

Not so happy New Year: Ontario Rewards Points Legislation coming into force January 1, 2018

NOVEMBER 16, 2017 4 MIN READ

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Ever since Ontario's legislature passed the *Protecting Rewards Points Act (Consumer Protection Amendment), 2016* (Act) prohibiting the expiration of rewards points in consumer loyalty programs, the retail industry has been waiting for the publication of the associated regulation that would provide more detail about the prohibition, along with some exceptions to the prohibition. The wait is now over, as the Ontario government recently published *Ontario Regulation 388/17* (the Regulation), which will come into force on January 1, 2018. Please refer to our earlier Osler Updates available [here](#) and [here](#) for a more detailed discussion of the Act.

Highlights of the Regulation include:

1. The definition of a “reward point”

The Regulation further clarifies the definition of a “reward point” found in the Act. Specifically, a “reward point” must: (i) be earned across multiple transactions; (ii) be accumulated by the consumer before being able to be exchanged for money, goods or services; and (iii) may be described as points, dollars spent or any other unit or similar term. Notably, part (iii) appears to be an anti-avoidance provision so that the application of the Act cannot be circumvented by simply renaming or recharacterizing “points” as some other term. Also of interest is that the Act will not apply to rewards points that are not earned over multiple transactions (e.g., a one-time gift with purchase would not be captured by the Act).

2. Exception for rewards programs offering a specific good

The Regulation excludes from the definition of a “reward point” offers that propose to provide a consumer with one specific good, service or one set of goods and services after the consumer achieves a certain amount of progress, if the goods or services are identified at the outset of the offer and they are not a gift card, voucher or similar item. For example, coffee stamp cards will not be caught by the Act.

3. Exception for low-value rewards

There is also a carve-out for rewards programs offering only low-value rewards. The Regulation provides that the Act will not apply to rewards programs under which rewards points are provided if no one good, one service or a single set of goods or services that the consumer may receive in exchange for redeeming the points has a value of more than

\$50.

4. Purchase requirement

The Regulation also provides that the Act will not apply in situations in which the consumer is not required to purchase goods or services to earn rewards, either upon joining the rewards program or during the entire term of the rewards program. However, where the consumer has entered into at least one other agreement with the same party operating the rewards program that does require purchase of goods or services to earn rewards points, the Act will apply.

5. Clarification on time alone expiry

Perhaps the single most important provision in the Regulation is in Section 43.6, which provides clarity on the prohibition in the Act against having a reward point expire "due to the passage of time alone." Specifically, the Regulation sets out that the expiry of a reward point due to the passage of time alone means that the point expires based **solely** on when a certain point in time is reached or when a certain amount of time has elapsed. Accordingly, rewards points can expire if conditions other than the passage of time trigger expiration. In other words, it is possible to structure a loyalty program where rewards points expire for other reasons, including account inactivity (see below).

6. Points allowed to expire for inactivity

The Regulation expressly provides that the prohibition on expiration of rewards points in the Act does not apply to loyalty programs where the points expire if a consumer has not earned or redeemed points during a specified period of time (presuming that the terms of the loyalty program permit such expiration). This will come as some relief to those organizations operating loyalty programs who were concerned about being obliged to maintain inactive accounts indefinitely.

7. Other matters

The Regulation also address other matters such as the expiration of gratuitous points, retroactivity, the requirement to credit back rewards points and the termination and reinstatement of rewards programs.

If you have questions on how this Act may affect your business, contact Andraya Frith, Dominic Mochrie or Christine Jackson.