



Consumer Protection

Doing Business In Canada

In Canada, in addition to federal consumer protection laws, each of the Canadian provinces and territories has consumer protection legislation governing transactions with consumers. The consumer protection legislation in Canada is not entirely harmonized. Accordingly, it is important to consider the laws of the respective Canadian jurisdiction when engaging in a consumer transaction in Canada.

The federal government has enacted laws that address matters including the regulation of financial institutions, misleading advertising, interest, product safety and anti-competitive practices. Provincial and territorial consumer protection laws address general consumer matters and specific industries.

Types of Consumer Agreements

In most instances, the provincial consumer protection legislation categorizes consumer agreements by type. For example, in Ontario consumer agreements include internet agreements, future performance agreements, direct agreements, time share agreements, lease agreements and credit agreements. The disclosure requirements vary by agreement type. Generally, consumer agreements must be in writing, a consumer cannot waive his or her rights under the consumer protection legislation, and prescribed disclosure must be given to the consumer prior to entering into an agreement.

Credit agreements in Ontario are further categorized as either fixed credit or open or variable credit. An open or variable credit agreement provides multiple advances in unspecified amounts, and may also impose a credit limit (i.e., a credit card or line of credit). A fixed credit agreement is one that is not open credit (e.g., specifies the amount of the advance to be made).

Gift Card Agreements/ Prepaid Card Agreements

Gift card and prepaid card (open and closed loop) agreements are regulated across Canada at a federal, provincial and territorial level. Under most legislation, a consumer can only be charged fees associated with customizing or replacing a lost or stolen gift card. At the provincial level, expiry dates are prohibited other than for gift cards issued for promotional or charitable purposes. Federally regulated financial institutions are subject to the *Prepaid Payment Products Regulations*, which address prepaid cards issued by federally regulated financial institutions (e.g., banks, trust companies and loan companies).

Consumer Credit

Cost of credit (sometimes referred to as the cost of borrowing) refers to all amounts a lender must disclose to a borrower that are payable under or as a condition to entering into a credit agreement or a lease agreement. The cost of credit disclosure requirements are generally harmonized across Canada, but some provinces and territories have not yet implemented the Harmonization of Cost of Credit Disclosure Laws in Canada Drafting Template developed by the Consumer Measures Committee in 1998. The template, which serves as a drafting guide, was created with a goal of harmonizing cost of credit disclosure in the Canadian marketplace. Among other disclosure, credit and lease agreements must disclose, where applicable, the amount and timing of payments, the annual percentage rate and prepayment rights and charges.



Prepayment

A borrower can prepay the full outstanding balance under a credit or lease agreement at any time without incurring any prepayment charge or penalty.

Permitted Default Charges

Default charges are charges imposed on a borrower when the borrower does not make a payment as it becomes due or does not comply with any other obligation under the credit agreement. Default charges that constitute a penalty are prohibited. Penalties are not enforceable. A lender can charge default interest at a higher interest rate (except where the loan is secured by a mortgage of real property). Other than interest, a lender can only charge a consumer with the following default charges under a credit agreement:

- ◆ Reasonable legal fees in connection with enforcing the agreement
- ◆ Reasonable costs in realizing or protecting its security under the agreement
- ◆ Reasonable charges in connection with dishonoured payments

Unfair Practices

Unfair practices (also referred to as misleading or deceptive acts or practices) are generally prohibited under Canadian consumer protection legislation. Unfair practices address behaviour that misleads consumers, subject consumers to undue pressure to enter into a transaction, or take advantage of particular consumers (e.g., a consumer who cannot reasonably protect his or her own interest due to disability, ignorance or illiteracy). Some consumer protection legislation prescribes deceptive acts or practices and others describe the general nature of such acts or practices and provide a non-exhaustive list of examples.

Unsolicited Goods and Services

Other than specified exempt circumstances, a consumer has no legal obligation to pay for unsolicited goods or

services. For example, a credit card issued to a consumer without the consumer's express request or consent. Under some of the consumer protection legislation, a consumer who uses such a credit card is deemed to have entered into a credit card agreement with the card issuer on first use of the card.

Consumer Sales Warranties

In some Canadian jurisdictions, the consumer protection legislation deems certain statutory warranties (in respect of sales of goods) that are implied in every sales transaction. Deemed warranties include an implied warranty or condition as to the quality or fitness of any particular purpose of goods supplied or a warranty that the good is durable and fit for its intended use.

Credit Reporting/Notice of Denial/Adverse Action

In some instances, credit reporting legislation requires a lender to obtain a consumer's consent prior to the lender obtaining a credit report and requires the lender to advise a consumer of an adverse action taken against the consumer that is based on the information in the credit report. In most instances, notice of denial or adverse action has to be provided to the consumer, however the requirements vary across the provinces.

Licenses, Permits, Registrations

Certain entities require provincial licenses, permits or registrations in order to conduct certain types of transactions with consumers, such as direct sellers, motor vehicle dealers, loan brokers and lenders, collection agencies, payday lenders and credit reporting agencies.



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