

Ontario Considering Further Changes to Door-to-Door Agreements and Other Consumer Protection Amendments

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On June 12, 2019, the Ministry of Government and Consumer Services (the Ministry) released a consultation paper “The Consumer Protection Act: Direct Selling in Consumers’ Homes,” proposing further changes to the direct selling regime under the *Consumer Protection Act* (Ontario) (the Act). **The nature of the changes proposed may impact businesses that do not engage in door-to-door sales and otherwise contract with consumers.**

Industry members and other stakeholders must provide comments to the Ministry by July 29, 2019. Once the consultation process has ended, it is anticipated that further amendments will be made to the Act in respect of direct agreements for restricted products or services.

Scope of Consultation

Since 2014, the Act has been amended to address direct agreements (i.e., door-to-door agreements) for the supply of HVAC products. The most recent and stringent amendments became law on March 1, 2018, of which we previously reported on in our e-let “New Door-to-Door Restrictions in Ontario.”

Pursuant to the 2018 amendments to the Act, direct agreements for restricted products or services (i.e., HVAC) may only be entered into in limited circumstances, including where a consumer has initiated contact with a business or where there is an existing direct agreement in place between the business and the consumer. Additionally, unsolicited door-to-door sales are prohibited even where an existing agreement is in place.

As a result of feedback from industry members about the overly restrictive nature of the 2018 amendments, the Ministry is seeking feedback on proposed amendments to the Act that would:

- Reduce the burden and barriers for businesses that provide products and services to consumers when the consumer initiates contact
- Level the playing field by increasing consumer protection to deter non-compliant businesses by providing consumers with additional time to rescind their agreements and requiring notice to consumers of assignments/transfers of their agreements to other businesses
- Strengthen enforcement powers to target businesses that cause the most harm to consumers

Proposed Amendments

Clarifying “Consumer-Initiated”

Currently under the Act, a permitted circumstance where a direct agreement for a restricted product or service can be entered into is where the consumer initiates contact. Consumer-initiated requires the consumer to initiate contact with the business and invite the business to attend the consumer’s home for the purpose of selling, leasing or contracting for a restricted product or service.

Industry members have raised concerns that the consumer-initiated circumstance is restrictive in circumstances where a consumer has contacted a business to attend the consumer’s home for a purpose other than entering into a direct agreement. For example, the business is asked to attend the home to repair a product, but, the product may need to be replaced. Currently, the Act does not permit the business to offer the consumer a replacement product or enter into a new direct agreement for the product. The business would have to leave the home and wait for the consumer to contact the business and specifically invite the business to their home to enter into an agreement to replace the product.

The consultation paper proposes to address this restriction by clarifying that a business may solicit for or enter into a direct agreement for a restricted product or service if the consumer has invited the business to attend the consumer’s home and one or more of the following conditions are met:

- The consumer invited the business to the consumer’s home to enter into an agreement for a restricted product or service
- The business is attending the consumer’s home as part of an ongoing agreement related to a restricted product or service
- The consumer asked the business to attend the consumer’s home to enter into an agreement for the service of a restricted product (e.g., repair or maintenance)
- The product has been prohibited or restricted from use by a person authorized by law

Permitting Business-Initiated Agreements

The Act currently prohibits a business from cold-calling a consumer to contract for a restricted product or service unless there is an existing agreement in place with the consumer for a restricted product or service (as set out in our e-lert “New Door-to-Door Restrictions in Ontario”). The consultation paper proposes to expand this exemption to apply to businesses that have an existing business relationship in place for a restricted product or service. An existing business relationship would include a work or purchase order, a written agreement that is no longer in effect and records indicating proof of payment.

The consultation paper also proposes removing the requirement for a business with an existing relationship with consumers (as set out in our e-lert “New Door-to-Door Restrictions in Ontario”) to obtain advance

consent from a consumer to offer a restricted product or service before attending a consumer's home.

Expanding Rescission Rights for Unfair Practices

Unfair practices (e.g., false, misleading or deceptive representations) are prohibited under the Act and, on contravention by a business, a consumer can (in addition to other remedies) rescind the relevant agreement by providing notice to the business within one year of entering into the agreement. The consultation paper proposes to extend the notice period, by allowing consumers to provide notice of rescission within one year of *having discovered* that the business has engaged in an unfair practice. **This change would not be limited to direct agreements and would impact other types of consumer agreements subject to the Act.**

Notice of Assignment

The consultation paper proposes amendments to the Act to require a business to provide consumers with notice of any assignment of the relevant agreement. Currently, the Act does not mandate such notice. **This proposed amendment does not appear to be limited to direct agreements and may have implications for other types of agreements entered into with consumers.**

Enforcement Provisions

The consultation paper proposes amendments to the enforcement provisions of the Act to:

- Clarify the powers of the Director of the Ministry to issue compliance orders to businesses to comply with the Act, including ordering a business to provide a consumer with a refund where the consumer is so entitled.
- Expressly require businesses to ensure that agreements related to a cancelled agreement for a restricted product or service can no longer be enforced (and security registrations are discharged). Currently under the Act, where an agreement for a restricted product or service is cancelled, all related agreements are cancelled (e.g., a credit agreement) as if they never existed.
- Establish administrative penalties (i.e., monetary penalties) for certain provisions of the Act. **For certainty, the introduction of administrative monetary penalties would not be limited to direct agreements.** The Ministry would further consult with the public on the development of an administrative penalty regime.

For more information on matters related to the *Consumer Protection Act*, please contact Suhuyini Abudulai or any member of our Banking, Lending & Specialty Finance Group.