

Proposed Changes to Ontario's Gift Card Rules

January 22, 2018

On January 19, 2018, the Ministry of Government and Consumer Services issued a consultation paper, seeking feedback on proposed changes to the gift card rules in the *Consumer Protection Act* (Ontario) (the Act). The proposed changes are summarized below.

Exemption for Prepaid Credit Cards Issued by Financial Institutions

Prepaid cards and gift cards are regulated federally and provincially in Canada. Federally, the *Prepaid Payment Products Regulations* applies to prepaid payment products issued by federally-regulated financial institutions (FRFIs). Various consumer protection laws, which are not entirely harmonized, regulate gift cards at the provincial level.

As reflected in Canadian case law, including the trilogy of cases known as *Marcotte* (we previously reported on *Marcotte* in our e-Alert "[Bank Act Amendments – New Consumer Protection Framework](#)") and the subsequent impact, constitutional arguments exist as to the application of provincial consumer protection laws to FRFIs. Some of the provincial gift card regulations expressly exempt certain FRFIs (e.g., Alberta and British Columbia).

A proposed change to the Act is to expressly exempt prepaid credit cards issued by FRFIs. Currently under the Act, gift cards issued for charitable purposes or for one specific good or service (e.g., a spa manicure) are exempt. If the proposed change were to take effect, the Act would exempt gift cards issued by a financial institution – similar to the exemption under the Alberta *Fair Trading Act*. A "financial institution" would be defined in the Act as:

- (i) a bank, authorized foreign bank or federal credit union, as these terms are defined in the *Bank Act*;
- (ii) a credit union registered under the *Credit Union and Caisses Populaires Act, 1994*; and
- (iii) a trust corporation or loan corporation as defined in the *Loan and Trust Corporations Act*.

Application to Gift Cards That Are Not Purchased as Gifts

Notwithstanding the term "gift" in gift card, gift cards are not always purchased as a gift. The consultation paper uses the timely example of a gift card offered in exchange for points under a rewards program.

Ontario courts have considered whether the Act regulates gift cards purchased for personal use and not as gifts for third parties. The proposed changes to the Act clarify that the gift card rules will apply whether or not the cardholder purchases the card for themselves or receives the card as a gift from someone else.

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Reloadable Gift Cards

Gift cards have various features. Some cards can be reloaded with funds. The consultation paper proposes to amend the Act to clarify that the gift card rules will apply whether or not the card is reloadable.

[The consultation paper can be found here](#). The consultation period is open until February 8, 2018.

For more information, please contact Suhuyini Abudulai or any member of our Banking, Lending & Specialty Finance Group.

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