

Ontario Proposes a New Consumer Protection Act

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On February 6, 2023, the Ministry of Public and Business Service Delivery (Ministry) issued a consultation paper, “Modernizing Consumer Protection in Ontario,” seeking public feedback on significant changes to the *Consumer Protection Act, 2002* (Ontario) (the Act), proposing a new and modern Act. The Ministry has been in process of a comprehensive review of the Act, the first in over 15 years. The initial stage of the review resulted in proposals that formed the basis of a consultation paper issued in December 1, 2020, of which we previously reported in our article, “Significant Changes Proposed to the Ontario Consumer Protection Act.”

The current consultation includes most of the proposals included in the 2020 consultation paper, in some instances with additional details or illustrative legislative language. This consultation also includes proposed changes to the Act that have been revised in response to feedback from the 2020 consultation paper, in addition to new proposed changes to the Act.

The current consultation focuses on proposed changes to the Act that the Ontario government may potentially develop into law to replace the current Act with a new Act. **Given the significant changes considered and the resulting impact, businesses that operate in Ontario and transact with consumers should review the consultation. Responses to the consultation paper are due by March 17, 2023.**

The following is an overview of some of the significant proposals in the consultation paper.

Continued Proposals

Please review our article, “Significant Changes Proposed to the Ontario Consumer Protection Act” for details on the continued proposals. The following highlights changes to those proposals based on feedback the Ministry received in respect to the 2020 consultation paper.

Consolidating Contract Disclosure Rules

The Act currently categorizes consumer agreements by type and requirements differ depending on how the agreement is entered into. Consumer agreements often fall within more than one type (e.g., internet agreement, lease agreement, credit agreement, remote agreement, or future performance agreement). The consultation proposes one set of core requirements for written consumer agreements (i.e., combining the

requirements for most categorized agreements in the Act). This is a welcome change given the confusion that ensues when determining the disclosure applicable to consumer agreements.

The Ministry notes that where there is an identified need, additional rules for certain contracts will be considered. This approach is needed to address particular elements of certain consumer contractual arrangements.

Changes proposed to the definition of a direct agreement would now include specific reference to such an agreement being one that is entered into in a consumer's home.

Protecting Against Unilateral Agreement Changes

The Act allows for amendments to a consumer agreement if prescribed conditions are met. The Ministry is considering requiring explicit consent to contract amendments and continuations to most contracts, with certain exceptions. The Ministry is also proposing to permit amendment by notice for indefinite term contracts, rather than by explicit consent, if certain conditions are met.

Additional requirements may include requiring businesses to provide notice of amendment at least 30 days and not more than 90 days before the effective date of the amendment and specifying clearly which elements of the contract are being amended. Indefinite term contracts that provide advanced notice to the consumer to continue the contract would be required to allow the consumer to cancel at no cost, except for permitted contract-end charges, at any time from the continuation date onward.

Enhanced Protection for Unfair Practices

The Act prohibits the making of false, misleading, deceptive or unconscionable representations to consumers. The paper proposes to amend the unfair practices regime by updating the non-exhaustive list of unfair practices and setting out examples of prohibited unconscionable conduct.

The current Act allows a consumer to rescind a contract within the first year of entering into it when an unfair practice occurs. For consumers who enter into longer-term contracts, such as leases and subscription agreements, the consultation proposes providing consumers the right to rescind a contract for one year after entering the contract or one year after an unfair practice takes place, whichever is later.

Consumer Rights and Prohibited Contract Terms

The Ministry is proposing to prohibit businesses from including contract terms that appear to waive important consumer rights, such as joining a class action lawsuit or suing in court, or that infringe on consumers' rights to make fair public reviews or comments. Additionally, the consultation is considering a ban on contractual limits on monetary liability when there has been a breach of implied warranties and

conditions.

Enhanced Refund Recovery

If a consumer is required to sue a business for its failure to provide a refund as required under the Act, the consultation proposes that the consumer can claim three times the amount of the required refund the consumer has not received. The enhanced refund would apply only to successful consumer litigation and is in addition to a court's authority to order damages.

Revised and New Proposals

Price Escalation Clauses

The 2020 consultation paper proposed permitting price escalation clauses on explicit consent of the consumer and if the consumer has the ability to cancel at no cost. Based on the complexity of this change, the Ministry is now considering addressing this proposal in regulation and would consult further at the regulation development stage.

Subscription-based Contracts

Looking to action taken by the European Union and the United States, the Ministry is considering measures to protect consumers from business practices that make it difficult to unsubscribe from, or terminate, a subscription- or membership-based contract.

Contract Breaking Services

Some businesses offer services to consumers to assist them in getting out of contracts the consumers have signed – the consumers pay these businesses in advance. The Ministry is proposing to prohibit advance payments for services that promise to help consumers break or exit contracts. In addition, consumers would be provided a 10-day cooling-off period in which they could cancel a contract for this type of service.

Long-term Lease Agreements

Continuing on the 2020 consultation paper, the current consultation addresses “purchase-cost plus leases,” being lease or rental agreements under which a consumer would eventually pay more than they would to buy the leased/rented product outright. The Ministry proposes to establish a cooling-off period for certain leases, increase disclosure requirements to improve consumer understanding of such leases before they enter into the contract, and set limits on termination costs if a consumer wishes to end the contract early.

Notably, the Ministry is proposing to apply similar credit agreement repayment principles in the Act to purchase-cost-plus lease contracts. Specifically, a consumer who ends a purchase-cost-plus lease early would only owe a portion of the cost of the leased item, which would take into consideration their payments to that point. The calculation of a maximum permitted termination cost would be set out in regulation.

Registration of Notices of Security Interests

The Ministry is proposing to clearly set out the obligation for businesses to discharge notices of security interests (NOSIs) (see our previous article on the 2020 consultation for additional details) for consumer goods registered in the Land Registry System when the contract is terminated in accordance with the Act. If a consumer rescinds or cancels a contract in accordance with the Act, or if a consumer terminates a purchase-cost-plus lease, the supplier would be required to comply with prescribed requirements.

The Ministry is also proposing an alternative process for a consumer seeking to discharge a NOSI when a business fails to do so. If a business fails to discharge a NOSI within 15 days of the consumer terminating their contract, the Ministry may then issue a compliance order to the business to have the NOSI discharged. If the business still fails to discharge the NOSI, the Director may provide an order to the consumer that the consumer may register on title to discharge the NOSI.

Additional NOSI requirements are being considered by the Ministry, as outlined in the consultation paper, to address other concerns with NOSIs.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.