

A Warning to Contractors and a Lesson for Regulators: Enforcement and Penalties Under the Consumer Protection Act

June 12, 2017

Virtually every regulator engages in some form of consumer protection. Concerns relating to false billing, misleading advertising, and the failure to deliver products and services can be found in nearly every regulatory statute. The vigour with which regulators seek the most serious remedies relating to these consumer protection issues is, however, quite variable. In some cases, the media has criticized regulators for not revoking a registrant's registration when they have been found guilty of professional misconduct for false or misleading billings.

Our provincial government's approach to addressing consumer protection issues is more aggressive, involving provincial offence proceedings where significant penalties, often involving large fines, jail, and probation are sought and received. We have firsthand experience, having recently represented clients in matters involving violations of the *Consumer Protection Act, 2002*¹ (the "CPA"). From our recent experience, we provide two important takeaways from the penalties being imposed for violations of the CPA. First, a charge under the CPA should not be taken lightly, as both the Ministry of Government and Consumer Protection (the "Ministry"), who administer the CPA, and the courts, view these matters as serious and are willing to order significant sentences for violations of the CPA. Second, professional regulators ought to carefully consider the penalties that they are seeking in cases involving consumer protection issues, as a new bar is being set by the province and by the courts.

Enforcement under the CPA

The CPA is aimed at protecting consumers by creating rules surrounding consumer transactions (i.e. any act or instance of conducting business or other dealings with a consumer)². A breach of those rules is an offence that is prosecuted in provincial court against the individual and/or the corporation involved (including its officers and directors). While the CPA applies broadly to cover most forms of consumer transactions, the Ministry seems to have primarily targeted the residential construction industry (either by design or because the bulk of complaints have arisen in the construction context).

A conviction under the CPA can result in significant penalties. An individual convicted of an offence under the Act can receive up to two years less a day in prison and/or a fine of up to \$50,000³. A corporation convicted of an offence may be fined up to \$250,000. In addition, a person convicted under the CPA may be ordered to pay compensation or make restitution and the Ministry has typically insisted that restitution orders be paid out in a schedule contained within a probation order (rendering the nonpayment of restitution an offence unto itself)⁴. The fact that these penalties exist is not unusual for provincial offences – what is unusual is that convictions under the CPA are now routinely resulting in orders for significant jail time.

Penalties Under the CPA

A review of the [Ministry's Bulletins](#) provides numerous illustrations of the significant penalties handed down for violations of

the CPA:

- [A contractor was sentenced to 360 days in jail, followed by two-years of probation, and ordered to pay \\$207,000 in restitution.](#) The contractor entered into agreements with consumers for home renovations, but failed to do the work, failed to pay sub-trades and suppliers, consistently asked for and received payments despite not performing the work, and the work that was performed created serious safety issues for consumers.
- [Two contractors were sentenced to jail terms of 225 and 75 days respectively, followed by two-year probation terms, and each was ordered to pay more than \\$24,000 in restitution.](#) The corporation operated by the contractors was also convicted and fined \$45,000. The corporation entered into agreements with five individuals to perform household renovations, but the work was not performed. The contractor who received 75 days in jail was convicted solely on the basis that he failed, as an officer and director of the corporation, to prevent the corporation from committing an offence under the CPA.
- [A contractor was sentenced to two months in jail, followed by a two-year probation term, and ordered to pay \\$6,000 in restitution.](#) The contractor entered into an agreement to install vinyl siding on a consumer's home, accepted a \$6,000 deposit, but never started the work. An interesting aspect of this case is that the contractor's business partner paid the deposit back to the consumer at his own cost, so the consumer had already received full restitution before the contractor was prosecuted.
- Two contractors were sentenced to jail terms of 130 and 120 days respectively, followed by two-year probation terms, and collectively ordered to pay \$37,491.20 in restitution. They entered into agreements with various consumers to construct sunrooms and garages, accepted deposits, but performed little or no work.

Key Take-Aways

The Ministry is taking matters of consumer protection seriously. If you or your business is charged under the CPA, it would be wise to retain experienced legal counsel as the courts have shown a willingness to order lengthy jail sentences. If you are involved in regulating professionals, in light of the new bar being set by the government, you should consider the penalties you are seeking for professionals found guilty of professional misconduct for consumer protection matters, such as false or misleading billings, in order to avoid public criticism.

[1][SO 2002, c 30, Sch A](#)

[2]CPA, [s 1](#) and [2\(1\)](#).

[3]CPA, s [116](#)(5).

[4]CPA, s [117](#).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.



www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035