1970

c 82 Consumer Protection Act

Ontario

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Bibliographic Citation
Consumer Protection Act, RSO 1970, c 82

Repository Citation
Available at: http://digitalcommons.osgoode.yorku.ca/rso/vol1970/iss1/85

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CHAPTER 82

The Consumer Protection Act

1. In this Act,

(a) "actually received" means the sum of money received by the borrower from the lender that can be used by the borrower without any restrictions on its use imposed by the lender;

(b) "borrower" means a person who receives credit;

(c) "buyer" means a person who purchases goods for consumption or services under an executory contract and includes his agent, but does not include a person who buys in the course of carrying on business or an association of individuals, a partnership or a corporation;

(d) "cost of borrowing" means,

(i) in the case of credit other than variable credit, the amount by which,

a. the total sum that the borrower is required to pay if the payments required are made as they become due, including all such sums regardless of the purpose or reason for the payment or the time of the payment,

b. the sum actually received in cash by the borrower or, where the lender is a seller, the amount of the cash price of the goods or services less the sums, if any, actually paid as a down payment or credited in respect of a trade-in or paid or credited for any other reason plus, in each case, insurance or official fees, if any, actually paid by the lender,

(ii) in the case of variable credit, the charges made in respect of the extension of the variable credit;

(e) "credit" means credit for which the borrower incurs a cost of borrowing and,

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by the advancement of money,
but does not include credit given on the security of a mortgage of real property;

(f) "Department" means the Department of Financial and Commercial Affairs;

(g) "Director" means the Director of the Consumer Protection Division of the Department of Financial and Commercial Affairs;

(h) "executory contract" means a contract between a buyer and a seller for the purchase and sale of goods or services in respect of which delivery of the goods or performance of the services or payment in full of the consideration is not made at the time the contract is entered into;

(i) "goods" means personal property;

(j) "itinerant seller" means a seller whose business includes soliciting, negotiating or arranging for the signing by a buyer, at a place other than the seller's permanent place of business, of an executory contract for the sale of goods or services, whether personally or by his agent or employee;

(k) "lender" means a person who extends credit;

(l) "Minister" means the Minister of Financial and Commercial Affairs;

(m) "official fee" means a fee that is required to be paid by or under a statute of Ontario or Canada;

(n) "prescribed" means prescribed by this Act or the regulations;

(o) "purchase price" means the total obligation payable by the buyer under an executory contract;

(p) "registered" means registered under this Act;

(q) "Registrar" means the Registrar of the Consumer Protection Bureau;

(r) "regulations" means the regulations made under this Act;

(s) "seller" means a person who is in the business of selling goods or services to buyers, and includes his agent;

(t) "trade-in" means consideration given by a buyer in a form other than money or an obligation to pay money;

(u) "Tribunal" means The Commercial Registration Appeal Tribunal established under The Department of Financial and Commercial Affairs Act;

(v) "variable credit" means credit made available under an agreement whereby the lender agrees to make credit available to be used from time to time, at the option of
the borrower, for the purpose of the purchase from time to time of goods or services, and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature. 1966, c. 23, s. 1; 1967, c. 13, s. 1; 1968, c. 17, s. 1; 1968-69, c. 14, s. 1.

2. This Act does not apply to the sale of a public utility as defined in section 1 of The Public Utilities Act or to any charge for the transmission, distribution or storage of gas as defined in The Ontario Energy Board Act where such charge has been approved by the Ontario Energy Board. 1966, c. 23, s. 2.

PART I

REGISTRATION OF ITINERANT SELLERS

3. The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him by or under this Act under the supervision of the Director. 1968-69, c. 14, s. 2, part.

4. — (1) No person shall carry on business as an itinerant seller unless he is registered by the Registrar under this Act.

(2) A registered itinerant seller shall not carry on business in a name other than the name in which he is registered or from a place of business other than that authorized by the registration.

(3) No person shall publish or cause to be published in writing any representation that he is registered under this Act. 1968-69, c. 14, s. 2, part.

5. — (1) An applicant is entitled to registration or renewal of registration except where,

(a) his financial responsibility or record of past conduct is such that it would not be in the public interest for the registration or renewal to be granted;

(b) where the applicant is a corporation, its financial responsibility or the record of past conduct of the corporation or its officers or directors is such that it would not be in the public interest for the registration or renewal to be granted; or

(c) the applicant is or proposes to be in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. 1968-69, c. 14, s. 2, part.
Revocation

6.—(1) The Tribunal may, upon the application of the Registrar, suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if he were an applicant, or where the registrant is in breach of a condition of the registration.

(2) Notwithstanding subsection 1, the Registrar may cancel a registration upon the request of the registrant in writing in the prescribed form surrendering his registration. 1968-69, c. 14, s. 2, part.

Voluntary
cancellation

Hearing by
Tribunal

7.—(1) Where the Registrar refuses to issue or renew a registration or applies to the Tribunal to suspend or revoke a registration, he shall serve notice upon the applicant or registrant, together with written reasons for his refusal or for the proposed suspension or revocation, and the applicant or registrant may, by written notice served upon the Registrar and the Tribunal within fifteen days after the service of the notice of refusal or proposed suspension or revocation, require a hearing by the Tribunal.

(2) Where the Registrar refuses to renew a registration, the applicant shall be deemed to continue to be registered until an order is made by the Tribunal or until the time for requiring a hearing by the Tribunal expires, whichever occurs first.

Stay of
refusal to
renew

Notice of
hearing

(3) The Tribunal shall fix a date for the hearing and shall serve notice of the hearing on the parties at least ten days before the day fixed.

(4) The notice of hearing shall contain,

(a) a statement of the time and place of the hearing;

(b) a statement of the statutory power under which the hearing is being held;

(c) a reference to the rules of procedure applicable to the hearing;

(d) a concise statement of the issues; and

(e) a statement that, if a party who has been duly notified does not attend at the hearing, the Tribunal may proceed in his absence and he is not entitled to notice of any further proceedings. 1968-69, c. 14, s. 2, part.

Idem

8.—(1) The Registrar, the applicant or registrant and any other person specified by the Tribunal are parties to the hearing.

(2) If a person who has been duly notified of a hearing does not attend, the Tribunal may proceed in his absence. 1968-69, c. 14, s. 2, part.
9.—(1) A hearing may be adjourned from time to time by the Tribunal on reasonable grounds,
   (a) on its own motion; or
   (b) on the motion of any party to the hearing.

(2) The Tribunal may, in the prescribed form, command the attendance before it of any person as a witness.

(3) The Tribunal may require any person,
   (a) to give evidence on oath at a hearing; and
   (b) to produce such documents and things as the Tribunal requires.

(4) An applicant or registrant giving evidence under oath before the Tribunal shall be advised of his right to object to answer any question under section 9 of The Evidence Act and section 5 of the Canada Evidence Act.

(5) The Tribunal may admit evidence not given under oath.

(6) Any person who, without lawful excuse,
   (a) on being duly summoned as a witness before the Tribunal, makes default in attending; or
   (b) being in attendance as a witness before the Tribunal refuses to take an oath legally required by the Tribunal to be taken, or to produce any document or thing in his power or control legally required by the Tribunal to be produced by him, or to answer any question to which the Tribunal may legally require an answer; or
   (c) does any other thing that would, if the Tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

is guilty of an offence punishable under subsection 7.

(7) The Tribunal may certify an offence under subsection 6 to the High Court and that court may thereupon inquire into the offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1968-69, c. 14, s. 2, part.

10. Any party may be represented before the Tribunal by counsel or agent. 1968-69, c. 14, s. 2, part.
11.—(1) Any witness may be represented before the Tribunal by counsel or agent, but at the hearing the counsel or agent may only advise the witness and state objections under the provisions of the relevant law.

(2) Where a hearing is in camera, a counsel or agent for a witness shall be excluded except when that witness is giving evidence. 1968-69, c. 14, s. 2, part.

12. At a hearing before the Tribunal, any party may call and examine his witnesses, cross-examine opposing witnesses and present his arguments and submissions. 1968-69, c. 14, s. 2, part.

13.—(1) All hearings shall be open to the public except where the Tribunal finds that,

(a) public security may be involved; or

(b) intimate financial or personal circumstances of any person may be disclosed,

in which case the Tribunal shall hold the hearing as to any such matters in camera.

(2) Notwithstanding the exceptions mentioned in clauses a and b of subsection 1, the Tribunal may, if in its opinion the public interest so requires, proceed without regard to such exceptions. 1968-69, c. 14, s. 2, part.

14. Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Tribunal within a reasonable time after the matter in issue has been finally determined. 1968-69, c. 14, s. 2, part.

15.—(1) The Tribunal may consider in reaching its decision any facts and information that are within its knowledge and that have not been introduced in evidence.

(2) The Tribunal shall notify all parties to a proceeding of any facts or information referred to in subsection 1 and shall, before reaching its decision, give the parties an opportunity to contest before it any such facts or information.

(3) The Tribunal shall cause a notice containing a statement of such facts or information to be served upon all the parties. 1968-69, c. 14, s. 2, part.

16. All oral evidence received by the Tribunal shall be taken down in writing and together with,

(a) the notice of hearing;
(b) any rulings or orders made in the course of the proceedings of the Tribunal;
(c) any written submissions received by the Tribunal; and
(d) the decision and the reasons therefor,
form the record. 1968-69, c. 14, s. 2, part.

17.—(1) The Tribunal may, after the hearing,
(a) where the hearing is an appeal from a decision of the Registrar, by order confirm or alter the decision of the Registrar or direct the Registrar to do any act the Registrar is authorized to do under this Act and as the Tribunal considers proper and for this purpose the Tribunal may substitute its opinion for that of the Registrar;
(b) where the hearing is an application for suspension or revocation of a registration, dismiss the application or order that the registration be suspended or revoked, and the Tribunal may attach such terms and conditions to its order or to the registration as it considers appropriate.

(2) The final decision of the Tribunal, including the reasons therefor, shall be in writing.

(3) The reasons for the final decision shall contain,
(a) the findings of fact on the evidence and any information or knowledge used in reaching the decision;
(b) any agreed findings of facts; and
(c) the conclusions of law based on the findings mentioned in clauses a and b.

(4) The Tribunal shall cause to be served on the parties a copy of its final decision, including the reasons therefor, and a notice stating the rights of appeal. 1968-69, c. 14, s. 2, part.

18. A certified copy of the final decision of the Tribunal, exclusive of the reasons therefor, may be filed in the office of the Registrar of the Supreme Court whereupon it shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1968-69, c. 14, s. 2, part.

19.—(1) Any party to the hearing before the Tribunal may appeal from the decision of the Tribunal to the Court of Appeal and the practice and procedure as to the appeal and proceedings incidental thereto are the same mutatis mutandis as upon an appeal from the High Court.

(2) The Minister may designate counsel to assist the court upon the hearing of an appeal under this section.
(3) An appeal under this section may be made on questions of law or fact or both and the court may confirm or alter the decision of the Tribunal or direct the Registrar or the Tribunal to do any act the Registrar or the Tribunal is authorized to do under this Act and as the court considers proper, and the court may substitute its opinion for that of the Registrar and the Tribunal and may exercise the same powers as it exercises on an appeal from a judge of the High Court sitting without a jury. 1968-69, c. 14, s. 2, part.

20. An order of the Tribunal refusing to renew or suspending or revoking a registration shall take effect immediately, but the Tribunal may grant a stay until the order becomes final. 1968-69, c. 14, s. 2, part.

21. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. 1968-69, c. 14, s. 2, part.

22.—(1) Where the Registrar receives a complaint in respect of an itinerant seller and so requests in writing, the itinerant seller shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

(2) The request under subsection 1 shall indicate the nature of the inquiry involved.

(3) For the purposes of subsection 1, the Registrar or any person designated in writing by him may at any reasonable time enter upon the business premises of the itinerant seller to make an inspection in relation to the complaint. 1968-69, c. 14, s. 2, part.

23.—(1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of a registered itinerant seller to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts are being complied with.

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as an itinerant seller while unregistered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4. 1968-69, c. 14, s. 2, part.

24.—(1) Upon an inspection under section 22 or 23, the person inspecting,
(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person being inspected; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected.

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

(2) Any copy made as provided in subsection 1 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original. 1968-69, c. 14, s. 2, part.

25.—(1) Every itinerant seller shall, within five days after the event, notify the Registrar in writing of,

(a) any change in his address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

(2) The Registrar shall be deemed to be notified under subsection 1 on the day on which he is actually notified or, where the notification is by mail, on the day of mailing. 1968-69, c. 14, s. 2, part.

26.—(1) Every itinerant seller shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the itinerant seller and certified by a person licensed under The Public Accountancy Act.

(2) The information contained in a financial statement filed under subsection 1 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 14, s. 2, part.

27.—(1) Any notice or order required to be given or served under this Part or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Department.
28.—(1) Where it appears to the Director that any person does not comply with any provision of this Part, the regulations or an order made under this Part, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Court of Appeal from an order made under subsection 1. 1968-69, c. 14, s. 2, part.

29.—(1) Every person who, knowingly,

(a) furnishes false information in any application under this Part or in any statement or return required to be furnished under this Part or the regulations; or

(b) fails to comply with any order, direction or other requirement made under this Part or section 47,

is guilty of an offence punishable under section 48, but no proceeding under clause a shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

(2) A statement as to,

(a) the registration or non-registration of any person;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Director; or

(d) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, document or material,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as \textit{prima facie} proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1968-69, c. 14, s. 2, part.
PART II
EXECUTORY CONTRACTS

30. This Part applies to executory contracts for the sale of goods or services where the purchase price, excluding the cost of borrowing, exceeds $50. 1966, c. 23, s. 15.

31.—(1) Every executory contract, other than an executory contract under an agreement for variable credit, shall be in writing and shall contain,

(a) the name and address of the seller and the buyer;
(b) a description of the goods or services sufficient to identify them with certainty;
(c) the itemized price of the goods or services and a detailed statement of the terms of payment;
(d) where credit is extended, a statement of any security for payment under the contract, including the particulars of any negotiable instrument, conditional sale agreement, chattel mortgage or any other security;
(e) where credit is extended, the statement required to be furnished by section 36;
(f) any warranty or guarantee applying to the goods or services and, where there is no warranty or guarantee, a statement to this effect; and
(g) any other matter required by the regulations. 1966, c. 23, s. 16 (1); 1968, c. 17, s. 2 (1).

(2) An executory contract is not binding on the buyer unless the contract is made in accordance with this Part and the regulations and is signed by the parties, and a duplicate original copy thereof is in the possession of each of the parties thereto. 1966, c. 23, s. 16 (2).

(3) Where the amount to be paid by a buyer under an executory contract is determined after an allowance for a trade-in and is stated in the contract to be subject to adjustment after the existence or amount of liens against the trade-in is ascertained or confirmed, the statement of the terms of payment and the statement of the cost of credit shall be based upon the amount as determined upon the information provided by the buyer but, upon any subsequent adjustment, the percentage rate by which the cost of borrowing is expressed, the total number of installments required to pay the total indebtedness or the price shown in the contract shall not be changed. 1968, c. 17, s. 2 (2).
32. Where a trade-in is delivered or money is paid, whether by way of deposit or otherwise, on account of the proposed purchase of goods or services but no binding contract is entered into in respect of the goods and no delivery of the goods or any part thereof has been made to the buyer or no performance of the services has been made, the seller shall upon the request of the buyer return such trade-in or refund in full the moneys so paid, as the case may be. 1966, c. 23, s. 17.

33.—(1) Where a seller solicits, negotiates or arranges for the signing by a buyer of an executory contract at a place other than the seller’s permanent place of business, the buyer may rescind the contract by delivering a notice of rescission in writing to the seller within two days after the duplicate original copy of the contract first comes into the possession of the buyer, and the buyer is not liable for any damages in respect of such rescission. 1966, c. 23, s. 18 (1); 1968, c. 17, s. 3 (1).

(2) Where a buyer rescinds a contract under subsection 1,

(a) the buyer shall immediately return any goods received under the contract and the seller shall bear the expense of the return, not exceeding the expense of returning the goods from the place where the buyer received their delivery; and

(b) the seller shall return any moneys received or realized in respect of the contract, whether from the buyer or any other person, and shall return any trade-in received under the contract. 1966, c. 23, s. 18 (2); 1968, c. 17, s. 3 (2).

34. Any provision in any executory contract or in any security agreement incidental thereto under which the seller may acquire title to, possession of or any rights in any goods of the buyer, other than the goods passing to the buyer under the contract, is not enforceable. 1966, c. 23, s. 19.
35.-(1) Where a buyer under an executory contract has paid two-thirds or more of the purchase price of the goods as fixed by the contract, any provision in the contract, or in any security agreement incidental thereto, under which the seller may retake possession of or resell the goods upon default in payment by the buyer is not enforceable except by leave of a judge of a county or district court.

(2) Upon an application for leave under subsection 1, the judge may, in his absolute discretion, grant or refuse leave or grant leave upon such terms and conditions as he considers advisable. 1966, c. 23, s. 20.

PART III
CREDIT TRANSACTIONS

36. Except as provided in section 37, every lender shall furnish to the borrower, before giving the credit, a clear statement in writing showing,

(a) the sum,
   (i) expressed as one sum in dollars and cents, actually received in cash by the borrower, plus insurance or official fees, if any, actually paid by the lender, or
   (ii) where the lender is a seller, being the amount of the cash price of the goods or services, including any insurance or official fees;

(b) where the lender is a seller, the sums, if any, actually paid as a down payment or credited in respect of a trade-in, or paid or credited for any other reason;

(c) where the lender is a seller, the amount by which the sum stated under subclause ii of clause a exceeds the sum stated under clause b;

(d) the cost of borrowing expressed as one sum in dollars and cents;

(e) the percentage that the cost of borrowing bears to the sum stated,
   (i) under subclause i of clause a, where the lender is not a seller, or
   (ii) under clause c, where the lender is a seller,

expressed as an annual rate applied to the unpaid balance thereof from time to time, calculated and expressed in the manner prescribed by the regulations;

(f) the amount, if any, charged for insurance;

(g) the amount, if any, charged for official fees; and
(h) the basis upon which additional charges are to be made in the event of default. 1966, c. 23, s. 21; 1967, c. 13, s. 2.

37.—(1) In this section, “period” means a period of time of not less than four weeks and not more than five weeks in duration. 1966, c. 23, s. 22 (1).

(2) A lender extending variable credit shall.

(a) before agreeing to extend variable credit, furnish the borrower with a clear statement in writing setting forth the cost of borrowing in respect of the unpaid balances from time to time,

(i) stated as an annual percentage, or scale of annual percentages, of such balance charged at the end of each period, subject to a minimum dollars-and-cents charge, if any, and

(ii) stated in dollars and cents in a schedule of fixed amounts of outstanding balances, and the corresponding charges for the cost of borrowing; and

(b) at the end of each period during the extension of credit, furnish the borrower with a clear statement in writing showing,

(i) the outstanding balance in the account of the borrower at the beginning of the period,

(ii) the amount and date of each extension of credit to the borrower during the period and the identity of the goods or services in respect of which the credit was extended,

(iii) the amount of each sum received or credited to the account of the borrower during the period, and the date and occasion thereof,

(iv) the cost of borrowing, expressed as one sum in dollars and cents, charged during the period,

(v) the outstanding balance in the account of the borrower at the end of the period, and

(vi) the statement referred to in clause a. 1966, c. 23, s. 22 (2); 1967, c. 13, s. 3.

38. The percentage rate by which the cost of borrowing is expressed shall be applied in the manner prescribed by the regulations. 1966, c. 23, s. 23.

39. A borrower is not liable to pay a lender as the cost of borrowing any sum in excess of the sum shown in the statement required by section 36 or 37 in respect of the transaction. 1966, c. 23, s. 24.
40. Where a sum remaining to be paid under an agreement for credit is paid in full before the term of the agreement has expired, (a) the borrower is entitled to a proportionate credit in respect of the cost of borrowing; and (b) the lender is entitled to a proportionate part of the cost of lending,
in an amount determined in the manner prescribed by the regulations. 1966, c. 23, s. 25.

41.—(1) Subject to the regulations, no lender shall represent, either orally or in print, or by radio or television broadcast, his charge for credit or cause such charge to be so represented unless the representation includes the full cost of borrowing and is expressed in the manner required by section 36 or 37. 1966, c. 23, s. 26 (1); 1967, c. 13, s. 4 (1).

(2) Subject to the regulations, where a lender represents or causes to be represented in a printing, broadcast or other publication any terms of the credit agreement other than that referred to in subsection 1, the lender shall also include or cause to be included all other relevant terms of the credit transaction, including,
(a) the sum to be actually received in cash by the borrower or the actual cash price of the goods;
(b) the amount of the down payment;
(c) the amount of each instalment; and
(d) the number of instalments required to repay the total indebtedness, including the cost of borrowing. 1966, c. 23, s. 26 (2); 1967, c. 13, s. 4 (2).

42.—(1) Where a lender assigns a negotiable instrument given to secure credit, he shall deliver to the assignee with the negotiable instrument a copy of the statement required by section 36 and, where the lender is a seller, a copy of the contract of sale.

(2) Every assignee of a negotiable instrument who reassigns the instrument shall deliver to his assignee the statement and contract of sale, if any, received by him in respect of the instrument.

(3) Where an assignee of a negotiable instrument to which subsection 2 applies is entitled to recover on the instrument from the maker, the maker is entitled to be indemnified therefor by any assignor of the instrument who has not complied with subsection 1 or 2 as the case may be. 1966, c. 23, s. 27.
43.—(1) Where an assignor of a negotiable instrument is convicted of a contravention of section 42, the provincial judge making the conviction may order that the person convicted is liable to indemnify the maker under subsection 3 of section 42.

(2) Where an indemnity order is made under subsection 1 in favour of a person who is or becomes liable under a judgment of a court to an assignee of the negotiable instrument in respect of which the indemnity order was made, the person entitled to the indemnity may file the indemnity order in the court office of the court in which the judgment was issued.

(3) Upon the filing of the indemnity order, the registrar or clerk of the court shall issue a default judgment in favour of the person entitled to the indemnity and against the person required by the indemnity order to give the indemnity, and the amount of the default judgment shall be the amount of the judgment referred to in subsection 1 and costs together with the costs of issuing the default judgment, or such less amount as the person entitled to the indemnity by praecipe requests.

(4) Upon application therefor, a judge of the court in which the default judgment is issued may set aside the default judgment or may determine the amount of the indemnity or make an order of reference for the purpose and may vary the amount of the default judgment. 1966, c. 23, s. 28.

PART IV

GENERAL

44. This Act applies notwithstanding any agreement or waiver to the contrary. 1966, c. 23, s. 29.

45. The rights of a buyer or borrower under this Act are in addition to any rights of the buyer or borrower under any other Act or by the operation of law, and nothing in this Act shall be construed to derogate from such rights. 1966, c. 23, s. 30.

46.—(1) In this section,

(a) "credit" means the advancing of money, goods or services to or on behalf of another for repayment at a later time, whether or not there is a cost of borrowing, and includes variable credit;

(b) "unsolicited goods" means personal property furnished to a person who did not request it and a request shall not be inferred from inaction or the passing of time alone, but does not include,
(i) personal property that the recipient knows or
ought to know is intended for another person, or
(ii) personal property supplied under a contract in
writing to which the recipient is a party that
provides for the periodic supply of personal prop­
erty to the recipient without further solicitation.

(2) No action shall be brought by which to charge any person
upon any arrangement for the extension of credit evidenced by a
credit card unless the person to whom credit is to be extended
requested or accepted the credit arrangement and card in writing,
and the obtaining of credit by the person named in the credit card
shall be deemed to constitute such written acceptance by him.

(3) No action shall be brought by which to charge any person
for payment in respect of unsolicited goods notwith­
sanding their
use, misuse, loss, damage or theft.

(4) Except as provided in this section, the recipient of unsoli­
ted goods or of a credit card that has not been requested or
accepted in accordance with subsection 2 has no legal obligation
in respect of their use or disposal. 1970, c. 80, s. 1, part.

(5) This section applies in respect of credit cards and unsoli­
ted goods received on or after the 3rd day of December,

47. Where, in the opinion of the Registrar, any seller or lender
is making false, misleading or deceptive statements in any
advertisement, circular, pamphlet or similar material, the Regis­
trar may order the immediate cessation of the use of such material
and sections 7 to 19 apply to the order in the same manner as to a
decision of the Registrar refusing registration and the order of the
Registrar shall take effect immediately, but the Tribunal may
grant a stay until the Registrar’s order becomes final. 1968-69,
c. 14, s. 3.

48.—(1) Every person who contravenes this Act or the
regulations and every director or officer of a corporation who
knowingly concurs in a contravention of this Act or the regula­
tions are guilty of an offence and on summary conv­
sicion are liable to a fine of not more than $2,000 or to imprisonment for a
term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under
subsection 1, the maximum penalty that may be imposed upon
the corporation is $25,000 and not as provided therein.

(3) Subject to subsection 1 of section 29, no proceeding under
this section shall be instituted more than three years after the
time when the subject-matter of the proceeding arose. 1966,
c. 23, s. 32.
(4) For the purposes of this section, an error or omission in any form prescribed or information required to be given by this Act or the regulations shall not be deemed to be in contravention of this Act or the regulations where the person against whom the contravention is alleged proves that the error or omission is a bona fide accidental or clerical error or omission or beyond his control. 1968, c. 17, s. 4.

49. The Lieutenant Governor in Council may make regulations,

(a) governing applications for registration or renewal of registration of itinerant sellers and prescribing terms and conditions of registration;

(b) requiring itinerant sellers to make returns and furnish information to the Registrar;

(c) prescribing further procedures respecting the conduct of matters coming before the Tribunal;

(d) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;

(e) requiring itinerant sellers or any class thereof to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

(f) requiring the payment of fees on application for registration as an itinerant seller or for renewal of such registration, and prescribing the amounts thereof;

(g) prescribing the form of executory contracts and statement of the cost of borrowing and the size, type and colour of lettering used in any provision thereof;

(h) requiring and governing the maintenance of trust accounts by sellers or any class thereof, and prescribing the moneys that shall be held in trust and the terms and conditions thereof;

(i) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated, expressed and applied;

(j) prescribing the manner of determining the apportionment of the cost of borrowing for the purposes of section 40;

(k) exempting any class of buyer, seller, itinerant seller, lender or borrower from the application of this Act or any provision thereof;
(l) prescribing forms for the purposes of this Act and providing for their use;

(m) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;

(n) defining any expression used in Part II or Part III of this Act;

(o) governing the advertising by lenders of the cost of borrowing or other terms of credit;

(p) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1966, c. 23, s. 33; 1967, c. 13, s. 6; 1968-69, c. 14, s. 5.