

Ontario's new *Consumer Protection Act*: better for consumers and better for businesses?

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On October 23, the Ontario government introduced Bill 142, the *Better for Consumers, Better for Businesses Act, 2023* (Bill). If passed, the Bill would repeal the *Consumer Protection Act, 2002* (existing CPA), which came into force in 2005, and enact the *Consumer Protection Act, 2023* (new CPA).

What you need to know

The introduction of the Bill follows Ontario's 2019 Rebuilding Consumer Confidence Strategy, which included the first comprehensive review of the existing CPA in 15 years. Although similar in many respects to the existing CPA, Bill 142 makes the following changes:

- **Simplifies the legislation's structure.** The Bill proposes a more streamlined approach to contractual disclosure. It establishes general requirements that apply to contracts for future performance or delivery, direct contracts, and contracts entered when the consumer and supplier are not present together, including online contracts.
- **Strengthens existing consumer protections.** The Bill expands protections around unconscionable representations, cancellation rights where an unfair practice has occurred, and the obligations of a supplier when providing information to a consumer.
- **Introduces new consumer protections.** Among the bevy of new protections is a list of terms that may not be included in contracts and rules prohibiting businesses from unilaterally changing contracts.
- **Increases maximum fines.** The amount to be paid has been doubled to \$100,000 for individuals and \$500,000 for corporations.
- **Creates new business implications.** Although the full impact of the changes will not be known until regulations are published, businesses should closely monitor the potential impact of the new rules on their contracts, policies and procedures.

Simplifying the legislation's structure

Under the existing CPA structure, it can be challenging to determine which disclosure requirements apply to a contract, and certain types of contracts are subject to overlapping requirements. The Bill proposes a simpler and more streamlined approach to contractual disclosure requirements. It establishes general requirements that apply to contracts for future performance or delivery, direct contracts and contracts entered when the consumer and supplier are not present together, including online contracts.

However, these general requirements do not apply to certain types of contracts—such as credit agreements, gift card agreements (called “prepaid purchase card contracts”), contracts for rewards points, contracts for work to be made to a motor vehicle, and certain types of leases. Exempted contracts are subject to their own set of prescribed disclosure requirements.

Strengthening existing consumer protection

As noted in the government's [press release](#), the proposed legislation “builds on existing protections to strengthen consumer rights”. Understanding the implications of such changes requires a careful review of the proposed changes. Here are a few examples:

Unconscionable representations vs. unconscionable acts

Although the concept of unconscionable representations remains in the proposed legislation, the Bill adds the concept of “unconscionable acts”.

Under the existing CPA, a representation may be deemed unconscionable if the person making the representation knows or ought to know that the consumer is not reasonably able to protect their interests because of disability, ignorance, illiteracy, or inability to understand the language of an agreement. A representation may also be deemed unconscionable if the person making the representation knows that the price grossly exceeds the price at which similar goods or services are available.

The new CPA no longer requires a representation by, or assumption of knowledge in respect of, the merchant for the consumer to benefit from the protection. For example, based on the proposed language, the mere act of charging a price that grossly exceeds the price at which similar goods or services are available from similar suppliers triggers the application of the protection—regardless of whether the merchant or its employees ought to know of the competing price.

Cancellation rights

The Bill also broadens a consumer's cancellation rights where an unfair practice has occurred. The current CPA allows consumers to rescind the agreement within one year of entering into the agreement if an unfair practice has occurred before or while entering into the agreement. Under the Bill, the right to rescind the agreement applies to unfair practices that have occurred before, during or after the time the contract was entered into, and the right to rescind remains for one year after entering into the agreement or one year after the unfair practice occurred, whichever occurs later.

Delivery of information

A more subtle, but important, change is with respect to the delivery of information. Under the existing CPA, when a supplier (other than those exempted from the general contractual requirements) is required to deliver information to a consumer, the disclosure must be clear, comprehensible and prominent, and it must be delivered in a form that can be retained by the consumer.

The Bill adds several requirements: that the information be delivered “in a manner that will likely come to the consumer’s attention”, that the “contract be delivered in a manner that allows the supplier to prove that the consumer has received it”, and that the copy of such contract must, for certain types of contracts, be delivered immediately after entering into the contract. Such requirements could prove to be difficult to comply with in the context of digital sales.

Introducing new consumer protections

In addition to extending the scope of existing consumer protections, the Bill also introduces several new consumer contractual rights and restrictions. In particular, it is prohibited for consumer contracts to include terms that:

- prevent contractual disputes from being adjudicated in Ontario;
- prevent a consumer from publishing a review of the supplier or of the goods or services supplied;
- place a monetary limit on claims made under an implied or statutory condition or warranty; and
- prevent a consumer from filing a complaint with the Ministry.

Merchants or suppliers that include these prohibited items would not only run the risk of potential regulatory enforcement action. They would also face important contractual consequences: borrowers will not be liable to pay the cost of borrowing disclosed in credit agreements; lessees will not be liable to pay implicit finance charges found in leases; and for other types of consumer contracts, consumers will have the right to cancel the contract within one year of entering into the contract.

Although the Bill does not specify the rules that will apply to amendments or renewals of contracts, the backgrounder that accompanied the release of the Bill reveals the government’s intention of introducing limits as to when businesses can make unilateral contract amendments, renewals and extensions without express consumer consent. Regulations would also require that contracts with automatic renewals or extensions include an ongoing right for the consumer to cancel.

Other consumer protections introduced in the Bill include:

- rules that would apply to “contract breaking”, where a supplier provides services or goods that are intended to assist a consumer in having their obligations under a contract terminated or reduced;
- the right to exit time-sharing contracts after 25 years; and
- miscellaneous rules, including a 10-day cooling-off period for a new category of long-term leases for heating, ventilation, and air conditioning (HVAC) and other home comfort appliances, called “purchase-cost-plus leases”.

The government also noted that it intends to introduce regulations to provide consumers with free monthly electronic access to their consumer reports and credit scores, and the right to add security freezes on their credit reports.

Although the title of the Bill is “Better for Consumers, Better for Business”, few proposed changes appear to be better for businesses. One change that could qualify as “better for businesses” is a requirement that a consumer who receives written direction from a supplier to destroy digital goods must do so as soon as possible after the consumer receives the refund.

Increasing the maximum fines for breaches

As noted above, the Bill proposes to double the fines under the new CPA to \$100,000 for individuals and \$500,000 for corporations.

In addition, under the new CPA, if a consumer brings an action for a refund, the court must order that the supplier or merchant pay three times the amount of the refund, unless it would be inequitable to do so. The existing CPA requires that only the amount of the refund be paid.

Conclusion

Bill 142 is at second reading, with referral ordered to standing committees. Additional updates will follow during the government's regulation-making phase, with the new CPA to take effect immediately on the day it receives royal assent. It is not yet clear if there will be a transition period or whether existing contracts will benefit from a "grandfathering" provision.

Because the Bill may evolve through the parliamentary process, the full implications of the new CPA will not be known until the new CPA becomes law and its related regulations are published. The new CPA proposes several significant changes to the business-customer relationship and although the full impact of the changes will not be known until regulations are published, businesses should closely monitor the potential impact of such changes to their contracts, policies and procedures.

To discuss these issues, please contact the author(s).

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