

Incoming consumer protection changes: Ontario regulations begin taking shape

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Ontario has taken another significant step in its years-long process to update the province's consumer protection legislation.

As described in our June 5, 2024 Update: "[Incoming changes to consumer protection legislation in Ontario, New Brunswick and Newfoundland and Labrador](#)", once proclaimed into force, Ontario's [Bill 142](#) (the *Better for Consumers, Better for Businesses Act, 2023*) would repeal the Ontario [Consumer Protection Act, 2002](#) (the Current CPA) and replace it with the [Consumer Protection Act, 2023](#) (the New CPA). However, while Bill 142 received royal assent on December 6, 2023, the associated regulations remain outstanding. Such regulations are critical to understanding the impact of the New CPA and, given the length of time without a public update from the Ministry of Public and Business Service Delivery and Procurement (the Ministry), many observers assumed that the regulations would be presented fully formed and without opportunity for the industry to comment.

Instead, on December 12, 2024, the Ministry released a 114-page paper initiating a phased public consultation seeking feedback on the development of the supporting regulations under the New CPA (the Consultation). The Consultation contains detailed information on the reasoning and methodology behind the Ministry's proposed approach to the regulations, along with some limited draft language for certain regulatory topics. However, much of the regulatory language remains to be drafted.

Many of the Ministry's suggestions are consistent with previous consultation papers. Nevertheless, the draft legislative language provides a clearer picture of the additional obligations on suppliers in the New CPA.

This Update highlights some of the important proposed changes that will be relevant to the majority of suppliers with customers in Ontario, particularly those who offer services online. In our view, these changes have the potential to add a significant compliance burden to suppliers, particularly those who use a common set of terms for consumers across various jurisdictions, and we have been actively involved in the consultation process.

General contract rules for various types of consumer agreements

As previously discussed in the [June 5, 2024 Update](#), the New CPA aims to simplify compliance with contract disclosure, content and delivery requirements by consolidating the distinct but overlapping requirements from the Current CPA into a single set of “core” requirements that will apply to a variety of consumer contracts. For the categories of consumer contracts that require additional or unique consumer protections, such as loan brokering contracts, credit repair contracts, timeshare contracts, personal development services contracts, and direct contracts (also known as “door-to-door” sale contracts), any such requirements will be tacked onto the “core” obligations, as needed.

The Consultation includes draft legislative language for the “core” disclosure and contract content requirements. There are few surprises in the draft language, and the consolidation of overlapping disclosure and contracting requirements remains a welcome change. However, for most suppliers of online services, the new language includes a few notable additions to the familiar regime from the Current CPA:

- distinguishing indefinite-term and fixed-term contracts — contracts will now need to state whether they are for an indefinite or fixed term (i.e., the duration of the contract) and comply with additional disclosure obligations. For example, suppliers of fixed-term contracts will need to disclose the total amount payable under the contract prior to execution. Alternatively, for indefinite-term contracts where the total amount payable has not been determined, suppliers will be required to expressly disclose a statement to that effect.
- price escalation clauses — if the contract includes a mechanism by which the supplier can increase the price, the draft legislative language includes a new obligation to disclose (prior to entering into the contract) when price escalations may occur and how price changes will be calculated. The Ministry is also consulting on further notice obligations on suppliers that may be required prior to implementing a price increase, even where such a price increase is consistent with the terms of the contract.
- method of delivery disclosure — the draft regulatory language has removed the disclosure carve-out from the Current CPA regarding the identity of delivery carriers. Under the Current CPA, all suppliers must disclose the place of delivery, but only suppliers who charge for delivery separately must disclose how the goods will be delivered, including the name of the carrier, if any, and the method of transportation to be used. The New CPA applies this disclosure obligation to all suppliers, irrespective of whether the supplier charges the consumer separately for delivery. This will be a challenge for suppliers, many of whom do not know the identity of the delivery providers at the time of executing a sales contract with a consumer — particularly the “last-mile” couriers — and this information would seem to have limited practical value to consumers.

Contract amendment and continuation rules

The most significant proposals in the Consultation for most consumer agreements relate to contract amendments and continuations (a renewal or extension of a fixed-term contract is referred to as a “continuation” in the New CPA). This topic is subject to some of the more comprehensive proposed legislative language in the Consultation. Unfortunately, the

Ministry is proposing to significantly increase the burden on suppliers for any amendments to (or continuations of) consumer agreements in Ontario.

Default approach: express consent

As suggested by previous consultation papers, the Ministry has followed through with an approach to make “express consent” the default rule for all contract amendments and continuations in Ontario. While no definition or process is set out for what might constitute “express consent”, the implication is an active step must be taken by a consumer to accept the new contract. Even for situations where the supplier and consumer explicitly agree to a contract amendment, the proposed regulatory language establishes a set of detailed notice, disclosure and consent requirements in order for any such amendment to be effective, including a cancellation right for consumers if the process is not strictly followed. This approach would create a regime where amending a contract is nearly as administratively intensive as executing a new contract.

Carve-out: amendment by notice

In certain specific scenarios, the Consultation proposes to allow suppliers to amend contracts by notice instead of requiring express consent. These specific scenarios are where the amendment (1) is required to ensure compliance with applicable laws (2) does not reduce the obligations of the supplier or increase the obligations of the consumer or (3) is made to an indefinite-term contract that contains very specific contractual terms and rights, including a detailed notice procedure and a termination right for consumers on 30 days’ advance notice, or at any time before the amendment takes effect.

In all such situations, a prescribed notice must still be provided, and consumers can avail themselves of mandated contractual termination rights or post-amendment cancellation rights if the strict procedures are not followed.

Continuations

While the New CPA defines the concept of “continuations” (i.e., renewals or extensions) of fixed-term contracts, the regulatory proposals create a strong default position that all such continuations are only effective on express consent of the consumer. The only proposed carve-out is where a fixed-term contract is “continuing” into an indefinite-term contract in, which case, the supplier may effect such continuation by notice (with analogous notice content, termination and cancellation rights, as described above for amendments). As currently drafted, the proposed language appears to remove the concept of “automatic renewals” from Ontario: contracts are either for an indefinite term (and therefore do not “renew”) or for a fixed term, which will require express consent for nearly any renewal (effectively executing a new contract).

Impact

The proposed regime for amendments and continuations creates a significant obstacle for suppliers with customers in Ontario, particularly those who use a common set of terms for consumers across various jurisdictions. Ontario is already an outlier in Canada with respect to its notice obligations on the amendment and renewal of certain contracts, and the Consultation proposes to create even more of a compliance burden for suppliers (along with the attendant legal risks).

Furthermore, the proposed language makes no meaningful distinction between amendments that are beneficial and amendments that are detrimental to consumers. If Ontario suppliers are unable to amend their terms with consumers — even to make changes that are beneficial to the consumer — without significant administrative and legal effort, it may put a freeze on service improvements or developments. Creating additional obstacles to providing or updating services to consumers in Ontario is not beneficial to businesses or consumers.

Purchase-cost-plus leases

In general, the approach to leasing and credit agreements in the New CPA appears consistent with the Current CPA, with one notable exception.

As discussed in the May 29, 2024 Update: [Incoming changes to consumer protection laws: implications for financial service providers](#), the New CPA introduces a new category of long-term leases known as “purchase-cost-plus” leases (PCP Leases). PCP Leases are defined as a lease under which the “total amount payable” exceeds 90% of the estimated retail value of the leased goods. The Consultation proposes that the “total amount payable” should include all potential amounts that a lessee is required to pay before or during the lease term, as well as any costs to terminate the lease (including termination fees and any “permitted contract end charges”, as defined in the New CPA).

PCP Leases will be subject to the core contract disclosure rules noted above, as well as additional rights and obligations. For example, consumers of PCP Leases will have the right to a 10-day cooling off period, as well as a statutory buyout option with limits on the buyout cost that decline over the life of the contract. The Consultation includes a proposed approach to this buyout schedule. There also will be additional disclosure obligations to ensure consumers are aware of these rights, including details of the allowable buyout schedule, and a mandatory information box that must be presented on the first page of the contract. Consumers are also given the option to cancel a PCP Lease without paying any buyout charges if an item has reached the end of its useful life. Additional requirements that apply to PCP Leases, specifically with respect to the allowable buyout schedule, will be determined in subsequent consultations and draft regulations.

While the stated purpose of the PCP Lease regime is to target supposed “bad actors” in the “home comfort appliances” consumer leasing space, the definition is so broad as to risk capturing an enormous swathe of the leasing market, well beyond the intended targets. The Consultation does, however, recognize that some types of leases that are not a major subject of consumer complaints, such as motor vehicle leases, may be inadvertently caught by the definition of PCP Leases, and proposes that motor vehicle leases, as well as leases under four months, be expressly exempt from the PCP Lease provisions, which would be welcome. The Consultation also proposes some partial exemptions for PCP Leases that do not include termination costs, aside from permitted contract-end charges, and contemplates that additional exemptions could be considered. The proposed language also limits its focus to the cost of goods, ignoring the significant role that services play in the lease of goods. While well-intentioned, the PCP Lease regime needs significant modification to avoid compromising and burdening many leasing suppliers with customers in Ontario.

Status quo...for now

Existing rights and obligations

According to the Consultation, many rights and obligations under the Current CPA will continue under the New CPA, albeit in some cases subject to further consultation. In particular, the Consultation suggests that the Ministry intends to carry over existing policies regarding credit agreements, gift cards, rewards points, personal development services, restricted products for door-to-door sales, motor vehicle repair, government cheque cashing, and general lease rules under Part IV of the Current CPA. Nevertheless, there are suggestions in the Consultation that some of the rules related to these contracts may be tweaked in the future.

Exemptions

Similarly, subject to a few changes, most of the exemptions set out in the Current CPA will be maintained and consolidated under the New CPA, although the Ministry is welcoming feedback on potential partial exemptions for banks and other federally-regulated entities, such as telecommunication companies. The Consultation includes a proposed partial exemption for banks, which would be exempt from the “core” contract requirements and certain cancellation rights, but not from the “fair marketplace rules” under the New CPA in the supply of financial products or services.

Monetary threshold

Under the Current CPA, only contracts meeting a \$50 monetary threshold for the consumer’s total payment obligation are subject to certain disclosure and content requirements (such as the Internet sales obligations). The Ministry intends to maintain this monetary threshold and broaden its application to all contracts subject to the consolidated “core” contract requirements. However, for a consumer’s cancellation right for late delivery, performance or failure to perform (now under Part V of the New CPA), the Ministry proposes to lower the threshold to \$0.01, ensuring its availability to all consumers of contracts where there is any payment obligation whatsoever.

Further consultations and pending changes

There are still several significant regulatory issues that remain to be determined through future consultations or regulatory proposals.

Contact breaking and timeshares

As noted in our [June 5, 2024 Update](#), the New CPA contains several other new provisions that will be relevant to certain sectors of businesses selling products or services to consumers in Ontario, including provisions regulating suppliers engaged in “contract breaking” services, and an exit option for certain timeshare owners. The Consultation includes some of the regulatory underpinning that will give effect to these new rights and obligations, including additional contract and disclosure requirements, and the details of the exit option for certain timeshare owners. However, the Ministry is still seeking input on the development of additional requirements.

Ministry statements on future regulatory developments

The Ministry has stated that it intends to consider additional regulatory proposals in the future. In the Consultation, the Ministry notes that this subsequent phase of regulation development could include administrative penalties, as well as substantive policy changes related to rewards points or prepaid purchase cards, along with possible further restrictions on door-to-door sales or solicitation, among other topics.

The Ministry is also explicitly consulting on further new rights for consumers, including a right to allow consumers to cancel a contract in the same manner it was entered. While this is reminiscent of “click to cancel” legislation that has recently passed in the European Union and parts of the United States, no draft language has yet been proposed. Consistent with this proposal, the Consultation also suggests a new disclosure requirement in the “core” contract disclosure rules of “contact information for terminating the contract”, if such information is different from the standard notice information.

Retroactivity and transition rules

The Ministry is seeking further feedback from stakeholders on the implications of a retroactive approach in the New CPA to existing consumer contracts. The New CPA explicitly provides for the associated regulations to have retroactive effect (i.e., to apply to contracts that have already been formed). Practically speaking, this will modify or eliminate any right, obligation or interest acquired under the consumer contracts or related agreements that have been entered into prior to the enactment of the New CPA.

Aside from creating uncertainty for all parties, the potential for retroactive application creates special risk for suppliers, given some of the novel prohibitions and cancellation rights in the New CPA. 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. If these cancellation rights were to apply to existing contracts, a majority of Ontario suppliers — many of whom use contracts containing such terms — could be subject to offence proceedings, cancellation requests, or class-action lawsuits. Please refer to our [June 5, 2024 Update](#) for a more fulsome discussion on prohibited terms or acknowledgments under the New CPA.

Consumer Beware List

The Consultation also makes some concerning proposals regarding the Consumer Beware List. While the list is intended to warn consumers of bad actors in the market, the Ministry is proposing to post “notices” to the list prior to any enforcement action being taken (and any offence being proven or even alleged). The Consultation also proposes providing the Ministry with the right to post the names of all registered officers and directors of suppliers in such notices, regardless of whether such individuals were involved or implicated in any offence. This risks causing significant and unwarranted reputational damage, but the details remain to be established.

Next steps

Given the lack of detailed language in the Consultation, the final regulations to the New CPA are likely a long way off. Nevertheless, the limited language we have seen so far paints a worrying picture about the potential burdens on (and risks to) suppliers in the future.

While the New CPA sped an unusually straight and unwavering course through the legislative process in 2023, the Ministry appears to be conducting a meaningful consultation on the development of the critical regulations. In our view, creating additional administrative burdens in Ontario will not benefit suppliers or consumers.

Osler will continue to monitor the progress of the New CPA and its associated regulations. Please reach out to any member of our Retail and Consumer Products or Financial Services Regulatory teams if you would like to discuss compliance going forward.