

Chapter 18

AN ACT TO AMEND THE CONSUMER PROTECTION ACT

(Assented to June 8, 2017)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. **The *Consumer Protection Act* is amended by this Act.**
2. **The following is added after section 50:**

PART III.1

RELIEF FROM UNCONSCIONABLE LOAN TRANSACTIONS

Definitions

50.1. In this Part,

"borrower" includes a surety and endorser or other person liable for the repayment of money lent or upon an agreement or collateral or other security given in respect of it; (*emprunteur*)

"cost of borrowing" includes interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges; (*frais d'emprunt*)

"credit grantor" includes the person advancing money lent and the assignee of a claim arising or security given in respect of money lent; (*fournisseur de crédit*)

"money lent" includes money advanced on behalf of a person in a transaction which, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced and includes a mortgage. (*prêt d'argent*)

Court may reopen transaction

50.2. Where, in respect of money lent, the Court finds that having regard to the risk and to the circumstances, the cost of borrowing is excessive and that the transaction is harsh and unconscionable, the Court may

- (a) reopen the transaction or loan agreement and take an account between the credit grantor and the borrower;
- (b) despite a statement or settlement of account or an agreement purporting to close previous dealings and create a new obligation, reopen an account already taken and relieve the borrower from payment of a sum in excess of the sum determined by the Court to be fairly due in respect of the principal and the cost of borrowing;

- (c) order the credit grantor to repay the excess where it has been paid or allowed on account by the borrower;
- (d) relieve the borrower from acceleration, forfeiture or other provisions in an agreement as described in and to the extent allowed in Part III; and
- (e) set aside either wholly or in part or revise or alter a security given or agreement made in respect of the money lent, and, where the credit grantor has parted with the security, order the credit grantor to indemnify the borrower.

Exercise of powers of Court

50.3. (1) The powers conferred by section 50.2 may be exercised in an action or proceeding

- (a) by a credit grantor for the recovery of money lent;
- (b) by the borrower despite a provision or agreement to the contrary and despite the fact that the time for repayment of the loan or an instalment of it has not arrived; or
- (c) in which the amount due or to become due in respect of money lent is in question.

Application for relief

(2) In addition to a right that a borrower may have under this or another Part or otherwise in respect of money lent, the borrower may apply for relief under this Part to the Court and the Court on the application may exercise the powers under section 50.2.

Burden of proof

50.4. In an action or proceeding taken under this Part, the burden of proof is on the credit grantor to establish that, having regard to the risk and to the circumstances, the cost of borrowing is not excessive and is not harsh and unconscionable.

Factors to be considered – cost of borrowing excessive

50.5. (1) In determining whether the cost of borrowing of a loan is excessive, the Court shall consider

- (a) interest rates prevailing at the time the loan was entered into for loans of a similar nature, including the prime rate of interest charged by chartered banks to their most credit-worthy customers;
- (b) the degree of risk assumed by the credit grantor; and
- (c) the cost of borrowing of a similar loan to a borrower in similar circumstances.

Factors to be considered – harsh and unconscionable transaction

(2) In determining whether a transaction is harsh and unconscionable, the Court shall consider

- (a) whether the borrower was unable to protect his or her own interests because of physical or mental disability, age, illiteracy, ignorance or inability to understand the nature of the lending transaction;
- (b) whether the borrower was subject to undue pressure to enter into the lending transaction; or

- (c) whether, at the time the loan was entered into, there was no reasonable probability of full payment of the principal amount of the loan and the cost of borrowing.

Saving genuine holder for value and existing jurisdiction

50.6. Nothing in this Part affects the rights of a genuine assignee or holder for value without notice or derogates from the existing powers or jurisdiction of the Court.

3. The following is added after section 72:

PART VI.1

UNFAIR AND UNCONSCIONABLE PRACTICES

Definitions

72.1. In this Part,

"consumer" means a natural person acting for personal, family or household purposes but does not include a person who is acting for business purposes; (*consommateur*)

"consumer transaction" means an act or instance of conducting business or other dealings with a consumer, including an agreement between a supplier and a consumer in which the supplier agrees to supply goods and services for payment; (*opération de consommation*)

"supplier" means a person who, as a principal or agent, in the course of his or her business offers or advertises the sale of goods or services to a consumer, engages in a consumer transaction with a consumer, or manufactures, imports, produces or assembles goods, and includes an assignee of the rights and obligations of such a person. (*fournisseur*)

Unfair business practices

72.2. (1) In this Part, an unfair business practice is a representation, conduct or failure to disclose material facts that has the effect, or might reasonably have the effect, of deceiving or misleading a consumer, and includes

- (a) a representation that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have;
- (b) a representation that a supplier has sponsorship, approval, status, affiliation or connection that he or she does not have;
- (c) a representation that goods or services are of a particular standard, quality or grade where they are not;
- (d) a representation that goods are of a particular style, model or origin where they are not;
- (e) a representation that goods have been used to an extent that is different from their actual use;
- (f) a representation that goods are new or unused where they are not or where they are reconditioned, reclaimed, altered or deteriorated;

- (g) a representation that goods have a particular prior history or use where they have not;
- (h) a representation that goods or services have been made available in accordance with a previous representation where they have not;
- (i) a representation that goods or services are available, or are available at a reduced price, for a reason that is different from the fact;
- (j) a representation that goods or services have been supplied in accordance with a previous representation, where they have not;
- (k) a representation that goods or services are available when the supplier knows or ought to know that they are not or has no intention of supplying them;
- (l) a representation that a specific price advantage exists where it does not;
- (m) a representation that a part, replacement, repair or adjustment is needed where it is not;
- (n) a representation that repairs have been made or parts installed where that is not the case;
- (o) a representation that the supplier is soliciting or communicating with consumers with a certain interest or purpose where he or she is not;
- (p) a representation that a consumer transaction involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading;
- (q) a representation such that a consumer might reasonably conclude that goods are available in greater quantities than are in fact available from the supplier;
- (r) a representation as to the authority of a salesperson, representative, employee or agent to negotiate the final terms of a consumer transaction where the representation is not accurate;
- (s) the giving of an estimate or evaluation of the price of goods or services that is materially less than the price subsequently determined or demanded, where the supplier has proceeded with the performance of the consumer transaction without the express prior consent of the consumer;
- (t) the giving of less prominence in an advertisement or display to the total price of goods or services than to the price of a part of the goods or services;
- (u) the giving of less prominence in a representation, advertisement or display to the total price of the goods or services than to the amount of an instalment to be paid for goods or services;
- (v) a representation that goods or services are free when that is not the case; and
- (w) a representation using exaggeration, innuendo or ambiguity as to a material fact.

When practice may occur

(2) An unfair business practice may occur before, during or after a consumer transaction, and whether or not the consumer transaction is completed or a consumer has suffered loss or damage.

Non-application

(3) With the exception of paragraphs (1)(t) and (u), subsection (1) does not apply to a supplier who, on behalf of another supplier, broadcasts by radio or television, or prints, publishes or distributes an advertisement that he or she has accepted in good faith.

Unconscionable acts

72.3. (1) In this Part, an act or practice is unconscionable if at the time of entering into a consumer transaction a supplier knew or ought to have known any of the following circumstances:

- (a) that at the time the consumer transaction was entered into there was no reasonable probability of full payment of the purchase price by the consumer;
- (b) that the consumer was unable to receive a substantial benefit from the consumer transaction;
- (c) that at the time the consumer transaction was entered into the price grossly exceeded the price at which similar goods or services were available to similar consumers;
- (d) that the terms and conditions of the consumer transaction were so one-sided, harsh or adverse to the consumer as to be inequitable;
- (e) that the supplier used trickery or undue pressure in order to induce the consumer to enter into the consumer transaction; or
- (f) that the supplier took advantage of the extreme necessity or helplessness of the consumer or the inability of the consumer to protect his or her interests because of his or her physical or mental disability, his or her ignorance, illiteracy, age or emotional state, or his or her inability to understand the character, nature or language of the consumer transaction.

When act or practice may occur

(2) An unconscionable act or practice may occur before, during or after a consumer transaction.

Prohibition

72.4. (1) A person shall not engage in an unfair business practice or unconscionable act or practice.

Burden of proof

(2) Where it is alleged that a supplier is engaging in or has engaged in an unfair business practice or an unconscionable act or practice, the burden of proof that the supplier is not engaging in or has not engaged in an unfair business practice or an unconscionable act or practice rests with the supplier.

Remedies of consumer

72.5. (1) A consumer who has suffered damage as a result of an unfair business practice or unconscionable act or practice, may start an action against a supplier.

Relief available

(2) In an action concerning a consumer transaction, including an action not made under this section, where the Court is satisfied that a supplier has engaged in an unfair business practice or unconscionable act or practice, the Court may

- (a) make an order declaring the act or practice to be an unfair business practice or unconscionable act or practice;
- (b) award damages for a loss suffered including exemplary or punitive damages;
- (c) make an order rescinding the consumer transaction;
- (d) grant an interim or permanent injunction restraining the supplier from continuing the unfair business practice or unconscionable act or practice;
- (e) reopen the transaction and repay the amount paid to the supplier by the consumer or relieve the consumer from the payment of an amount in excess of the amount judged by the Court to be a fair price for the consumer transaction; and
- (f) make other directions and grant other relief that the Court considers appropriate.

Remedies not limited

(3) Nothing in this section limits a remedy a consumer may have with respect to a transaction under the common law, another Part, or another enactment.

4. The following is added after section 104:

PART IX.1

CHEQUE CASHING FEES – GOVERNMENT CHEQUES

Definitions

104.1. In this Part,

"cheque cashing fee" means

- (a) a fee, commission or other amount or consideration charged, paid or given for cashing or negotiating a government cheque, and
- (b) any other fee, commission, amount or consideration designated by regulation as a cheque cashing fee; (*frais d'encaissement de chèque*)

"government agency" means a body designated as a government agency in the regulations; (*organisme gouvernemental*)

"government cheque" means a cheque or other written order to pay drawn on an account of

- (a) the Government of Canada,
- (b) the Government of Nunavut,
- (c) a government agency, or
- (d) a local government body; (*chèque du gouvernement*)

"local government body" means one of the following when designated in the regulations:

- (a) a municipality established under the *Cities, Towns and Villages Act* or the *Hamlets Act*,
- (b) a District Education Authority established under the *Education Act*,
- (c) a housing association or housing authority as defined in the Nunavut Housing Corporation Act.
(*organisme d'administration locale*)

Prohibition against unauthorized fees

104.2. Except as prescribed, no person shall

- (a) charge, require or accept a cheque cashing fee; or
- (b) permit any other person to charge, require or accept a cheque cashing fee.

Definition of "payer"

104.3. (1) In this section, "payer" means a person who pays or is charged or required to pay a cheque cashing fee.

Consequences of failure to comply

(2) In addition to any penalty that a person may be subject to under any other provision of this Act or the regulations, if a person contravenes section 104.2,

- (a) the payer is not liable to pay the cheque cashing fee or any part of it; and
- (b) the person must, immediately on demand by the payer or the Director, reimburse the payer, in cash for
 - (i) the total amount paid as a cheque cashing fee, and
 - (ii) the value of any other consideration given.

Regulations

104.4. (1) The Commissioner, on recommendation of the Minister, may make regulations

- (a) designating a fee, commission or other amount or consideration as a cheque cashing fee for the purpose of this Part;
- (b) prescribing or limiting the amount that may be charged as a cheque cashing fee;
- (c) designating a body as a government agency for the purpose of this Part;
- (d) designating any of the following as a local government body for the purpose of this Part:
 - (i) a municipality established under the *Cities, Towns and Villages Act* or the *Hamlets Act*,
 - (ii) a District Education Authority established under the *Education Act*,
 - (iii) a housing association or housing authority as defined in the Nunavut Housing Corporation Act;
- (e) exempting any transaction or class of transactions or any person or class of persons from the application of this Part or a regulation under this Part;
- (f) respecting any other matter the Minister considers necessary for the administration of this Part.

Application of regulation

(2) A regulation under this Part may be general or particular in its application, and may apply to one or more classes of persons, transactions or things, and to the whole or any part of Nunavut.

5. Section 107 is repealed and the following is substituted:

Agreements waiving benefits

- 107.** (1) An agreement, whether oral or written, is void if it provides that
- (a) any provision of this Act or the regulations does not apply;
 - (b) a benefit or remedy under this Act or the regulations is not available; or
 - (c) a benefit or remedy under this Act or the regulations is in any way limited or modified.

Money recoverable

(2) Money paid by a consumer under an agreement described in subsection (1) is recoverable in the Court.

Exception

(3) Subsection (1) does not apply to a release made by a person to settle a dispute.

6. Section 111 is amended

- (a) **in subsection (1) by**
 - (i) **striking out “\$1,000” and substituting “\$10,000”;**
 - (ii) **striking out “\$2,000” and substituting “\$20,000”;**
- (b) **in subsection (2) by**
 - (i) **striking out “\$2,000” and substituting “\$20,000”;**
 - (ii) **striking out “\$5,000” and substituting “\$50,000”;**
- (c) **by adding the following after subsection (2):**

Compensation and restitution

(3) If a person is convicted of an offence under this Act, the Court may, in addition to any other penalty, order the person convicted to pay compensation or make restitution.

Coming into force

7. (1) Sections 1 to 3, 5 and 6 come into force on Assent.

(2) Section 4 comes into force on a day to be fixed by order of the Commissioner.