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Crypto Consumer Protection Law

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Often when we hear news about law and cryptocurrency, it invariably involves the application of securities law to the issuance of cryptocurrency tokens and coins.

One area of Canadian law which doesn't get the publicity that securities law generates, but which certainly touches both consumers of cryptocurrency and the businesses who deal in it, is consumer protection law.

Consumer protection laws exist to protect consumers from unfair business practices and provide various legal remedies and resources to consumers who have been victims of abusive or non-compliant business practices. Consumers cannot waive their rights under consumer protection law and if a contract is vague, its terms are interpreted in favour of the consumer. Businesses who deal in cryptocurrency must be mindful of these laws as consumer protection legislation does contain procedures for legal enforcement of consumer remedies, including rights of civil action in court and, in some instances, the right to demand a charge-back from credit card issuers.

In Canada, every province and territory has some form of consumer protection legislation. Why it is so important for businesses dealing in cryptocurrency to be mindful of this area of law? One important reason is that most provincial consumer protection legislation contains specific laws targeting goods and services sold via the internet. This is relevant to businesses such as cryptocurrency exchanges, online wallet services and proprietors selling things like crypto mining equipment who almost exclusively conduct business via the internet and are therefore subject to this legislation.

It is good practice for those in the cryptocurrency space to be aware of the *Consumer Protection Act* of Alberta (the "Act"), and the Internet Sales Contract Regulation, when setting up any business, as there are some fairly harsh penalties for non-compliance. In Alberta, for example, sellers of goods or services who are convicted of an offence under the Consumer Protection Act or the Internet Sales Contract Regulation are subject to a fine of the greater of $300,000 or three times the cost amount of the goods or services provided or to imprisonment for not more than two years (or both).

It may seem self-evident, however in Alberta a provider of services or goods cannot exert undue pressure or influence on a consumer to enter into an agreement for sale, and one cannot charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference. It's also illegal for a supplier of goods or services to take advantage of a consumer as a result of the consumer's inability to understand the character, nature, language or effect of the transaction. Arguably this is particularly important in the instance of

someone dealing in a cryptocurrency related service or product, as the details can become technical in certain circumstances.

Additionally, it is an unfair practice for a supplier to:

1. enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services
2. enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services
3. include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided
4. make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact

The Internet Sales Contract Regulation

In Alberta, an “internet sales contract” means a consumer transaction where (a) the consideration for the goods or services exceeds $50.00 and the contract is formed by “text-based internet communications” (i.e. any contract formed via the internet).

“Consideration” in this context is sufficiently broad to include bitcoin and other cryptocurrencies. Therefore, where there is a payment obligation in bitcoin, some other cryptocurrency or fiat in an amount greater than CAD $50.00, the consumer could rely on the Alberta Consumer Protection Act and the Internet Sales Contract Regulation for protection.

Before a consumer enters into an internet sales contract, the supplier of the goods or services must disclose the following to the consumer:

1. the name and address of the supplier and, if different, the name and address under which the supplier carries on business
2. the supplier’s telephone number and, if available, the supplier’s e-mail address
3. a fair and accurate description of the goods or services being sold to the consumer, including any relevant technical or system specifications
4. an itemized list of the price of the goods or services being sold to the consumer and any associated costs payable by the consumer, including taxes and shipping charges
5. a description of any additional charges that may apply to the contract, such as customs duties and brokerage fees, whose amounts cannot reasonably be determined by the supplier
6. the total consideration payable by the consumer to the supplier under the contract or, where the goods or services are being purchased over time, the amount of the periodic payments under the contract
7. the currency in which amounts owing under the contract are payable
8. the terms, conditions and method of payment
9. the date when the goods are to be delivered or the services are to begin, or both
10. the supplier’s delivery arrangements, including the identity of the shipper, the mode of transportation and the place of delivery
11. the supplier’s cancellation, return, exchange and refund policies, if any
12. any other restrictions, limitations or conditions of purchase that may apply

A supplier of services must provide the consumer with an express opportunity to accept or decline the agreement and to correct errors immediately before the consumer enters into it.

The disclosure listed above required of the supplier must be prominently displayed in a clear and comprehensible manner and made available in a manner that ensures the consumer has accessed the information and that the consumer is able to retain and print the information.

The supplier must provide a copy of the internet agreement in writing or electronic format to the consumer within 15 days after the contract is entered into. The copy of the internet agreement must include all of the information contained above and must include the consumer's name and the date the contract was entered into. A consumer may cancel an internet agreement within 7 days of receiving a copy of the contract if the supplier does not disclose the above information or provide the consumer with an express opportunity to accept or decline the agreement or to correct errors immediately before entering into it. A consumer may also cancel an internet agreement within 30 days from the date the contract is entered into, if the supplier fails to provide the consumer with a copy of the contract.

If an internet agreement is cancelled by a consumer, the business/supplier must provide a full refund to the consumer of all amounts paid by the consumer under the contract, within the time frames set out in the Internet Sales Contract Regulation.

Pro tip: Don't forget about the consumers as they are afforded a wide variety of legal protections!

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