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INTERNET/E-COMMERCE LAW

Not many Canadian web stores so buyers turn to international sites Limited protection for cross-border online purchases

BY MARK BOURRIE
For Law Times

Your client bought a rare, vintage porcelain pig on eBay. She's waited two months and it hasn't arrived. Or it has been delivered, but it's a Mongolian knock-off.

What can you do to help her?

Unless your client is very stubborn or the item is very valuable, there's not much that can be done, says Gil Zvulony, of Zvulony & Co., a Toronto litigation firm that specializes in Internet issues. Companies like eBay and its money-transfer subsidiary, PayPal, offer limited protection, but, it seems, the biggest victim of Internet fraud is e-commerce itself.

Most Canadians will likely never have trouble with Internet retailers, since, according to a study released this year, not many Canadians are shopping online.

Online sales account for just two per cent of all retail sales in Canada. In the United States, six per cent of shopping is done online, and the figure is five per cent in the U.K., according to figures compiled by Toronto-based J.C. Williams Group Ltd.

Canadians, on average, spend less on an average sale than people in the U.S. or the U.K., the survey showed.

Part of the reason: most of the things Canadians buy must come across a border and are usually handled by two postal systems or by couriers that are not only expensive, but have very strict liability waivers in their contracts.

"Canadian retailers really need to step up in a big way," Patrick Bartlett, vice-president of direct marketing for Canada Post, told an e-commerce conference earlier this year.

"There's not enough prod-

uct available online. We're very well developed in electronics, books, music and travel. Where we haven't developed as much is on the general merchandise side," Bartlett said.

He noted that big Canadian retailers like The Bay and Canadian Tire have a small e-commerce presence compared to major U.S. retailers.

That means most Canadians who do shop online are buying from companies in the U.S., or are buying items on the eBay auction site. That, says Zvulony, puts them into the quagmire of international litigation if they're cheated or a deal falls through.

And that's expensive and not for the impatient, he says.

"I think, in a deal worth \$5,000 or less, it wouldn't be worthwhile to hire a lawyer, but it might be worth fighting on your own. Or if you're a victim of an obvious scam, probably it's better to just call the police.

"There are all sorts of web sites that allow consumers to post reviews, but then you could end up in a defamation suit. Recently, I was involved with one of those.

"You have to be very careful if you're going to use the Internet to try to publicize a complaint. People sit behind computer screens and feel they have a sense of protection and anonymity. They don't. There are several ways to find who they are," he said.

Zvulony's firm is sometimes contacted by foreigners who feel they were cheated by Canadian sellers.

"In e-commerce, there's always the issue of whether someone



Gil Zvulony says harmonized protection, debt collection, and small-claims recovery laws could help consumers and online businesses.

purchased something on the Internet and never got it. Usually it's an American who's trying to collect on something bought in Canada. They know it's best to come to the jurisdiction of the seller.

"Cases can depend on how the item was transported. I've never had a case of someone who actually sent something and the person on the other end didn't get it. But when it does happen, you can go after the courier, but they usually have a 'no liability' clause in the contract, or you can try to collect from insurance.

"But this sort of dispute isn't something that began with e-commerce. It's been around since people started sending goods over the ocean in boats. But the latest revolution in commerce, the Internet, created all kinds of jurisdictional disputes involving ordinary people and relatively small amounts of money."

Zvulony says harmonized commerce protection, debt collection, and small-claims recovery laws could help consumers

commerce contract would include contracts concluded electronically, and there are many types of those.

"But there are all sorts of jurisdictional disputes that arise from doing business on the Internet. And lot of litigation in what's described as e-commerce is primarily copyright-based. For instance, I'm doing a case right now on the issue of who owns a licence, or whether one exists, to post on the Internet 15,000 photographs taken by my client. They're travel photographs that represent the life's work of my client, and if they're posted, they're effectively lost," he says.

Then there's the privacy issue.

"When we shop in the real world, nobody is watching our every move, monitoring the stores we visit, what we buy, the clothes we try on, or the products we look at. But when we go online, this is exactly what is happening," noted the Public Interest Advocacy Centre in a brief to Canada's Senate.

"Through the use of computer technologies, private companies are collecting detailed personal data about us, using it to target their advertising to us, and trading it in the marketplace. In fact, a huge industry in personal data collection has developed and is growing by leaps and bounds.

"Many web sites depend on revenue from selling user data to third parties, or delivering specific demographics to advertisers. E-commerce business models are often based on the collection and sharing of personal information. The more information they have about you, the more money they make."

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