Ontario’s new Consumer Protection Act: Proposed measures

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On December 12, 2024, the Ontario government launched a consultation for the regulations (the Consultation) under Ontario’s new consumer protection legislation. On December 6, 2023, the new *Consumer Protection Act, 2023* (the New CPA) received Royal Assent as part of the *Bill 142, the Better for Consumers, Better for Businesses Act, 2023*. The substance of the New CPA will be detailed in the Proposed Regulations. Once in force, the New CPA will repeal Ontario’s current *Consumer Protection Act, 2002* (the Current CPA), modernizing Ontario’s primary consumer protection framework which governs most consumer transactions in the province.

The Ontario government is considering additional regulatory proposals concerning reward points, prepaid purchase cards, further restrictions on door-to-door sales or solicitation, and other consumer protection measures that will be addressed in consultations at a later date.

The following is an overview of the proposed measures that the government is considering in the development of the Proposed Regulations. Comments from stakeholders must be submitted by February 10, 2025.

General contract rules

The Current CPA categorizes consumer agreements by type, requiring prescribed disclosure for each type of agreement. The New CPA introduced one set of core requirements for written consumer agreements (other than prescribed agreements such as credit agreements and the new ‘purchase-cost-plus-leases’ described below).

Agreements anticipated to be subject to the unified core disclosure rules include internet agreements, remote agreements (entered when the business and the consumer are not together), future performance agreements (where payment or performance is not completed at the time of entering into the agreement), timeshare agreements, personal development services agreements (e.g., fitness memberships), loan brokering, credit repair, and certain types of lease agreements.

The core rules applicable to most consumer agreements will be similar to the requirements for internet and remote agreements under the Current CPA. Purchase-

cost-plus-leases (PCPLs), agreements for reward points, cashing government cheques, prepaid purchase cards, motor vehicle repairs, credit agreements, contract breaking services agreements, and other prescribed agreements would be subject to other disclosure requirements and rules (in some instances, in addition to the core rules).

The core rules proposed in the Consultation address, among other matters, the following:

- Outdated requirements of providing fax number disclosure by removing reference to fax numbers.
- Requiring businesses to disclose specific contact information for terminating a contract if such information differs from the business's standard contact information.
- Requiring businesses to disclose the place and method of delivery of goods (in the Current CPA, place of delivery must be disclosed but only businesses charging separately for delivery must disclose how the goods will be delivered).

Additional contract disclosure rules

For agreements including agreements for loan brokering, credit repair, contract breaking services, direct contracts, and PCPLs, in addition to other prescribed disclosure, the government is considering expanding the cancellation rights under cooling-off periods to apply to other consumer contracts (currently, the Current CPA cooling-off period applies to a limited amount of consumer contracts). The Consultation seeks feedback as to which contract types should include a cooling-off period.

Leases and purchase-cost-plus-leases

The Current CPA regulates financial leases in Part VIII and any other lease in Part VI (residential tenancy leases are not subject to the Current CPA). Specifically, leases that are (a) a fixed term of four months or more, (b) an indefinite term or renewed automatically, and (c) residual obligation leases have disclosures and other rules in the Current CPA. All other lease agreements are subject to the general contract disclosure rules.

When developing the New CPA, the government introduced the concept of PCPLs, defined as leases where the total amount payable exceeds 90 per cent of the estimated retail value of the leased goods.

The Consultation proposes to address PCPLs and leases that are shorter than four months in the New CPA under a separate part of the New CPA (Part III Lease Rules), though a limited number of leases will be subject to the Part III Lease Rules and the unified contract disclosure rules (including PCLPs). The Consultation provides that the Part III Lease Rules will not apply to:

- A lease for a fixed term of four months or more;
- A lease for an indefinite term;
- A lease that is renewed automatically until one of the parties takes positive steps to terminate it;
- A residual obligation lease; or

- Any other lease prescribed by regulation.

Additional requirements for PCPLs considered in the Consultation include:

- If the lease may be subject to price increases, the intervals of the price increases and the manner by which price increases are to be determined, including any applicable rates or formulas used to calculate price increases.
- If the lease is indefinite, a reasonable estimate of the length of the useful life of the leased goods.
- If the lease is indefinite, the total amount the consumer owes under the lease assuming that the term would be for the reasonable estimate of the length of the useful life of the leased goods.
- Any circumstances in which the business/lessor may terminate the lease before the end of the lease term.
- Any circumstances in which the consumer may terminate the lease before the end of the lease term, other than to exercise a buyout option in accordance with the New CPA.
- Details of the buyout schedule as such buyout schedule is required in accordance with the new CPA.
- The "regular" periodic payment and any discount/rebate offered.

Advertising rules are proposed for PCPLs in addition to modification of the general lease advertising rule, such as not requiring the annual percentage rate to be disclosed for advertisements for leases where periodic payments are subject to change. As to PCPL advertising, the Consultation seeks feedback considering what constitutes the “total amount payable” for the definition of PCPL, exemptions for goods or services that are not subject to major consumer complaints (e.g., motor vehicle leases), the maximum buyout cost and parameters for the buyout schedule now required in the New CPA, and consumer remedies where a lease does not comply with the regulatory requirements.

Price escalation clauses

The government is considering the specific information businesses should be required to provide to consumers when a business implements a price increase during the term of a consumer agreement in accordance with a price escalation clause. The Consultation proposes the following information that businesses could be required to provide in a notice to consumers:

- The amount of the price change;
- The date the price change will take effect; or
- The new amount of the periodic payment.

Contract amendments and continuations

In the Current CPA there are two sets of rules that apply to amendments, extensions, and renewals, depending on whether the initial agreement terms permit such changes. The New CPA provides a new framework for contract amendments and continuations:

- Defining a continuation as a renewal or extension of a fixed-term consumer contract;
- Defining an amendment as any change to a consumer contract, other than a change that results in the continuation of a contract;
- Restricting suppliers (businesses) from amending or continuing a contract, except in accordance with regulations under the New CPA; and
- Voiding any non-compliant amendments or continuations.

The Consultation considers regulatory proposals for business-initiated changes requiring the express consent of the consumer, with an ongoing right for a consumer to terminate the agreement if changes are made by notice.

Timeshare termination right

Timeshare agreements in the New CPA will be subject to a new timeshare termination option, stated in the Consultation as unique and among the first initiatives of its kind in North America. When in force, the New CPA will provide consumers with a termination right on or after the 25-year anniversary of entering into a timeshare agreement or on the consumer's death, regardless of the years that have passed under the agreement. The regulations will outline the requirements that must be met for a timeshare contract to be terminated under such circumstances. Specifically, the government is proposing that the regulation will stipulate that the termination is complete once the following criteria are met:

- The consumer has given the business written notice of their intention to terminate.
- Outstanding payments and debts are settled.
- The business charges a termination fee as calculated according to a prescribed formula.
- Where applicable, the consumer transfers the ownership interest in land associated with the timeshare agreement back to the business.
- Where the consumer owns points under the timeshare agreement that can be exchanged for goods or services, including the right to use property, the consumer must transfer the points to the business, if the points cannot be extinguished by the business. Any timeshare consumer who has terminated their timeshare agreement will waive their entitlement to any benefits accrued in respect of the timeshare agreement, such as extra points or access to additional resort features.

Monetary thresholds and cancellation for late delivery or performance

The disclosure rules for consumer agreement in the Current CPA apply when the monetary threshold (generally $50) is met. The New CPA will maintain the monetary threshold, though in the Consultation for the development of the regulations the government is considering changing the monetary threshold for all or certain consumer agreements, and clearly providing that the monetary threshold is met if recurring payments under the consumer agreement in total could or would exceed $50 during the duration of the agreement (for both indefinite and fixed-term agreements).

The New CPA also provides consumers with a cancellation right for late delivery or performance (with the exception of certain credit agreements and leases). The cancellation right would be available only if the consumer's total potential payment obligation under the agreement exceeds a monetary threshold to be established in the regulations. The government is proposing that the cancellation right for late delivery or performance be available broadly to consumers making purchases subject to the New CPA (other than exempted consumer transactions) and proposes to set the monetary threshold for late delivery of performance to $0.01 (*i.e.*, a consumer can exercise this cancellation right for any transaction with a value of one cent or more).

Exemptions

The existing exemptions in the Current CPA will be carried over to the New CPA, with some additions (*e.g.*, exempting professional services provided by the University of Ottawa Heart Institute).

The New CPA introduces partial exemptions mostly from specific disclosure rules. The exemptions are to address instances where the sector or contract type is already regulated by other provincial or federal legislation.

Banking transactions would be exempt from the fair marketplace rules of the New CPA (i.e., unfair practices). The government welcomes comments concerning additional exemptions for banks and exemptions for other federally regulated entities, such as telecommunication companies.

Retroactive application of the New CPA; transition rules

The government intends that all consumer agreements entered into after the New CPA becomes law comply with the New CPA. To facilitate the implementation of the New CPA and the repeal of the Current CPA, the New CPA has regulation making powers that may have the effect of modifying or eliminating any right, obligation, or interest acquired under consumer agreements or related agreements entered into before the New CPA becomes law.

The government is seeking feedback to understand the impacts and risks of retroactive application of the New CPA to existing consumer agreements and indicates the vested right of businesses and the interests of consumers in accessing enhanced rights under the New CPA will be considered.

The application of transitional rules to different provisions under the New CPA may involve different considerations (*e.g.*, an existing agreement under the Current CPA that includes terms prohibited in the New CPA may require a transitional rule to apply the New CPA to the agreement).

The government has set out three key principles to guide the analysis of whether New CPA rules should be applied to existing contracts: clarity whether the New CPA or Existing CPA applies, balancing fairness to businesses and enhanced protections for consumers, and the expeditious transitioning from the Current CPA to the New CPA

(*e.g.*, whether any agreement formed under the Current CPA that is amended or continued after the New CPA comes into force should be deemed a new consumer agreement and thus required to comply with the New CPA).

For more information on Ontario's new *Consumer Protection Act*, please reach out to one of the key contacts listed below.

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