



Office of Consumer Affairs CONSUMER QUARTERLY

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Scams Without Frontiers

New Challenges for Consumer Protection

There ought to be a law!"

Thus sounds the anguished cry of the victim of a consumer scam. Although the vast majority of consumer transactions in Canada takes place without a hitch — the result of vigilant consumers, industry self-regulation and consumer protection laws — the scam artist is flourishing. More and more people posing as legitimate merchants are taking consumers' money without living up to their end of the bargain. The unscrupulous are also increasingly plying their trade across provincial and international borders to stay beyond the reach of the law.

It is impossible for law enforcers to monitor every aspect of millions of daily transactions. Even if Canadians were to want it, Big Brother could not be watching all the time; however, consumer protection agencies are devising new ways to combat the latest tricks scam artists use to separate the unwary from their money.

This issue of the *Consumer Quarterly* explores how the evolving marketplace creates new opportunities for scammers and also examines what governments and consumers are doing about it.

A Ruse by Any Other Name...

A look in the dictionary is enough to confirm that the gullible have been cozened, do-diddled, hoodwinked and bamboozled by thimblerriggers, charlatans and grifters throughout the ages.

However, determining whether or not a particular transaction is part of a scam can be difficult. There is a large grey area, in which consumer laws may not necessarily apply, between consumers' unmet expectations of the quality of a good or service and outright fraud as defined in the Criminal Code — when a business deliberately misleads a consumer.

It is far easier to avoid an unscrupulous merchant than to undo a fraudulent transaction after the fact. A consumer's first and best line of defence is to determine the reputation of a business, build a relationship with its staff whenever possible, and understand the attributes and quality of the product purchased.

New Markets, New Scams

Modern consumer protection law was largely developed 30 years ago when Canadians consumed more goods than services, and they had regular personal contact with sellers, making it easier to assess their reputations.

Since then, Canadians have become much heavier consumers of services, ranging from recreation and travel to financial services, while consumer products have become technically more complex and, therefore, more difficult to appraise.



These developments challenge consumer protection because product quality and proof of performance are more difficult to establish. At the same time, globalization has led to more cross-border and distance selling, and telecommunications advances are allowing companies to reach wider audiences more quickly and cheaply. As a

result of these changes, scam artists are finding new routes into consumers' pockets.

Internet commerce is expected to grow dramatically in the next few years and consumer pressure for better regulation of the electronic marketplace's excesses is inevitable. But regulators have had trouble wielding their traditional swords in this

modern battlefield: some Internet participants resist incursions by consumer protection agencies or other regulators on the grounds that cyberspace should remain unconstrained; and enforcement proves difficult if the seller, the buyer and the server hosting the Web page are in different countries.

Hiding Behind Borders

Certain industries attract scams, in particular scams in which the perpetrator tries to avoid prosecution by living in one jurisdiction and doing business in another. An interprovincial committee of consumer protection agencies has identified industries commonly associated with concerns and problems for cross-border enforcement in Canada: telemarketing, loan and mortgage brokers, timeshares, travel, prepaid services, home repairs and improvements, door-to-door sellers, and multi-level marketing.

A 1997 Angus Reid study, conducted on behalf of Alberta's Ministry of Municipal Affairs, surveyed 800 Albertans on their experiences and concerns with some of these industries. The results are presented below.

Telemarketing

A telephone sales representative says you have won a prize. It can only be claimed by paying a fee and, at times, nothing materializes. Prosecution of these criminals is difficult because many are calling from another province or country.

Three quarters of those surveyed had been contacted by telemarketers in the previous year and three quarters of all respondents expressed a concern about this practice. While many were primarily concerned that telemarketing was intrusive and inconvenient, others raised questions about business honesty and the privacy of consumer information.

Law enforcers registered 18 000 telemarketing "fraud" attempts and 4 000 victims in Canada in 1995, with total dollar losses to the victims exceeding \$7 million. Most of the losses occurred in Ontario and western Canada; however, all regions of Canada have been targeted. It is estimated that only 10% of people report this type of crime. The actual number of telemarketing fraud victims in 1995 could therefore have been as high as 40 000, suffering a loss of more than \$70 million.

Telemarketing fraud or deceptive practices often target the elderly. In 1996, about half of all victims were older than 60, according to Canada-U.S. complaints-tracking bodies. In Canada, people older than 60 represent only 16.3% of the population.

Concerns with Industry Practices

| Industry | % of respondents approached in 1996 | % of all respondents with concerns |
|---------------------------|-------------------------------------|------------------------------------|
| Telemarketing | 75% | 75% |
| Timeshares | 27% | 40% |
| Home repairs/improvements | 21% | 63% |

Source: 1997 Angus Reid survey

Consumer Fraud Goes Global

The National Consumers League (NCL) in the United States reports that telemarketing fraud is going global. In 1996, four of the top 11 locations for illegal telemarketing operations that target U.S. citizens were Canadian provinces: Quebec (third, up from 25th in 1995), Ontario (eighth, up from 20th), British Columbia (ninth, up from 10th), and Nova Scotia (eleventh, not on the 1995 list).

The NCL's Internet Fraud Watch team reports that con artists use the same pitches on the Internet as they do by mail and phone. But, in addition to bogus prizes and get-rich quick schemes, they target buyers of computer products. In this case they purport to sell computer equipment, software and Internet services which never materialize.

More than 28% of Canadians who own timeshare property are not satisfied with their purchase, according to a 1996 World Tourism Organization study.

Timeshares

Typically, out-of-province timeshare companies establish temporary operations to sell property ownership using very dubious sales tactics. The sales pitch usually lasts for several hours and the seller attempts to pressure the consumer into an expensive deal without the chance to consult with a lawyer or real estate agent, let alone the opportunity to visit the site before the deal is concluded.

More than 28% of Canadians who own timeshare property are not satisfied with their purchase, according to a 1996 World Tourism Organization study. Consumers cited pressure sales tactics, buyer remorse, contract terms, escalating maintenance fees, excessive prices and limited resale opportunities as the sources of their dissatisfaction. In Ontario alone, more than 2 400 consumer complaints on timeshares were collected between 1991 and 1996.

Home Improvements

Dishonest contractors often use high pressure sales tactics, misrepresent the quality of their products and services and operate from one province to another, often without proper licences or records. By the time a homeowner's roof starts leaking, these contractors are frequently beyond the reach of the provincial consumer protection office.

With 63% of respondents in the Alberta survey expressing a concern about home improvement practices, it is clear that many consumers lack confidence in the home improvements industry. It also suggests that legitimate companies will face difficulty in establishing credibility.

No Holiday from Travel Scams

A 1997 study entitled *An Analysis of Consumer Issues and Fraud in the Travel and Tourism Industry*, commissioned by Industry Canada's Office of Consumer Affairs, in collaboration with the Ontario Ministry of Consumer and Commercial Relations and the Canadian Tourism Commission, demonstrates how a range of scams are applied in the travel industry.

The study emphasizes that the travel industry generally serves and protects Canadian consumers well. Unfortunately, scams could be on the rise as more consumers travel, use the Internet to make reservations and are enticed by "free" travel products into questionable dealings.

Here are two examples of consumer concerns:

- misrepresentation and lack of disclosure — for example, finding that the product or service is not available at the advertised price during the desired time, or that the product does not live up to the initial offer.
- vacation prizes offered by telephone involving substantial advance payments — prizes either do not materialize or the price of the total vacation package is highly inflated.

Aside from these typical scams, the survey also uncovered several other consumer concerns related to paying in advance, getting home safely, obtaining redress when problems arise, and extra charges such as insurance.

After the Flood

Manitoba's flood victims may become victims of another scourge — scam artists.

Manitoba's Department of Consumer and Corporate Affairs and Emergency Management Organization are urging consumers to be very cautious before entering into any transaction related to the flood.

In particular, the agencies are warning about the following:

- unsolicited door-to-door sales of home repair services — vendors must be licensed by the province
- contractors — consumers should check references and read any contract very carefully
- firms offering free water testing — it is done by the public utility before residents are allowed back into their homes
- loan brokers — promises of "guaranteed" loans go unfulfilled, even after the consumer has paid the requested "processing fees"
- phony inspectors — any government official will carry an authorized photo identity card
- Bogus charitable solicitations — consumers should check that the charity is legitimate before donating.

A special investigation unit comprising several enforcement agencies, including the RCMP, the Winnipeg Police and Canada Customs, is currently investigating fraudulent activities reported during the flood clean-up period.

Consumers Fight Back... Sometimes

The 1997 Angus Reid study found that 28% of respondents reported knowing someone who had bought a product or service from a company that had acted unethically. In addition, 11% of respondents stated that they themselves had suffered a financial or other loss in a consumer transaction in the previous two years.

Many times consumers do not know they have been the victim of a scam, or, if they do, they believe it is too late to do anything about it. Those who were aware that they had been bilked dealt with the problem in several different ways. Significantly, almost half of the survey respondents either did nothing or found they had no recourse.

What's a Consumer To Do?



Source: 1997 Angus Reid survey

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English
<http://strategis.ic.gc.ca/OCA>

or French
<http://strategis.ic.gc.ca/BC>

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Agencies Working Together

In response to growth in cross-border scams, the federal and provincial Consumer Measures Committee is working under the Agreement on Internal Trade to strengthen interprovincial consumer protection. It is developing a database to improve information-sharing and provide early warnings of new scams. As well, members of the Consumer Measures Committee are cooperating to improve law enforcement across borders.

Internationally, Canada's Competition Bureau established the Task Force on Cross-Border Deceptive Marketing Practices with the U.S. Federal Trade Commission in 1996, to provide a cooperative approach to law enforcement between the two countries. The Competition Bureau is also Canada's representative on the International Marketing Supervision Network, whose mandate is to share information and encourage cooperative cross-border enforcement among member countries.

Meanwhile, Canada and the United States, under a joint agreement to combat telemarketing scams, have established a task force of law enforcement and consumer protection agencies from both countries. The task force is scheduled to make recommendations for action by October this year.

Project Phonebusters is an innovative example of how authorities are addressing emerging problems. It combines the resources of the public and private sectors, including the Ontario Provincial Police, the RCMP, provincial governments, Industry Canada's Competition Bureau, the Canadian Bankers Association, the Canadian Couriers Association and the Better Business Bureaux in both the U.S. and Canada.

In the end, timely information still remains one of the best ways to help consumers help themselves. And so, the Consumer Measures Committee is also working on new consumer awareness initiatives. Meanwhile, Industry Canada continues to develop the Recalls and Frauds Section of the Consumer Connection Web site as a one-stop source of current information for consumers on, among other things, how to avoid being bilked, shammed, thimblerrigged or otherwise separated from their hard-earned money.