

# Bill 47 Protecting Rewards Points Act: Will rewards points become more rewarding for Ontario consumers?

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On October 20, 2016, Mr. Arthur Potts, the Liberal MPP for Beaches – East York, introduced a Private Member's Public Bill, Bill 47, *Protecting Rewards Points Act* (Consumer Protection Amendment), 2016 (the Bill). The Bill passed Second Reading on October 27, 2016 and has been referred to the Standing Committee.

The stated purpose of the Bill is to amend the *Consumer Protection Act, 2002* (Ontario) (the CPA) with respect to rewards points. If the Bill becomes law, the definition of "consumer agreement" will be amended to include agreements under which rewards points are provided (Loyalty Agreements), and a new section will be added to the CPA that prohibits Loyalty Agreements from allowing the expiry of rewards points, except on termination of the Loyalty Agreement. Lastly, if passed, the Bill will have retroactive effect requiring any rewards points that expired on or after October 1, 2016 to be credited back to the consumer.

The most obvious impact the Bill would have on retailers and companies with rewards programs is the prohibition on allowing the expiry of rewards points. The less obvious impact is the inclusion of Loyalty Agreements in the definition of "consumer agreement" under the CPA. Currently, rewards programs are not expressly regulated under the CPA; however, these programs are subject to the provisions of the CPA regulating "consumer transactions" (e.g., the unfair practices provisions). If the Bill becomes law, Loyalty Agreements will also be subject to the provisions of the CPA regulating "consumer agreements," which, depending on the structure of the rewards program, could include the provisions regulating future performance agreements, internet agreements, remote agreements and direct agreements.

If the Bill becomes law, the approach of lumping Loyalty Agreements into the definition of "consumer agreement" under the CPA will likely lead to a number of uncertainties as to how to comply with such provisions as the provisions were not drafted with rewards programs in mind. Accordingly, if the Ontario government is of the view that a gap exists in the current legal regime governing rewards programs, the Bill is not likely the right vehicle to fill such a gap. Instead, any regulation of rewards programs should be tailored to the unique nature and features of rewards programs.

It is worth noting that Private Members' Public Bills, such as Bill 47, typically do not become law. However, they bring matters that concern private members, their constituencies or their parties to the attention of the government, the media and the public. They may ultimately have an impact on government policy or indicate policy directions a future government might take.