

Incoming changes to consumer protection laws: implications for financial service providers

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Authors: [Elizabeth Sale](#), [Andraya Frith](#), [Dominic Mochrie](#), [Christine Jackson](#), [Hunter Ceklic](#), [Lucas Versteegh](#), [David Arya](#)

Ontario, New Brunswick and Newfoundland and Labrador have introduced new legislation to overhaul their respective consumer protection regimes, including the introduction of a high-cost credit regime in both New Brunswick and Newfoundland and Labrador. This Osler Update provides a summary of the key changes and incoming measures that are expected to affect financial service providers providing financial products or services to consumers located in these jurisdictions. Financial service providers should ensure that they are tracking these developments and that they will be prepared for the changes that are coming over the course of this year and beyond.

For a broader discussion on new consumer protection laws and key developments that are generally applicable to businesses selling products or services to consumers in these jurisdictions, please refer to our [companion Osler Update](#).

Ontario

On December 6, 2023, Ontario's [Bill 142](#) (the *Better for Consumers, Better for Businesses Act, 2023*) received royal assent. Once proclaimed into force, the bill would repeal the Ontario [Consumer Protection Act, 2002](#) and replace it with the [Consumer Protection Act, 2023](#) as well as amend the Ontario [Consumer Reporting Act](#) (CRA).

Bill 142 represents the culmination of a three-year review and consultation process which, at one point as evidenced by a [January 2021](#) consultation paper, contemplated the introduction of high-cost credit rules. Despite this, Bill 142 does not include provisions to this effect, bucking the trend established by Manitoba, Alberta, British Columbia, Newfoundland and Labrador and New Brunswick, which have introduced their own high-cost credit regimes.

Notable changes relevant to financial service providers

Exceptions to application of Part 3 of the new Ontario Consumer

Protection Act

As discussed further in our [companion Osler Update](#), Part 3 of the new Ontario Consumer Protection Act streamlines core requirements applying to various types of “consumer contracts,” including direct contracts, PCP Leases (as defined below) and credit repair contracts. However, importantly for certain financial service providers, Part 3 generally does not apply to the aspects of consumer contracts that deal with the supply of credit, loans or what are currently known as “Part VIII” leases (except leases that are direct contracts or PCP Leases) and does not apply to prepaid purchase card contracts and those relating to the provision of rewards points.

Exceptions to cancellation rights

As discussed further in our [companion Osler Update](#), any consumer contract containing a prohibited term or acknowledgement can be cancelled in its entirety at the consumer’s discretion within one year of entering into the contract. We note, however, that this cancellation right does not extend to credit agreements (except supplier credit agreements) and leases (except PCP Leases).

Purchase-cost-plus leases (PCP leases)

The new Ontario Consumer Protection Act eliminates the concept of the “Part IV lease” under Ontario’s current Consumer Protection Act and replaces it with a new category of lease called the “purchase-cost-plus lease,” defined as a lease where the total amount payable exceeds 90% of the estimated retail value of the leased good. The meaning of “total amount payable” will be determined by regulation. While this new definition is more straightforward than the current definition of Part IV lease, it is also overly broad, and may inadvertently capture those leases that are currently regulated as “Part VIII leases” given current lease annual percentage rates and longer terms.

PCP Leases will be regulated along with other consumer contracts in Part III of the new Ontario Consumer Protection Act, separately from the current Part VIII leases, which, somewhat confusingly, will be regulated under Part IV of the new Ontario Consumer Protection Act.

The new Ontario Consumer Protection Act also introduces the concept of an allowance buyout schedule, where every PCP Lease must include an option to purchase the leased goods and terminate the lease at any time upon payment of an amount that does not exceed the applicable amount set out under an allowance buyout cost schedule. The allowable buyout schedule must decrease over time, ultimately to zero, during the PCP Lease term. Additional requirements that apply to the allowable buyout schedule may be determined by regulation.

Notices of security interest (NOSI)

The new Ontario Consumer Protection Act aims to clearly set out the obligations for businesses to discharge NOSIs for consumer goods registered in the land registry system when the contract is rescinded, cancelled or terminated in accordance with the new Ontario Consumer Protection Act. Businesses would be obligated to discharge the NOSI in such circumstances within 15 days after the rescission, cancellation or termination. This time frame is shorter than the 30-day period provided for under subsection 57(1) of the *Ontario Personal Property Security Act* (PPSA) for registration of a certificate of discharge of a NOSI.

The new Ontario Consumer Protection Act would also implement an alternative process that could assist a consumer seeking to discharge a NOSI when a business fails to do so. The Director may issue an order to a consumer directing the land registrar to delete the NOSI from title to the land identified in the order. This additional power is intended to alleviate the challenges consumers may encounter when attempting to have a NOSI discharged from title to their land.

However, these changes may soon be modified or superseded by further changes to the NOSI regime. On May 27, 2024, the Ontario Minister of Public and Business Service Delivery announced the introduction of the proposed *Homeowner Protection Act, 2024* (HPA), which, if passed, will retroactively abolish NOSIs for certain consumer goods. The HPA would amend the Ontario PPSA by providing that a NOSI may not be registered in the land registry office if the collateral is consumer goods, except as may be provided by regulations. This means the default position is that a NOSI on a consumer good is prohibited, unless the type of consumer good is expressly set out in the regulations (as opposed to a ban that is designed to target only specific classes of consumer goods). In addition, the HPA provides that existing NOSIs relating to all consumer goods will expire on the day the HPA receives royal assent.

The HPA also provides that if a NOSI relating to consumer goods has expired, due to the passage of the time or because the HPA received royal assent, the NOSI may be deleted from title by registering an application in the land registry office.

The ban is disappointing, given that there had been extensive consultations on NOSIs that appeared to be aiming for a more balanced approach, including a consultation that closed on December 1, 2023. However, the ban is not unexpected as the Ministry had announced its intention to pass legislation banning NOSIs this past March. We will need to wait for the regulations to see what types of consumer goods, if any, will be exempted from the ban.

Changes to the CRA

Bill 142 introduces amendments to the CRA that build upon previous amendments to the *Ontario Access to Consumer Credit Reports and Elevator Availability Act, 2018* that are yet to be proclaimed into force. The proposed changes under Bill 142 provide for some relief for consumer reporting agencies. For example, not all consumer reporting agencies would be required to provide information about consumer scores as set out in the legislation; rather, this requirement will only apply to certain agencies, as designated under regulations. Agencies would also no longer be required to provide consumer report and consumer score information to consumers in person.

The amendments provide for greater information access by consumers, as agencies would not be able to charge a fee after making two or more information disclosures per year, as set out in the the proposed changes under Bill 142. The new fee structure requires agencies to provide consumer report or consumer score information at no charge once a month (if requested and provided electronically). If the information is provided using a non-electronic method, agencies would still be permitted to charge a fee after making two or more information disclosures per year.

Some other notable amendments include the following:

- **Credit scores:** When agencies generate a consumer score for a consumer, the score must be generated using a method that is similar to the method the agency most commonly uses when generating scores *for creditors*; the proposed changes under Bill 142 required the score to be generated using the most commonly used method by the agency.

- **Security freezes:** The effect of a security freeze (introduced under the proposed changes under Bill 142) would be more limited. Rather than a blanket prohibition on any disclosure of credit or personal information to a third party, the agency would be prohibited from disclosing such information in more narrow circumstances, including for credit and leasing purposes and other transactions to be prescribed.
- **Explanatory statements:** A new section allowing consumers to place an explanatory statement in their file would be added, which is somewhat consistent with provisions in other provincial consumer reporting laws, including in Alberta and British Columbia.
- **Increased fines and penalties:** The maximum fines and penalties for offences under the CRA would be increased from \$25,000 to \$50,000 for individuals and from \$100,000 to \$250,000 for corporations.

The above analysis is limited to changes under Bill 142 that affect only financial service providers. For a broader discussion of Bill 142 and its potential impact on businesses operating in Ontario, please refer to our [companion Osler Update](#).

Newfoundland and Labrador

Newfoundland and Labrador is poised to join a growing number of provinces in Canada that have implemented a high-cost credit regime. On December 21, 2023, the Government of Newfoundland and Labrador announced the proclamation of [Part VII.2 of the *Consumer Protection and Business Practices Act* \(CPBPA\)](#), which will regulate high-cost credit products when it comes into force. The province has also introduced [two regulations \[PDF\]](#) under the CPBPA, which will regulate high-cost credit products and the licensing of high-cost credit grantors. These changes are collectively set to take effect on June 1, 2024.

The introduction of a high-cost credit regime in Newfoundland and Labrador follows the introduction of similar legislation in Manitoba (2016), Alberta (2019), Québec (2019) and British Columbia (2022). (See our previous Osler Updates published in [December 2019](#) and [April 2022](#) for further discussion of the British Columbia high-cost regime.) As discussed in greater detail below, new legislation introduced in New Brunswick will also regulate high-cost credit grantors in that province when it comes into force.

Application

Part VII.2 of the CPBPA generally applies to high-cost credit products and high-cost credit grantors who offer, arrange or provide high-cost credit products to a borrower in the province. There are exemptions from the regime for banks and credit unions incorporated or continued under the *Credit Union Act, 2009*. High-cost products provided before June 1, 2024, are also exempt, except to the extent the product is extended or renewed on or after that date. Payday loans are also generally excluded from the application of the regime.

The high-cost credit regime will apply to fixed credit and leases that have an APR of at least 22 percentage points over the Bank of Canada rate (defined as the rate in force on the expiry of a two-day period following the announcement of the rate by the Bank of Canada) and where the borrower or lessor is acting primarily for a personal, family or household purpose. The regime will also apply to open credit products that have an annual interest rate of at least 22 percentage points over the Bank of Canada rate and extend credit for a personal, family or household purpose.

We note that, given new changes to the criminal rate of interest, the band of what

constitutes "high-cost" will be significantly narrower once the new, lower interest rate cap comes into effect. For further analysis on the new criminal rate of interest and expected consequences, see our [Updates from April 2023](#) and [January 2024](#).

High-cost credit licenses

As of June 1, 2024, any person, including a loan broker, who offers, arranges, provides or facilitates high-cost credit products to or for consumers must obtain a licence from the Director of Consumer Protection and Business Practices (unless an exemption applies).

These high-cost credit grantors will be subject to a litany of obligations, restrictions and prohibitions, largely mirroring the approach taken by other provinces. For instance, a borrower will be allowed to cancel a high-cost credit agreement during a four-day cooling-off period or if a high-cost credit grantor fails to comply with certain disclosure obligations. Other rules are unique to the Newfoundland and Labrador regime: for instance, a high-cost credit grantor is prohibited from issuing a new high-cost credit product to a borrower who already has a high-cost credit product issued by that high-cost credit grantor.

New Brunswick

Like Newfoundland and Labrador, New Brunswick will be joining the growing list of Canadian provinces that regulate high-cost credit products. [Bill 16](#), the *Consumer Protection Act*, passed third reading on March 22, 2024, and is awaiting royal assent. The bill was introduced by the Government of New Brunswick late last year and will enact the *Consumer Protection Act* when it comes into force, although no in-force date has been announced. The New Brunswick Consumer Protection Act sets out a new high-cost credit regime that will apply to high-cost credit grantors, with exceptions for loans of less than \$100, payday loans and financial products or services regulated under New Brunswick's *Loan and Trust Companies Act* or *Credit Unions Act*.

The New Brunswick Consumer Protection Act does not set out the high-cost credit APR threshold. However, across the Canadian provinces that have implemented a high-cost credit regime to date, the threshold annual interest rate or annual percentage rate is typically at or above 32%. In Québec and Newfoundland and Labrador, it is a floating rate based on a Bank of Canada rate plus 22 percentage points.

The proposed high-cost credit rules would require any person who offers, arranges or provides high-cost credit products to obtain a licence in respect of each location from which the person seeks to offer, arrange or provide such products. Licencees must comply with various disclosure and advertising requirements, as well as rules regarding borrower cancellation rights and prohibitions on certain practices. While the rules largely mirror those that apply in other provinces that regulate high-cost credit lenders, there are a few differences. Notably, high-cost credit grantors are prohibited from making a high-cost credit product contingent on the purchase of insurance or other goods or services.

If it receives royal assent, the New Brunswick Consumer Protection Act will eventually replace the *Gift Cards Act*, *Direct Sellers Act*, *Cost of Credit Disclosure and Payday Loans Act*, *Collection and Debt Settlement Services Act* and *Credit Reporting Services Act* (current New Brunswick Acts). While the provisions under such old legislation remain largely intact, there are some changes. Notably:

- A new addition to the existing gift card rules would allow a consumer to demand the refund of an amount remaining on a gift card if it is below a certain yet-to-be-prescribed

threshold. A similar rule under Québec's consumer protection legislation prescribes a threshold balance of \$5.

- The general cost of credit disclosure rules would not apply to a credit agreement in relation to either a high-cost credit product (or a lease that is a high-cost credit product) or a payday loan, as these products would be subject to their own specific disclosure rules.
- Proposed collections and debt settlement services rules would contain carve outs for Schedule 1 or Schedule 2 banks, loan or trust companies licensed under the *Loan and Trust Companies Act* and credit unions incorporated under the *Credit Unions Act*. The rules would expand the list of license classes (which presently include classes for collection agencies, collection agency branches and collectors) to introduce new classes of licences for debt settlement services and debt settlement services branches.

The above analysis is limited to changes under Bill 16 that affect only financial service providers. For a broader discussion of Bill 16 and its potential impact on businesses operating in New Brunswick, please refer to our [companion Osler Update](#).

Conclusion

Osler will continue to monitor the progress of the new Ontario Consumer Protection Act, the New Brunswick Consumer Protection Act and the updates to Newfoundland and Labrador's CPBPA and their associated regulations. Stay tuned for [our presentation on June 11](#) on upcoming consumer protection changes and please reach out to any member of our Retail and Consumer Products or Financial Services Regulatory teams if you would like to discuss your business' compliance going forward.