

Ontario Introduces New Consumer Protection Act

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On October 23, 2023, the Ministry of Public and Business Service Delivery (Ministry), presented Bill 142, the Better for Consumers, Better for Businesses Act, 2023 in the Ontario Legislature, which bill introduces a new *Consumer Protection Act, 2023* (New CPA) and, if passed, would repeal the existing *Consumer Protection Act, 2002* (Current CPA).

We previously reported on the proposed New CPA in our article, “Ontario Proposes a New *Consumer Protection Act*” and, for the most part, the changes summarized in that article are addressed in the New CPA.

If the bill is approved by the Ontario Legislature, detailed substantive rules will be established in supporting regulations prepared once the bill passes. The New CPA would not come into force until after the preparation of such regulations. The Ministry has indicated that, should the bill pass, the Ministry will launch consultations in early 2024 on the drafting of the supporting regulations required to bring the New CPA into effect.

The following is an overview of certain significant changes in the New CPA. Importantly, certain elements of the New CPA may apply retroactively to existing consumer contracts entered into before the New CPA becomes law. Given the impact on documentation and business practice, businesses that operate in Ontario and transact with consumers should be cognizant of the New CPA.

Combined Contract Disclosure Rules

The Current CPA categorizes consumer agreements by type and the disclosure requirements differ depending on how the agreement is entered into. The New CPA has one set of core requirements for written consumer agreements, allowing for certain exceptions where a need is identified (e.g., credit agreements).

Additional Contracts Subject to Cooling-off Period

The New CPA will allow a consumer to cancel any of the following consumer contracts at any time after the date of entering into the contract until, subject to certain exceptions, ten (10) days after the consumer receives a written copy of the contract:

Cassels

- Direct contract (e.g., agreements entered into at a consumer's home)
- Purchase-cost-plus lease (Purchase Lease)
- Timeshare contract
- Personal development services contract (e.g., gym membership)
- Contract for loan brokering, credit repair, or contract breaking
- Other contracts as may be prescribed

Unilateral Contract Amendments

The Current CPA permits amendments to consumer contracts if prescribed conditions are met. The New CPA limits the circumstances in which a business can unilaterally amend a consumer contract, automatically renew a consumer contract, or extend a consumer contract without the consumer's express consent.

Purchase Leases

A Purchase Lease is a new definition and contract in the New CPA, defined as a lease under which the total amount payable exceeds 90 per cent of the estimated retail value of the leased goods. Among other requirements, a Purchase Lease will be required to:

- Include provisions that entitle a lessee to purchase the leased goods and terminate the lease at any point during the lease term upon payment of an amount not exceeding the allowable buyout cost schedule amount described in the immediately following bullet; and
- Contain an allowable buyout cost schedule setting out, (a) the cost for which the lessee may purchase the leased goods, which cost may not exceed an amount determined in accordance with the regulations to be developed and must decrease to zero during the lease term, and (b) such other information as may be prescribed.

Contract Breaking Services

The New CPA regulates businesses that provide "contract breaking," defined as services or goods intended to assist a consumer in having their obligations under a consumer contract terminated or reduced. Contract breaking providers are, among other restrictions in the New CPA, prohibited from receiving advance payment for their supply of goods or services to consumers.

Prohibited Mandatory Arbitration Clauses

While the Current CPA voids mandatory arbitration clauses if they are included in consumer contracts, the New CPA prohibits their inclusion in a consumer contract.

Long-term Leases/Rental Agreements; Timeshares

The New CPA provides consumers with various exit options from timeshares and long-term leases/rental agreements. For instance, under the New CPA, a consumer may terminate a timeshare contract on or after the 25-year anniversary of entering into the contract.

Unfair Practices

The Current CPA prohibits the making of false, misleading, deceptive, or unconscionable representations to consumers. The New CPA strengthens the unfair practices regime by updating the non-exhaustive list of unfair practices and setting out examples of prohibited unconscionable conduct.

The Current CPA allows a consumer to rescind a contract within the first year of entering into it when an unfair practice occurs. The New CPA allows consumers to rescind a contract up to one year after entering into the contract or one year after the unfair practice occurs, whichever is later.

NOSIs

The New CPA allows the Ontario government to assist consumers in discharging Notices of Security Interest (NOSIs) and clarifies the obligations of businesses in relation to discharging NOSIs. In addition to addressing NOSIs in the New CPA, the Ontario government is also consulting on additional legislative changes to address NOSIs, including in respect to the *Personal Property Security Act* (Ontario). The NOSI consultation paper can be accessed [here](#), and the comment period ends on December 1, 2023.

Stronger Enforcement Powers

The New CPA provides the Ministry with stronger enforcement powers and increases the maximum amount of fines that can be imposed by the courts for non-compliance with the New CPA.