

Response to Consultation Paper: Modernizing Consumer Protection in Ontario

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Introduction

The Canadian Marketing Association (CMA) is the voice of the marketing profession with corporate, not-for-profit, public, and post-secondary members, the majority of whom are based in Ontario. We help our members maintain high standards of professional conduct through our <u>Canadian Marketing</u> <u>Code of Ethics & Standards</u>, our series of <u>compliance and best practices guides</u>, and <u>training and</u> <u>professional development offerings</u>. In addition, we provide <u>resources to educate consumers</u> about their rights and obligations, and we respond to inquiries, and work to resolve complaints from consumers.

By adhering to the Canadian Marketing Code of Ethics & Standards, CMA members demonstrate their commitment to maintain the highest standards of honesty, transparency, truth, accuracy, fairness and professionalism. The CMA is pleased to respond to the Government of Ontario's consultation paper on Modernizing the Consumer Protection Act (CPA).

We support efforts by the Government to protect consumers from unwanted solicitations, unfair practices, and false, misleading or deceptive representations. Strong consumer protection laws evoke trust and, along with strong professional codes, establish standards for ethical behaviour. This helps consumers distinguish between reputable, trusted organizations and rogue players.

Reaching consumers and meeting their needs is at the core of marketing. Building and maintaining strong relationships with consumers is key to business success – and one important way to achieve this is through clear, transparent communications. <u>The CMA Guide on Transparency for Consumers</u> provides a framework to help organizations provide clear, user-friendly information about how their personal information is collected, used and shared. The principles in this guide could be applied to other types of information that is sent to consumers.

Comments on the consultation paper

Attracting and servicing consumers is key to business success. The vast majority of businesses in Ontario recognize this and are dedicated to serving their customers well. A strong legal framework is important to protect consumers from unscrupulous operators.

We support the government's goals to modernize the CPA, with a view to protecting consumers and fostering support for Ontario businesses, as well as promoting digitization and improving service delivery to support ongoing growth.

As changes to the CPA advance through the legislative process, we encourage the government to convey its confidence in the vast majority of Ontario businesses and their significant role in serving consumers and strengthening the economy.

Our specific comments on the government's proposals focus on the areas of consolidating contract disclosure rules, unfair practices, consumer rights and prohibited contract terms, and emerging issues and new challenges.

Consolidating contract disclosure rules

Combining contract disclosure rules into a single set of core rules offers several benefits including clarity, streamlined compliance and potential reduced costs for additional resources. However, complete standardization could hamper the ability of reputable businesses to tailor their products and promotional offers to meet the needs of consumers. It could also impede healthy competition, which is not in the best interest of consumers.

The consultation paper indicates that additional rules for certain contracts would be considered where there is an identified need. We suggest that a measure of flexibility will be required for businesses that operate in multiple industries or have requirements that overlap with other levels of government, such as in the case of federally regulated institutions. In these situations, standardization could result in increased costs as they would need to invest resources into bringing all their lines of business into a single set of core rules.

Unfair practices: Strengthening protections

We agree that the CPA should protect consumers, in particular vulnerable consumers, from unscrupulous behaviour. The approach recommended in the consultation paper is consistent with the provisions of our Code.

Unfair practices: Improving remedies

We understand the intent behind the proposal to extend the time limit for consumers to rescind a contract from one year after entering the contract to one year after an unfair practice takes place, whichever is later. However, the wording of the provision is too broad and could result in unintended consequences. For example, it could enable consumers to rescind a contract that they no longer want, in situations where they are motivated by the desire to get out of a contract rather than an interest in addressing an unfair practice when the consequence is not significant.

To avoid this unintended consequence, the ability of a consumer to rescind a contract should be limited to practices that have a significant impact of harm on the consumer. Otherwise, a business can never be certain that its contracts are binding – a situation that would impede their ability to operate with certainty and compete effectively in the marketplace.

In addition, to support businesses and consumers, it will be important for the government to provide clear guidance on how to determine the date on which an unfair practice is considered to have taken place.

Consumer rights and prohibited contract terms

We agree that:

- Contract clauses that suggest a consumer has waived any legal rights provided under the CPA should be prohibited.
- Consumers should not be prohibited by contract or otherwise penalized from publishing fair reviews of a business or its goods or services. Fair reviews provide valuable insights for consumers about products and services and to businesses about the customer experience.

A business can suffer irreparable harm when unfair or inaccurate negative reviews are published, especially when these are orchestrated to unduly damage the business. We submit that the CPA should provide some protection from such activities for businesses.

Rules for delivering required information to consumers

We support the principle that required disclosures should be provided or delivered to consumers in a manner that will likely come to the consumer's attention. Specifically, we understand that this requirement could be fulfilled through such vehicles as an email, mailed notice, or clear statement on an account statement or other regular communication vehicle.

It is important to acknowledge that consumers often do not read information, even when it is provided in an acceptable manner. In this regard, some of the responsibility to be informed falls on the consumer.

Compliance orders on businesses facilitating contraventions

We agree with the principle that the Director's order-making power would extend to cover any business that facilitates another business' contravention of the CPA.

For example, predatory UX practices through automatic pre-selection at check-out lull consumers to take unintended actions (such as buying multiple items, signing up for paid subscriptions, or inadvertent tipping). These techniques are generally used by offshore websites and apps who are interested in one-off transactions and not in building long-term relationships with customers. When they impact Ontario consumers, the Director should have the ability to issue and enforce an order.

A consumer education and awareness campaign could benefit consumers to make them aware of these practices by non-legitimate brands and businesses.

Cancelling a subscription-based contract

We support the general principle that consumers should be able to cancel a subscription through the same channel they used to enroll. For example, if a consumer signed up for membership online, they should be able to cancel that membership online and not be required to take added steps, such as going in person to a store. However, the updated law should provide some flexibility for small and medium sized businesses that may not have the capability or resources to provide a full range of options.

Promotional gift cards

We recommend that the government amend the CPA to make it clear that a "promotional" gift card – in other words, a gift card that a company gives free of charge to a consumer when the consumer buys a product – can have an expiry date, unlike a gift card that a consumer purchases with their own money. This would help address confusion in the marketplace and bring the CPA in line with similar laws in other Canadian jurisdictions.

Implementation

Businesses need a stable regulatory environment in which to operate, especially in an uncertain economic climate. The challenge of navigating or implementing new, onerous requirements could undermine the financial stability of small and medium-sized businesses.

We recommend that careful consideration be given to the implementation timeline. Providing too short of an implementation window could pose challenges at a time when many businesses are facing significant pressures. We recommend an implementation notice period of one year from the time that the final regulations are published, and that existing contracts with a duration of three years or less be grandfathered until they come up for renewal.

In closing

In closing, any proposed amendments to the CPA should be reviewed to ensure that they do not result in unintended consequences that could hamper the ability of businesses to attract and serve their customers.

For questions or to discuss our submission, contact:

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About the CMA

The CMA's purpose is to embolden Canadian marketers to make a powerful impact on business in Canada. We provide opportunities for our members from coast to coast to develop professionally, to contribute to marketing thought leadership, to build strong networks, and to strengthen the regulatory climate for business success. Our Chartered Marketer (CM) designation signifies that recipients are highly qualified and up to date with best practices, as reflected in the Canadian Marketing Code of Ethics and Standards. We represent virtually all of Canada's major business sectors, and all marketing disciplines, channels and technologies. Our Consumer Centre helps Canadians better understand their rights and obligations. For more information, visit thecma.ca.