes known to the seller or lessor the particular purpose for which the goods are required, so as to show that the buyer or lessee relies on the seller's or lessor's skill or judgment, and the goods are of a description that it is in the course of the seller's or lessor's business to supply, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are reasonably fit for that purpose; except that in the case of a contract for the sale or lease of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(b) if goods are bought by description from a seller or lessor who deals in goods of that description, whether the seller or lessor is the manufacturer or not, there is an implied condition that the goods are of merchantable quality; but if the buyer or lessee has examined the goods there is no implied condition as regards defects that the examination ought to have revealed;

(c) there is an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale or lease;

(d) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(e) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with it.

No waiver of warranties or conditions

20 (1) For the purpose of this section, retail sale or lease includes every contract of sale or lease made by a seller or lessor in the ordinary course of the seller's or lessor's business but does not include a sale or lease of goods

(a) to a purchaser for resale or to a lessee for subletting,

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- (b) to a purchaser or lessee who intends to use the goods primarily for business purposes,
 - (c) to a corporation or an industrial or commercial enterprise, or
 - (d) by a trustee in bankruptcy, a liquidator or sheriff.
- (2) Despite section 18 (e) or 69, in the case of a retail sale or lease of goods, other than goods that on reasonable inspection appear to be used goods or goods that are described or represented by the seller or lessor to be used, any term of a contract of sale or lease, or any collateral or contemporaneous contract or agreement, that purports to negative or in any way diminish the conditions or warranties under sections 17, 18 and 19 of this Act, is,
- (a) if a term, severable from the contract and void, or
 - (b) if a collateral or contemporaneous contract or agreement, void.
- (3) Despite section 18 (e) or 69, in the case of a retail sale or lease of new or used goods,
- (a) any term of a contract of sale or lease, or
 - (b) any collateral or contemporaneous contract or agreement,
- that purports to negative or in any way diminish the condition or warranty under section 16 is,
- (c) if a term, severable from the contract and void, or
 - (d) if a collateral or contemporaneous contract or agreement, void.

Legislation Excerpts

20. Business Practices and Consumer Protection Act – sections 59, 60 and 62

Disclosure in advertisements

59 (1) In this section, "credit grantor" includes a lessor.

(2) For the purpose of applying section 57 [definitions] to this section:

"borrower" includes a lessee;

"credit agreement" includes a lease.

(3) If a credit grantor who publishes an advertisement, or on whose behalf an advertisement is published, is required under this Part, as a result of disclosing certain information in the advertisement, to include other information in the advertisement, the credit grantor must ensure that

- (a) if the required information is the APR, the APR is disclosed at least as prominently as is the information that necessitated the inclusion of the APR, and
- (b) any other required information is prominently displayed in a clear and comprehensible manner.

Advertising requirements applicable to fixed credit

60 (1) This section applies only to advertisements that

- (a) if the required information is the APR, the APR is disclosed at least as prominently as is the information that necessitated the inclusion of the APR, and
- (b) any other required information is prominently displayed in a clear and comprehensible manner.

(2) A credit grantor must ensure that every advertisement published by or on behalf of the credit grantor discloses, in relation to the proposed credit agreement,

- (a) the APR, and
- (b) the term.

(3) In addition to complying with subsection (2), the credit grantor must ensure that,

- (a) if the advertisement is for a credit sale of a specifically identified product, the advertisement discloses the cash price of that product, or

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(b) if the advertisement is for a credit sale of a specifically identified product in connection with which a non-interest finance charge is to be payable, the

(i) the cash price of the product, and

(ii) the total cost of credit.

Advertising interest-free periods

62 (1) This section applies to an advertisement to which section 60 [advertising requirements applicable to fixed credit] or 61 [advertising requirements applicable to open credit] applies.

(2) An advertisement that states or implies that no interest is payable for a certain period in respect of a consumer transaction must disclose whether, under the credit agreement, the transaction

(a) has an interest-free period, or

(b) has a grace period.

(3) If, under the credit agreement, the transaction has a grace period, the advertisement must also disclose the conditions under which the interest accrued during the period will be forgiven and,

(a) if the credit agreement extends fixed credit or open credit that is not associated with a credit card, the APR that will apply to the period if those conditions are not met, or

(b) if the credit agreement extends open credit that is associated with a credit card, the annual interest rate that will apply to the period if those conditions are not met.

(4) An advertisement to which subsection (2) applies that does not disclose the information required under subsections (2) (b) and (3) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

Legislation Excerpts

21. Business Practices and Consumer Protection Act – sections 63 and 64

Advertising requirements applicable to leases

63 (1) In this section, "estimated residual cash payment" and "estimated residual value" have the same meaning as in section 100 (1) [definitions].

(2) For the purpose of applying section 57 [definitions] to this section, a reference in that section to "borrower", "cash price", "credit agreement", "credit grantor" or "purchased" is deemed to be a reference to "lessee", "cash value", "lease", "lessor" or "leased", respectively.

(3) Subject to the regulations, a lessor must ensure that every advertisement published by or on behalf of the lessor that gives specific information about the cost of a lease discloses the following information:

- (a) a statement that the consumer transaction is a lease;
- (b) the term of the lease;
- (c) the nature and amount of any payments that are payable by the lessee on or before the beginning of the term;
- (d) the amount, timing and number of the periodic payments;
- (e) the nature and amount of any other payments that are payable by a lessee in the ordinary course of events;
- (f) the lease APR;
- (g) if required by regulations under this or any other enactment, prescribed information regarding extra charges based on usage of the leased goods.

Advertising a representative transaction

64 (1) If this Part requires that certain information be included in an advertisement and if that information is different for different credit agreements to which the advertisement relates, the advertisement must disclose that information as it applies to a representative transaction and must identify the transaction as a representative transaction.

(2) For the purposes of subsection (1), a transaction is a representative transaction if its terms are reasonably typical of the terms of the credit agreements to which the advertisement relates.

Legislation Excerpts

22. Business Practices and Consumer Protection Act – sections 66(1) and (2), 67, 68, 71, 70 and 73

Disclosure statements must be given

66 (1) In this section, "business day", in relation to a credit grantor, means a day on which the credit grantor is open for business.

(2) Subject to subsection (3), a credit grantor who has entered into, or who is negotiating to enter into, a credit agreement with a borrower must give the borrower a disclosure statement in relation to the credit agreement before the earlier of

- (a) the borrower entering into the credit agreement, and
- (b) the borrower making any payment in connection with the credit agreement.

Form of disclosure statements and statements of account

67 (1) A credit grantor who is required to give a disclosure statement or a statement of account under this Part must ensure that the statement

- (a) is in writing,
- (b) contains the information required under this Part, and
- (c) prominently displays that information in a clear and comprehensible manner.

(2) A disclosure statement or a statement of account may be a separate document or part of another document.

Giving of documents if multiple borrowers

68 If there is more than one borrower under a credit agreement, a disclosure statement, notice or other document that, under this Part, is required to be given to the borrower may be given to any one of the borrowers, and the credit grantor is not required to give a separate disclosure statement, notice or other document to each borrower.

Inconsistency between disclosure statement and credit agreement

70 If information in a disclosure statement is inconsistent with any information or provision set out in the credit agreement, the credit agreement is presumed to incorporate the information or provision that is more favourable to the borrower, unless it is proven that the less favourable information or provision reflects the borrower's actual understanding of the provisions of the agreement.

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Borrowers may choose insurer

71 (1) A borrower who is required by a credit grantor to purchase insurance may purchase it from any insurer authorized to provide that type of insurance in British Columbia, except that the credit grantor may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

(2) A credit grantor who offers to provide or to arrange insurance referred to in subsection (1) must clearly disclose to the borrower in writing, at the time of that offer, that the borrower may, subject to subsection (1), purchase the required insurance through an insurance agent and insurer of the borrower's choice.

Borrowers may cancel optional services

73 (1) A borrower may cancel an optional service of a continuing nature that is provided by the credit grantor or by an associate of the credit grantor by giving 30 days' notice, or a shorter period of notice as is provided for by the agreement under which the service is provided.

(2) A borrower who cancels an optional service in accordance with subsection (1)

(a) is not liable for charges relating to any portion of the service that has not been provided at the time of the effective date of the cancellation, and

(b) is entitled to a refund of any amount already paid for those charges.

Legislation Excerpts

23. Business Practices and Consumer Protection Act – sections 74 and 75

Prepayment of credit

- 74** (1) This section does not apply to a credit agreement that is a mortgage loan.
- (2) A borrower is entitled to prepay the full outstanding balance owing under a credit agreement at any time without incurring any prepayment charge or penalty.
- (3) If a prepayment under subsection (2) is made in relation to a credit agreement for fixed credit, the credit grantor must refund or credit to the borrower the prescribed portion of any non-interest finance charges paid by the borrower or added to the outstanding balance.
- (4) A borrower is entitled, on any scheduled payment date, or at least monthly, to prepay less than the full outstanding balance owing under a credit agreement for fixed credit, without any prepayment charge or penalty, but, in that event, is not entitled to a refund or credit of any non-interest finance charges.

Default charges

- 75** A credit grantor must not impose, under a credit agreement, any default charges other than the following:
- (a) court ordered costs incurred in collecting or attempting to collect a debt;
 - (b) reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject matter of a security interest after default;
 - (c) reasonable charges that reflect costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.

Legislation Excerpts

24. Business Practices and Consumer Protection Act – sections 101 and 102

Disclosure required in relation to leases

101 (1) A lessor who has entered into, or who is negotiating to enter into, a lease must ensure that the initial disclosure statement for that lease discloses the following information:

- (a) the effective date of the statement;
- (b) a statement that the transaction is a lease;
- (c) a description of the leased goods;
- (d) the term of the lease;
- (e) the cash value of the leased goods;
- (f) the nature and amount of any other advance received, and of each charge incurred, by the lessee in connection with the lease at or before the beginning of the term;
- (g) the nature and amount of each payment made by the lessee at or before the beginning of the term;
- (h) the capitalized amount;
- (i) the amount, timing and number of the periodic payments;
- (j) the estimated residual value of the leased goods;
- (k) for an option lease,
 - (i) how and when the option may be exercised,
 - (ii) the option price if the option is exercised at the end of the term, and
 - (iii) the method of determining the option price if the option is exercised before the end of the term;
- (l) for a residual obligation lease,
 - (i) the estimated residual cash payment, and
 - (ii) a statement that the lessee's maximum liability at the end of the term is the sum of
 - (A) the estimated residual cash payment, and
 - (B) the estimated residual value less the realizable value of the leased goods;

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(m) the circumstances, if any, under which the lessee or the lessor may terminate the lease before the end of the term and the amount, or the method of determining the amount, of any payment that the lessee will be required to make on early termination of the lease;

(n) if there are circumstances in which the lessee will be required to make a payment in connection with the lease and if that payment is not a payment required to be disclosed under paragraphs (g) to (m),

(i) the circumstances, and

(ii) the amount of the payment or the method of determining the amount;

(o) the implicit finance charge;

(p) the APR;

(q) the total lease cost.

(2) The circumstances referred to in subsection (1) (n) include, without limitation, unreasonable wear or excess use.

Maximum liability under residual obligation leases

102 The lessee's maximum liability at the end of the term of a residual obligation lease after returning the leased goods to the lessor is the sum of the following amounts as calculated in accordance with the regulations:

(a) the estimated residual cash payment;

(b) the estimated residual value less the realizable value of the leased goods.

Legislation Excerpts

25. Business Practices and Consumer Protection Act – sections 107, 108 and 112

Consent for report

107 (1) A person must not obtain from a reporting agency a report respecting an individual for a purpose referred to in section 108 (1) (a) [*to whom reports may be given*] without the consent of the individual.

(2) A person may obtain the consent of the individual by any method that permits the person to produce evidence that the individual consented, including by prominently displaying the information respecting the consent in a clear and comprehensible manner in an application for credit, insurance, employment or tenancy.

To whom reports may be given

108 (1) A reporting agency must not knowingly provide any credit information about an individual in a report, except in a report given

(a) to a person who, it has reason to believe,

(i) intends to use the report in connection with extending credit to, or collecting a debt of, the individual,

(ii) intends to use the report in connection with the individual entering into or renewing a tenancy agreement,

(iii) intends to use the report for the purpose of evaluating the individual for employment, promotion, reassignment or retention as an employee,

(iv) intends to use the report in connection with underwriting insurance involving the individual,

(v) intends to use the report to determine the eligibility of the individual under an enactment, if the information is relevant to a lawful requirement, or

(vi) otherwise has a direct business requirement for the report in connection with a transaction,

(b) to the government of Canada, the government of a province or a municipality in Canada or to an agent of the government of Canada, the government of a province or a municipality in Canada,

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(c) to a law enforcement agency in Canada, concerning an offence under the laws of Canada or of a province, to assist in an investigation or in the making of a decision to undertake an investigation

(i) to determine whether the offence has taken place, or

(ii) to prepare for the laying of a charge or the prosecution of the offence,

(d) in response to a court order,

(e) to the director, to assist in an inspection under this Act, or

(f) under the written consent of the individual to whom the information relates.

(2) A person must not obtain from a reporting agency a report about an individual except in the circumstances referred to in subsection (1).

False or misleading information

112 (1) A person must not supply false or misleading information to a reporting agency.

(2) A person does not contravene subsection (1) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

Legislation Excerpts

26. Motor Dealer Consignment Sales Regulation – sections 4 and 6

Form of purchase agreement

4 (1) If the purchase of a consigned motor vehicle is negotiated between a motor dealer and a purchaser, the motor dealer must prepare a purchase agreement and provide the purchaser with a copy of the purchase agreement at the time of signing by the purchaser.

(2) The purchase agreement must contain all of the following information:

- (a) a complete description of the motor vehicle being purchased;
- (b) the total price, including, as applicable, the down payment, the value of any trade-in and any administration fee or other fees;
- (c) a statement that the motor vehicle is on consignment;
- (d) a statement that any cheque, bank draft or money order received from the purchaser in payment for the consigned motor vehicle must be made payable to the trust account of the motor dealer by identifying the trust account in the manner that the trust account is identified in the records of the savings institution.

Manner of payment

6 (1) Any payment received from a purchaser is deemed to be held in trust for the consignor and lien holder.

(2) Money held by a motor dealer in trust under subsection (1)

- (a) continues to be the beneficial property of the consignor and lien holder,
- (b) must not be used as collateral by the motor dealer, and
- (c) is not subject to attachment or execution against the motor dealer.

(3) Within one day after payment is received from the purchaser, the payment must be deposited by the motor dealer in a trust account at a savings institution located in British Columbia, and the trust account must be designated as a trust account in the records of the savings institution and the motor dealer.

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(4) A motor dealer must not withdraw or authorize the withdrawal of any trust funds referred to in this section unless the funds are for the purpose of

- (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
- (b) correcting an error caused by money deposited in the trust account by mistake, or,
- (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

Legislation Excerpts

27. Motor Vehicle Act – sections 14, 15 and 17

Change of address or name

14 (1) If the address of the owner of a vehicle licensed under this Act is changed from the address stated in the application on which the licence was issued or as shown on the licence, the owner must, within 10 days of the change of address, notify the Insurance Corporation of British Columbia in writing or by some other means approved by the corporation of the owner's old and new address.

(2) In case of a change of name, by marriage or otherwise, of the owner of a vehicle licensed under this Act, the owner must within 10 days notify the Insurance Corporation of British Columbia in writing of the former name and the new name in full.

Notice of change made in motor vehicle

15 (1) If a change is made in a motor vehicle registered under this Act by

- (a) replacing the chassis by another,
- (b) replacing the body by another,
- (c) changing the type of the motor vehicle for another;
- (d) changing the style or colour of the body, or
- (e) changing the type of fuel system,

the owner of the motor vehicle must immediately deliver to the Insurance Corporation of British Columbia a notice in writing stating the nature of the change and other particulars the corporation requires.

(2) The last licence issued for the motor vehicle under this Act must be attached to the notice under subsection (1) for surrender to the Insurance Corporation of British Columbia, and any alteration in the amount of the annual licence fee payable for the motor vehicle due to the change must immediately be adjusted by rebate or payment.

(3) The Insurance Corporation of British Columbia must then issue to the owner a new licence for the operation of the motor vehicle, and may require the substitution of new number plates for those last issued for that motor vehicle and the payment of the prescribed fee for them.

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Transfer of motor vehicle

17 (1) If the title or interest of a person in a motor vehicle or trailer registered under section 3 is transferred, whether by gift, exchange, barter, or sale, the transferor and the transferee of the title or interest must immediately sign a notice of the transfer in the form required by the Insurance Corporation of British Columbia, and the transferee must within 10 days from the day of the transfer deliver the notice to the corporation for registration by the corporation, accompanied by the prescribed fee and the insurance premium prescribed under the *Insurance (Motor Vehicle) Act* in respect of the transfer and the amount of tax owing in respect of the motor vehicle under the *Social Service Tax Act*.

(2) If there is a transfer, by operation of law, of the title or interest of an owner of a motor vehicle or trailer registered under section 3, by way of inheritance, bequest, order in bankruptcy, execution sale, repossession on default in performance of a lease or conditional sale contract, or other means than the voluntary act of the person whose title or interest is transferred,

(a) the notice of transfer under this section must be signed by the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred in place of that person, and

(b) the person signing must transmit to the Insurance Corporation of British Columbia evidence satisfactory to the corporation of all facts entitling that person to sign the notice of transfer.

(3) The form of the notice of transfer under subsection (2) may be varied in accordance with the facts of the case.

(4) All documents required to be transmitted to the Insurance Corporation of British Columbia under this section may be delivered to the corporation, a government agent or a person authorized in writing by the corporation for the purposes of this section, but in every case the person delivering the notice of transfer must at the same time surrender the licence last issued under section 3 for the motor vehicle or trailer, and the person to whom it is surrendered must endorse on it a memorandum of the notice of transfer and the date of its delivery to him or her.

(5) If a notice of transfer is delivered to the Insurance Corporation of British Columbia for a motor vehicle or trailer and any fee or part of a fee for a previous licence issued for the motor vehicle or trailer under this Act is unpaid, or if the insurance premium prescribed under the *Insurance (Motor Vehicle) Act* in respect of the transfer or any amount in respect of the motor vehicle or trailer under the *Social Service Tax Act* is unpaid, the corporation may refuse registration under this section.

Legislation Excerpts

28. Motor Vehicle Act – section 45

Operation of demonstration cars by written consent

45 (1) A prospective purchaser of a motor vehicle, entrusted with a motor vehicle by a holder of a demonstration licence issued under section 38 for the sole purpose of demonstration, and in possession of a written consent given to him or her by the demonstration licence holder for the operation of the motor vehicle under this section, may, for a period not exceeding 48 hours from the time the written consent is given to him or her, and not occurring more than twice in any year, drive and operate the motor vehicle having displayed on it a demonstration licence plate issued to that demonstration licence holder.

(2) A consent is not sufficient for the purposes of this subsection unless the date and the hour of the day on which it is given and the signature of the demonstration licence holder are legibly written on it in ink by the demonstration licence holder.

(3) A person, who is the owner of a motor vehicle that has suffered damage through accident and is undergoing repair in the repair shop of a demonstration licence holder entrusted with a motor vehicle by the demonstration licence holder for the sole purpose of use until completion of the repairs, and in possession of a written consent given to him or her by the Insurance Corporation of British Columbia or an officer or constable of the Royal Canadian Mounted Police for the operation of the motor vehicle under this subsection, may drive and operate the motor vehicle having displayed on it a demonstration licence plate, issued to that demonstration licence holder, on a highway during the time the repairs are being made.

(4) A person to whom a consent for the purpose of this section is given by a demonstration licence holder, the Insurance Corporation of British Columbia or an officer or constable of the Royal Canadian Mounted Police must at all times while driving or operating on a highway the motor vehicle for which the consent is given produce the consent for inspection on demand of a peace officer or constable.

(5) A person who is a mechanic in the regular employ of a demonstration licence holder and is entrusted with a motor vehicle by the demonstration licence holder for the sole purpose of conditioning or testing it may drive and operate the motor vehicle having displayed on it a demonstration licence plate, issued to that demonstration licence holder, on any highway.

(6) A person who is in the regular employ of a demonstration licence holder, or authorized by the demonstration licence holder in writing, and entrusted with the motor vehicle by the demonstration licence holder for the sole purpose of its transportation from a railway depot, wharf or a warehouse to a salesroom, warehouse or place of shipment, or delivery to a purchaser of the motor vehicle, may drive and operate the motor vehicle, having displayed on it a demonstration licence plate, issued to that demonstration licence holder, on any highway.

Legislation Excerpts

29. Repairer's Lien Act – sections 2 to 4, and 10

Lien on chattels

2 (1) A mechanic or other person who, by bestowing money, skill or materials on any chattel in altering and improving its properties, or increasing its value, becomes entitled to a lien on the chattel for the amount or value of the money, skill or materials bestowed, has, while the lien exists, power to sell the chattel, if the amount to which he or she is entitled remains unpaid for 90 days after it ought to have been paid.

(2) Before selling a chattel under subsection (1), the mechanic or other person must give 2 weeks' notice by advertisement in a newspaper published in the city, town or county in which the work was done, or in case there is no newspaper published in the city, town or county, then in a newspaper published in British Columbia nearest to it.

(3) A notice under subsection (2) must state the following:

- (a) the name of the person indebted;
- (b) the amount of that person's debt;
- (c) a description of the chattel to be sold;
- (d) the time and place of sale.

(4) After the sale, the mechanic or other person must do the following:

- (a) apply the proceeds of the sale in payment of the debt, and the costs of advertising and sale;
- (b) pay over the surplus, if any, to the person entitled to it, when that person applies for it;
- (c) leave a written notice of the result of the sale at the owner's last known place of residence or business or mail the notice to either address.

Garage keeper's lien on motor vehicle, aircraft, boat or outboard motor

3 (1) If a garage keeper, before surrendering possession of a motor vehicle, aircraft, boat or outboard motor, obtains from the person at whose request the garage keeper has bestowed money, skill or materials on it, an acknowledgment of debt by requiring that person to sign an invoice or other statement of account, the garage keeper does not, by surrendering possession of the motor vehicle, aircraft, boat or outboard motor, lose any lien on it.

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- (2) The lien ceases to exist on the expiry of 21 days after possession is surrendered unless, in the meantime, the garage keeper registers in the registry a financing statement respecting the lien on the motor vehicle, aircraft, boat or outboard motor.
- (3) Registration of a financing statement is effective from the time assigned to it in the office of the registry.
- (4) If 2 or more financing statements are assigned the same time, the order of registration is determined by reference to the registration numbers assigned to the financing statements in the registry office.
- (5) The registrar must not register a financing statement or issue a search result respecting a lien under this Act until any fees prescribed under the *Personal Property Security Act* have been paid or arrangements satisfactory to the registrar for their payment have been made.
- (6) A registration may relate to one or more liens.
- (7) The motor vehicle, aircraft, boat or outboard motor must be described on the financing statement in the form and manner prescribed by regulation under the *Personal Property Security Act*.
- (8) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in the registration of it unless the defect, irregularity, omission or error is seriously misleading.
- (9) A registration is invalid if the motor vehicle, aircraft, boat or outboard motor is required, by the regulation referred to in subsection (7), to be described in a financing statement by serial number and there is a seriously misleading defect, irregularity, omission or error in
 - (a) the name of the owner of the motor vehicle, aircraft, boat or outboard motor, or
 - (b) the serial number of the motor vehicle, aircraft, boat or outboard motor.
- (10) Nothing in subsections (8) and (9) requires, as a condition to a finding, that a defect, irregularity, omission or error is seriously misleading, proof that anyone was actually misled by it.
- (11) Failure to provide a description in a financing statement of a motor vehicle, aircraft, boat or outboard motor does not affect the validity or effectiveness of the registration with respect to another motor vehicle, aircraft, boat or outboard motor described on the financing statement.
- (12) The registrar may reject a financing statement when, in the opinion of the registrar, it does not comply with this Act or the regulations.
- (13) The registrar must give written reasons for rejecting a financing statement.

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Duration and renewal of lien

4 (1) On the registration of a financing statement, the lien continues for a period of 180 days after the date of registration and, subject to subsections (2) and (3), after that period

(a) the lien ceases to exist, and

(b) the registration of the financing statement is no longer effective.

(2) If the motor vehicle, aircraft, boat or outboard motor has been seized under section 11 within the period referred to in subsection (1) or allowed under subsection (3), the lien continues for as long as the motor vehicle, aircraft, boat or outboard motor remains in the possession of the sheriff or of the garage keeper.

(3) If it appears that a seizure cannot be effected within the 180 days, a court may order, on application made without notice to any person but within the 180 days, that the time during which the seizure may be made be extended for a further period not exceeding 180 days after the date of the order.

(4) If an order is made under subsection (3), the lien continues until the date specified in the order, as long as a financing change statement is registered in respect of the order in the registry before the expiry of the 180 days referred to in subsection (1).

Priority of lien

10 After possession of the motor vehicle, aircraft, boat or outboard motor has been surrendered by the garage keeper, the garage keeper's lien on it is postponed to

(a) the interest of a buyer acquired in good faith, for value and without knowledge of the lien of the garage keeper after the surrender and before a financing statement relating to the lien is registered as provided under this Act,

(b) a security interest acquired in good faith, for value and perfected under the *Personal Property Security Act* after the surrender and before a financing statement relating to a lien is registered under this Act,

(c) another repairer's lien under section 3 if

(i) the money, skill or materials to which the other lien relates was bestowed in good faith and without knowledge of the first lien, and

(ii) a financing statement relating to the other lien is registered as provided under this Act before a financing statement relating to the first lien is registered, and

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(d) the lien of a repairer who has retained possession, if the money, skill or materials to which the other lien relates was bestowed in good faith, without knowledge of the first lien and before a financing statement relating to the first lien is registered under this Act.

Legislation Excerpts

30. Motor Dealer Act Regulation – section 21

Contents of sale or purchase agreement (new vehicles)

21 (1) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a new motor vehicle he shall include the following information:

- (a) the name and address of the purchaser and vendor;
- (b) the date of the sale;
- (c) the make of the motor vehicle;
- (d) the model year;
- (e) the manufacturer's vehicle identification number;
- (f) the body type;
- (g) particulars, including price, of extra equipment or accessories added to or removed from the motor vehicle by the motor dealer according to the agreement made at the time of the sale;
- (h) the actual selling price of the motor vehicle;
- (i) the tax payable pursuant to the Social Service Tax Act;
- (j) the down payment or deposit, including the value ascribed to any trade-in, and the terms and conditions governing the refund of the deposit;
- (k) the balance to be paid by the purchaser;
- (l) an itemized list of the cost of any other charges for which the purchaser is responsible, including insurance and licence fees if they are to be added to the contract price;

Content of sale or purchase agreement (used vehicles)

(2) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a used motor vehicle, he shall include the particulars required for a new motor vehicle under subsection (1) and

- (a) any documentation or transfer fee,

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- (b) the recorded odometer reading at the time of sale,
 - (c) the name of any jurisdiction known to the motor dealer other than British Columbia in which the motor vehicle has previously been registered,
 - (d) an itemized list of any repairs to be effected and the additional cost, if any,
 - (e) a statement that the motor vehicle complies with the requirements of the Motor Vehicle Act, and
 - (f) in the case of a motor vehicle not suitable for transportation a statement to that effect.
- (3) A motor dealer shall give a duplicate copy of the sales or purchase agreement to the purchaser or seller, as the case may be, at the time it is accepted by the motor dealer.

Legislation Excerpts

31. Business Practices and Consumer Protection Act – sections 154, 155 and 157

Undertakings

154 (1) If the director has reason to believe that a person is contravening, is about to contravene or has contravened this Act or the regulations, the director may accept from the person a written undertaking that is in a form and that contains the terms and conditions the director determines are appropriate in the circumstances.

(2) Without limiting subsection (1), an undertaking may include one or more of the following terms and conditions:

- (a) an undertaking to comply with this Act and the regulations;
- (b) an undertaking to refrain from engaging in an act or practice;
- (c) an undertaking to compensate consumers or a class of consumers, including reimbursing any money or returning any other property or thing received from consumers in connection with a consumer transaction;
- (d) an undertaking to provide a bond in accordance with the *Bonding Act* or other security and the circumstances under which the security may be realized;
- (e) an undertaking to reimburse to the director the costs of any inspection, including actual legal costs;
- (f) an undertaking with respect to the form, content and maintenance of trust accounts, records, contracts, advertisements or other documents;
- (g) if two or more persons give the undertaking, all the persons named in the undertaking are jointly and severally responsible for complying with the undertaking and are jointly and severally liable for the payment of any amounts under the undertaking.

(3) The director may terminate an inspection of or proceeding against a person on the acceptance of an undertaking from the person.

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Compliance orders

155 (1) After giving a person an opportunity to be heard, an inspector may order the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

(a) name the person in respect of whom the order is issued,

(b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations,

(c) identify the section of this Act or the regulations that is being contravened, is about to be contravened or has been contravened,

(d) be dated and signed by the inspector issuing the order, and

(e) inform the recipient that the director may file the compliance order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court.

(3) In a compliance order, an inspector may order a person to stop engaging in or not engage in a specified act or practice.

(4) The director may include one or more of the following orders in a compliance order:

(a) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;

(b) that a person compensate other persons or a class of persons who have suffered loss or damage as a result of a contravention of this Act or the regulations;

(c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;

(d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.

(5) The inspector must serve a copy of the compliance order on the person named in the order.

(6) If a compliance order is made against two or more persons, all the persons against whom the order is made are jointly and severally responsible for complying with the order and are

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jointly and severally liable for the payment of any amounts the persons are required to pay under the order.

(7) A compliance order may be reconsidered in accordance with Division 1 of Part 12 [*reconsiderations*].

Filing undertakings or orders in Supreme Court

157 (1) The director may file with the Supreme Court

- (a) an undertaking,
- (b) a compliance order, or
- (c) a direct sales prohibition order.

(2) An undertaking, compliance order or direct sales prohibition order filed under subsection (1) is deemed for all purposes, except appeal from the undertaking or order filed, to be an order of the Supreme Court and enforceable as an order of the court.

Legislation Excerpts

32. Business Practices and Consumer Protection Act – sections 158 and 159

Receivers and trustees

158 (1) In this section, "**receiver**" includes a trustee or receiver manager.

(2) If an inspector has begun an inspection of a person, the director may apply to the court, on notice or without notice to anyone, for the appointment of a receiver of the property of that person.

(3) On application under subsection (2), the court may appoint a receiver of the property of the person if it is satisfied the appointment is in the best interest of any of the following:

- (a) that person's creditors;
- (b) persons whose property is in the possession of or under the control of that person;
- (c) consumers.

(4) A receiver appointed under this section is the receiver of all the property belonging to, held by, held on behalf of or held in trust for the person named in the order, and the receiver has authority, if directed by the court, to wind up or manage the business and affairs of the person named and all necessary or incidental powers.

(5) If the director applies for the appointment of a receiver without notice to anyone, the receiver

- (a) is to be appointed for a period not longer than 8 days, and
- (b) is not to be authorized to wind up the business or affairs of the person named in the order

unless the court, after the hearing, otherwise orders.

(6) On application with notice, the court may vary or rescind an order made under this section.

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Order to freeze property

159 (1) The director may make a property freezing order under subsection (2) in respect of a person under inspection if the director believes the order is advisable for the protection of persons dealing with the person under inspection.

(2) The director may order, on terms the director considers reasonable, one or more of the following:

(a) that the person under inspection

(i) not take any of the person's property from the possession of another person named in the order who has the property on deposit, under control or for safe keeping, and

(ii) not dispose of the person's property or otherwise deal with the person's property in a way that reduces the value of the property, whether the property is acquired by the person before, on or after the date of the order;

(b) that a person to whom the order is directed hold property in trust, if the person has, in British Columbia, on deposit, under control or for safe keeping any property of the person under inspection;

(c) that a debtor of the person under inspection

(i) hold in trust property that is payable or transferable in satisfaction of the debt, or

(ii) transfer to a receiver property that is payable or transferable in satisfaction of the debt;

(d) that a lessor, to whom the order is directed, of safety deposit boxes, safes or compartments in safes, not permit the opening or removal of a safety deposit box, safe or compartment in a safe leased to the person under inspection;

(e) that a person to whom the order is directed hold the property affected by the order in that person's possession, safe keeping or control in trust for an interim receiver, custodian, trustee, receiver manager, receiver or liquidator who has been appointed or whose appointment has been applied for under any of section 158 [*receivers and trustees*], the *Company Act*, the *Law and Equity Act*, the *Personal Property Security Act*, the *Supreme Court Act*, the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada).

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(3) A property freezing order does not apply to assets in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the order expressly states that it applies to those assets or securities.

(4) The director must serve a property freezing order on each person to whom it is directed and on each person under inspection who is named in the order.

(5) A property freezing order takes effect in respect of a person at the time the property freezing order is served on the person or at a later time specified by the director in the order.

(6) Any property affected by a property freezing order continues to be affected by the order and remains frozen under it until the director, in writing,

(a) rescinds the order, or

(b) orders the release of that property.