

## Urquhart

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**Subject:** FW: Ontario Consumer Protection Act Gives Authority for Judge to Order Restitution of the Damages Due to Offences Under the Act

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**From:** Urquhart [mailto:urquhart@rogers.com]

**Sent:** July-27-11 11:48 AM

**To:** Charles Sousa; 'Charles Sousa'; 'Ed Steele'

**Cc:** Diane & Hugh Urquhart

**Subject:** Ontario Consumer Protection Act Gives Authority for Judge to Order Restitution of the Damages Due to Offences Under the Act

Minister of Labour Charles Sousa  
& MPP Mississauga South

Please call again asap.

Whoever you spoke to at the Ministry of Consumer Services either does not know the Ontario Consumer Protection Act, or thinks he can blow smoke up your "you know what." It is very clear in the OCPA S. 117 that the Ministry of Consumer Services can lay charges of Unfair Practices Offences against both Nortel and Sun Life. Then, an Ontario Court of Justice, Provincial Offences Court judge adjudicates the offences, and if found guilty of an offense, the judge may order Nortel and/or Sun Life to pay restitution of the damages borne by Nortel disabled employees due to the offences committed.

### **Orders for compensation, restitution**

**117. If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution.**

The ruse may be that the Ministry staff is saying the Tribunal cannot order restitution, but this is not an impediment to the Ministry laying offences charges and having these charges heard at one of the Ontario Court of Justice, Provincial Offences Courts in Ontario.

When will these Ministry of Consumer Services staff be held to account for knowing both the broad and flexible application of the law and the letter of the law, so that they may deal effectively with Ontario citizens.

Diane Urquhart

[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_02c30\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02c30_e.htm)

### **Unfair practices prohibited**

**17. (1) No person shall engage in an unfair practice.**

### **One act deemed practice**

(2) A person who performs one act referred to in section 14, 15 or 16 shall be deemed to be engaging in an unfair practice.

### **Rescinding agreement**

18. (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages.

### **Remedy if rescission not possible**

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

- (a) because the return or restitution of the goods or services is no longer possible; or
- (b) because rescission would deprive a third party of a right in the subject-matter of the agreement that the third party has acquired in good faith and for value.

### **Offences**

116. (1) A person is guilty of an offence if the person,

- (a) fails to comply with any order, direction or other requirement under this Act; or
- (b) contravenes or fails to comply with,
  - (i) in respect of Part II, Consumer Rights and Warranties, subsection 10 (1), section 12, subsections 13 (2) and (7) and subsections 13.1 (1) and (2),
  - (ii) in respect of Part III, Unfair Practices, subsection 17 (1),
  - (iii) in respect of Part IV, Rights and Obligations Respecting Specific Consumer Agreements, subsection 30 (2), clauses 33 (a) and (b), subsections 34 (1) and (2) and 36 (1),
  - (iv) in respect of Part V, Sectors Where Advance Fee Prohibited, section 49, subsection 50 (1) and section 53,
  - (v) in respect of Part VI, Repairs to Motor Vehicles and Other Goods, subsections 56 (1), 57 (1) and (3), 58 (1) and (2), section 60, subsections 61 (1) and (2) and sections 62 and 64,
  - (vi) in respect of Part VII, Credit Agreements, section 71, subsections 72 (2) and 76 (2), section 77 and subsections 78 (1) and (2), 79 (1), 80 (1), (2), (3) and (5), 81 (1), (3), (5), (6) and (7) and 82 (1) and (2),
  - (vii) in respect of Part VIII, Leasing, section 88 and subsection 89 (1), and
  - (viii) in respect of Part IX, Procedures for Consumer Remedies, subsections 96 (1), 98 (2) and 99 (5).

**Same**

(2) A person who contravenes or fails to comply with a provision of a regulation made under this Act is guilty of an offence.

**Corporation**

(3) An officer or director of a corporation is guilty of an offence if he or she fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) or (2).

**Attempt**

(4) Any person who attempts to commit any offence referred to in subsection (1) or (2) is guilty of an offence. 2002, c. 30, Sched. A, s. 116 (4).

**Penalties**

(5) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.

**Limitation**

(6) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director.

**Orders for compensation, restitution**

117. If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution.

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or such other tribunal as may be prescribed.