Ontario Government Proposes to Clarify Gift Card Rules Under the Consumer Protection Act

January 26, 2018

On January 19, 2018, the Ministry of Government and Consumer Services (the "Ministry") released a consultation paper entitled "Proposal to Clarify the Gift Card Rules under the Consumer Protection Act, 2002" seeking comments on proposed changes to Ontario Regulation 17/05 under the *Consumer Protection Act, 2002* (the "Regulation").

The Regulation already contains rules intended to protect consumers who buy gift cards and includes restrictions on matters such as expiry dates on gift cards and fees that reduce the face value of gift cards. However, the Ministry notes in the consultation paper that since the gift card rules came into effect in 2007, there has been some confusion as to their application.

As such, the proposed changes being considered are intended to clarify that the gift card rules:

1. Do not apply to prepaid credit cards issued by certain financial institutions, including banks, authorized foreign banks, federal credit unions, trust corporations or loan corporations;
2. Apply to gift cards, even if they are not purchased as gifts; and
3. Apply to reloadable gift cards.

The exemption pertaining to prepaid credit cards issued by certain financial institutions is particularly notable in light of the trilogy of Supreme Court of Canada cases known as *Marcotte* which addressed the extent to which federally regulated financial institutions were subject to certain provincial laws dealing with credit cards.

Stakeholders are invited to submit written comments by **February 8, 2018**. The Ministry will review comments and suggestions received during the consultation process.

If you would like to know more about this consultation paper, have any questions regarding the proposals contained in the consultation paper and how they affect your business or would like any assistance in commenting on the consultation paper, please do not hesitate to contact the authors of this bulletin.

By

Stephen J. Redican, Samantha Tom

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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