
DIRECTOR'S ORDER UNDER SECTION 157
OF THE *CONSUMER PROTECTION ACT* (formerly the *Fair Trading Act*)
TO
JOHN ALLAN MCKALE
AND
WARRANTY ADVOCATES LTD. OPERATING AS HOME WARRANTY ADVOCATES
AND
ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF THE ABOVE

This Director's Order was issued under s. 157(1) of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1(1) of the *Fair Trading Act*, this Director's Order is part of the public record.

Albertans who have questions or concerns about this business are encouraged to contact the Service Alberta Consumer Contact Centre at 1-877-427-4088.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

[Search for a Licensed Business, Charity or Fundraiser](#)

To view a tipsheet on this business licence category, please click here:

[Tipsheets](#)

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ISSUE

Service Alberta has investigated allegations related to breaches of the *Consumer Protection Act* (CPA) and found evidence that:

1. The manner in which HWA operates meets the definition of a home inspection business as defined in Section 6.2(2) of the DTBR.
2. Therefore HWA was required to be licensed as a Home Inspection business at the time it entered into these two transactions.
3. HWA would also be required to comply with the contract and insurance requirements under the HIBR.
4. The "Audit and Proposal" document includes the statement "We provide complete audits of your Home and find the defects that will be approved to start the repairs." This gives consumers the impression that this approval is guaranteed.
5. The document also includes the statement "We pull from over 80,000 residences to reference Claims, Decision Reversals, Approvals and more to force the Warranty Providers into decisions that are binding and enforceable." This gives the consumer the impression that HWA can force warranty providers to make a decision in favour of the consumer.
6. Previous complaints have been received alleging the same contraventions and a formal warning was issued on November 30, 2021.

LEGISLATION

Consumer Protection Act Chapter C-26.3

Section 4 If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

Section 6(3) It is an unfair practice for a supplier

- (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

Section 6(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
- (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
- (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not;

Section 104(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

Section 157(1) If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

(2) An order may direct the person or publisher

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and

- (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

(3) A person or publisher who is subject to an order under this section may appeal under section 179.

Home Inspection Business Regulation (HIBR)

Section 5 No home inspection business licence may be issued or renewed unless the applicant submits to the Director

- (b) proof that the applicant has errors and omission insurance specifically in respect of the carrying on of the home inspection business covering at least \$1 000 000 per claim and \$2 000 000 aggregate for all claims within a one-year period.

Section 6(1) A home inspection business shall not carry on its business without the insurance referred to in section 5(b).

Section 19 A home inspection business shall ensure that every home inspection contract

- (a) is in writing,
- (b) is legible, and
- (c) includes the following:
 - (i) the consumer's name and address;
 - (ii) the home inspection business's name and licence number, business address, including street address, telephone number and, if applicable, fax number and e-mail address;
 - (iii) the name and licence number of the home inspector conducting the inspection;
 - (iv) the date of the contract;
 - (v) the date on which the home inspection is to occur;
 - (vi) the date the completed home inspection report is to be provided to the consumer;
 - (vii) the address of the dwelling to be inspected;
 - (viii) if the contract does not include an inspection of any of the following features or components of the dwelling, a statement, to be initialled by the consumer, indicating that fact:
 - (A) roofing, flashings or chimney;
 - (B) exterior, including lot gradings, walkways, driveways, retaining walls, patios and decks;
 - (C) structure;
 - (D) electrical;
 - (E) heating;
 - (F) heat pumps and cooling;
 - (G) insulation;
 - (H) plumbing;
 - (I) interior;
 - (ix) if the contract does not include an inspection of mould or asbestos, statement, to be initialled by the consumer, indicating that fact;
 - (x) a statement that unless expressly stated in the contract, the contract does not include an inspection of any outbuildings or other structures not attached to the dwelling other than a garage or carport;

- (xi) a statement that the inspection will be non-invasive unless the parties agree to specified invasive procedures;
- (xii) if all or any part of the home inspection is to be subcontracted to another home inspection business, the name and licence number of that home inspection business and a statement, to be initialled by the consumer, indicating that fact.

Section 20 A home inspection business shall ensure that before a home inspection occurs,

- (a) the home inspection contract is signed by the home inspection business and by the consumer, and
- (b) the name of each signatory to the contract is printed legibly beside or below the signature.

Section 21 The home inspection business shall provide the consumer with a copy of the signed home inspection contract at the time the contract is signed.

Section 23(1) A home inspection business shall ensure that every home inspection report

- (a) is in writing,
- (b) is legible,
- (c) addresses the condition of the following features or components of the dwelling, except for those that have been excluded by the home inspection contract under section 19:
 - (i) roofing, flashings or chimney;
 - (ii) exterior, including lot gradings, walkways, driveways, retaining walls, patios and decks;
 - (iii) structure;
 - (iv) electrical;
 - (v) heating;
 - (vi) heat pumps and cooling;
 - (vii) insulation;
 - (viii) plumbing;
 - (ix) interior, and
- (c) makes recommendations on any identified deficiencies for each of the features or components referred to in clause (c) that are included in the inspection, and anything else that is made part of the inspection.

(2) A recommendation to obtain an expert opinion meets the requirements of a recommendation under subsection (1)(d).

Section 24 A home inspection business shall provide a copy of the completed home inspection report to the consumer on or before the date set out in the home inspection contract.

Section 26(2) A home inspection business shall not enter into a home inspection contract if the home inspection would result in a conflict of interest for the home inspection business or a home inspector employed or otherwise engaged by the home inspection business.

(3) A conflict of interest under subsection (2) includes a payment from a person other than the person for whom the home inspection report is to be prepared.

- (4) A home inspector shall not conduct a home inspection if the home inspection would result in a conflict of interest for the home inspector.
- (5) A conflict of interest under subsection (4) includes a payment for a home inspection from a person other than the home inspection business.
- (6) Neither a home inspector nor a home inspection business shall provide a consumer with an estimate of the cost of any repair or improvement to a dwelling as a result of a home inspection.

Designation of Trades and Businesses Regulation (DTBR)

Section 3(2) In this section, “direct selling business” means the activities of soliciting, negotiating or concluding in person, at any place other than the seller’s place of business, sales contracts, including direct sales contracts to which Part 3 of the *Consumer Protection Act* applies, for the provision of goods or services, where the buyer is a consumer.

Section 6.2(2) In this section

- (b) “home inspection” means an opinion as to the condition of a dwelling based primarily on a non-invasive examination of readily accessible features and components of the dwelling;
- (c) “home inspection business” means the activity of providing home inspection services to consumers;

ORDER

John Allan McKale, Warranty Advocates Ltd. operating as Home Warranty Advocates and any employee, representative, or agent of John Allan McKale and Warranty Advocates Ltd. operating as Home Warranty Advocates must immediately:

1. cease from entering into home inspection contracts until the licensing requirements under Section 104(1) of the Consumer Protection Act have been met;
2. cease from entering into home inspection contracts without ensuring they include the requisite contract and insurance requirements as set out in the Home Inspection Business Regulation;
3. cease from providing home inspection reports that do not comply with the Home Inspection Business Regulation;
4. cease from providing consumers with an estimate of the cost of repair or improvement to a dwelling as a result of a home inspection;
5. cease to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact;
6. cease doing or saying anything that might reasonably deceive or mislead a consumer;

7. cease providing misleading statements of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage; and
8. cease to make representations that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not.

NON COMPLIANCE WITH ORDER

ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *CONSUMER PROTECTION ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *CONSUMER PROTECTION ACT*.



Monica Soukoreff
Director of Fair Trading (as delegated)
May 18, 2022