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ARTICLE

Refunds and returns in the COVID-19 era

As fallout from the COVID-19 pandemic ripples across the world, greatly disrupting the economy, Canadian merchants face challenges regarding increased demand for refunds and returns.

Government measures implemented to slow the spread of COVID-19, which restricted travel and mass gatherings and forced the closure of non-essential businesses, have had a significant impact on retailers and consumers alike. Many consumers are experiencing financial hardship, while merchants themselves are facing a surge in [COVID-related class actions](#), as well as substantial cash flow issues.

Many retailers have suspended or otherwise modified their return policies in light of store closures and extended the return period upon reopening. However, as the Canadian economy begins to reopen, merchants have had to review and adapt their refund and return policies in order to meet the growing demands of consumers in this new climate. Accordingly, many businesses are seeking guidance regarding their legal obligations to provide refunds to consumers.

Among the businesses most affected by government orders are those in the airline, sports and entertainment, and fitness and leisure sectors. This article sets out examples of how merchants in these sectors have responded to consumer demands for refunds. It also provides important considerations for businesses looking to review their existing refund policies and consumer contracts.

Consumer rights: Refunds and warranties

It is important to note that Canada does not have any federal or provincial legislation that specifically grants consumers a general right to return products in exchange for a refund. Merchants are not legally obligated to accept returns or issue refunds, subject to certain exceptions, and sales are generally considered final. Despite this, merchants often establish their own return and refund policies in order to remain competitive and gain consumer loyalty. Merchants who choose to establish a policy can set their own terms and conditions, but are then contractually required to stick to those terms and conditions.

There are existing provincial consumer protection laws and regulations that give consumers the right to cancel certain specific contracts and get refunds within a set period. For instance, in a number of provinces (including Québec, Ontario and Alberta), consumers have 10 days to cancel contracts made with a door-to-door salesperson for the purchase of certain prescribed goods or services.

Moreover, there are provincial consumer protection laws and regulations that grant implied warranties of merchantability, fitness for normal use and durability, which impose on merchants and manufacturers an obligation to repair, exchange or refund a defective good, regardless of their policies.

Online retailers

Due to physical store closures, many retailers have shifted attention to their ecommerce divisions. Online purchases have increased substantially since the pandemic began, creating delivery delays and increased requests for returns and refunds. Provincial consumer protection laws and regulations place several obligations on online merchants to allow consumers to cancel their orders and seek refunds in a number of circumstances. These circumstances include, without limitation:

- When the contract of sale does not set out certain prescribed disclosures;
- When the checkout process doesn't give consumers the opportunity to review, modify and/or refuse their orders;
- When consumers do not receive a copy of the contract or receipt within 15 days of the transaction; and
- When products are not delivered within 30 days of the delivery date specified in the contract, or as subsequently agreed to between the parties.

Merchants must satisfy their obligations, despite added challenges related to supply, demand and shipping. Certain Canadian and international online merchants have recognized the importance of their obligations while maintaining consumer loyalty by adapting their refund policies and even extending return periods.

Airlines: Flight cancellations

The airline industry has been one of the hardest hit by COVID-19 due to the federal government's advisory restricting international travel, which remains in effect today. Consequently, airlines have had to suspend, reduce and cancel flights.

The Canadian Transportation Agency's *Air Passenger Protection Regulations* (the APPR) impose minimum obligations on airlines regarding, among other things, flight cancellations. Under the APPR, airline operators must ensure that passengers complete their itinerary in the event of flight cancellations or disruptions. This entails an obligation to rebook or offer alternate travel arrangements in the same class of service.

Where cancellations result from events within the carrier's control (e.g., commercial overbooking, mechanical malfunctions, etc.), passengers may be entitled to a refund if rebooking arrangements are inadequate or if the disruption makes the trip unnecessary. The APPR provides for offering compensation in the form of reimbursements, vouchers or rebates, according to passenger preference. Where cancellations arise from situations outside of the airline's control (e.g., government-mandated travel restrictions), carriers are only required to ensure that passengers eventually arrive at their destination.

In these unprecedented times, in lieu of offering refunds, several Canadian airlines have opted to offer affected passengers vouchers or credit for future travel. Certain airlines established specific refund policies for COVID-related cancellations that only offer time-limited flight vouchers, while other airlines have had to revisit their policies due to growing consumer backlash. These revised policies provide customers with the choice of fully-transferable vouchers with no expiry date, or converting the ticket value to reward points.

Regardless, passengers wishing to receive reimbursements from airlines are increasingly expressing frustration. Several consumer protection groups are urging the federal government to take immediate action to ensure that consumers can receive a refund to the original form of payment rather than in voucher form. Advocates for this action claim that passengers are entitled to full refunds under the law. On May 28, the National Assembly of Québec unanimously adopted a motion to demand that the federal government force airlines to offer refunds for COVID-related flight cancellations.

Sports and entertainment: Event cancellations

As progress is made in the fight against COVID-19, provinces are gradually reopening businesses, services and public spaces. As of the date of publication, Québec and Ontario are among the provinces to allow for reopening of all economic activity sectors, excluding, in Ontario, festivals and major events. Such restrictions continue to challenge the sports and entertainment industries, as requests for ticket refunds for cancelled or postponed events grow.

The rules governing ticket sales and refunds are based on provincial consumer protection legislation, as well as the merchant's terms and conditions, to the extent such exist. For instance, in Québec, merchants are required to reimburse ticket holders in certain circumstances, notably where an event is canceled due to events outside of their control. The exception is when the contract governing the ticket sale contains a valid *force majeure* clause under which the consumer agrees that the ticket is non-refundable or exchangeable upon the occurrence of an event beyond the merchant's control that results in the event being cancelled or postponed. The merchant may offer a credit, refund or postponement to the ticket holder, who may refuse or accept the offer. Additionally, it is interesting to note that ticket resellers in Québec are required to inform consumers of their right to refunds in situations in which shows or events are cancelled prior to completing the transaction.

Certain ticket agents and resellers across Canada have offered their customers various options, including full refunds, credit, and donations, while others have demonstrated less flexibility. Popular event ticket exchanges and resale platforms are facing class action lawsuits across Canada and the US and many have been forced to modify their refund policies after widespread criticism from ticket holders.

Fitness and leisure: Memberships and season passes

Pandemic-related restrictions have also resulted in consumers' inability to use memberships and season passes. From the outset of the closures, membership and pass holders have actively sought refunds from ski resorts, amusement parks and fitness centres.

In a number of provinces, consumers who no longer enjoy the benefit of services described in membership contracts may suspend payments to merchants, but are not entitled to full refunds.

For instance, in Québec, consumers who sign up for fitness centre memberships are granted specific rights under Québec's *Consumer Protection Act*. Consumers who prepaid for fitness centre memberships may cancel their contracts and receive a refund of any outstanding amounts where the merchant has yet to provide the services or within a period equal to 10 per cent of the duration of the contract. Those consumers, who wish to cancel their contract once services have already begun, may do so subject to paying for the services rendered to date and a penalty calculated on a contract-by-contract basis. When offering alternatives to refunds, merchants must, in all cases, ensure that they comply with the restrictions and obligations imposed on them under the law applicable to them.

Gyms and fitness centres across Canada have reported proactively freezing membership fees until reopening in order to retain their membership base. Likewise, zoos and amusement parks have revised their policies and have either extended the expiration dates for seasonal pass holders or issued full refunds for prepaid events.

Key takeaways for businesses

Businesses looking to adopt, review and/or update their existing refund and return policies in the face of these extraordinary times should be careful to:

- Identify and respect their statutory obligations, as well as the obligations set out in their existing policies (if any) and the terms and conditions of previous transactions;
- Consider maintaining and even enhancing their consumer base and loyalty;
- Consider the strategies adopted within their industry;
- Understand the needs of their customers by speaking to them directly, through personalized exchanges thanking them for their support and/or by conducting surveys; and
- Exercise transparency in order to set customer expectations and enhance customer satisfaction.

If you have further questions regarding refund and return obligations, please reach out to any of the contacts listed below.

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