

Appendix A – Consultation Questions

Online Contracts

Question 1:

What factor or factors distinguish “online” practices from other forms of contract identified in the Consumer Protection Act (CPA)?

Question 2:

Should Ontario create a statutory or regulatory framework to address potential consumer risks and harms in the digital marketplace? If so, should the CPA be amended to add a statutory definition of “online” practices? How should “online” practices be defined?

Monetary Threshold

Question 3:

Should the CPA be amended to eliminate the monetary threshold (currently \$50) for consumer protections for “online” contracts? What are the potential benefits and drawbacks of eliminating the monetary threshold?

Unilateral Changes

Question 4:

Should the CPA be amended to reflect to provide more consumer protections against unilateral changes in terms of service (ToS) in the digital marketplace? If so, could this be achieved by:

- Prohibiting unilateral changes related to “key information” or “market contexts”?
- Providing a right to cancel a contract without penalty under proscribed circumstances?
- Better ensuring a “duty of good faith” to distinguish routine from consequential unilateral changes?
- Creating a ToS registry, consumer welfare agency, or other audit mechanism to review unilateral changes and prepare independent summaries for consumers about potential risks and consequences.
- Other potential reforms?

Question 5:

How should potential reforms to better protect consumers against unilateral changes be balanced against the legitimate interests of online suppliers?

Notice and Disclosure

Question 6:

Should the CPA be amended to require online suppliers to provide more meaningful and effective notice of material terms and online consumer risks? If so,

- What is the best way to improve online consumer notice while avoiding consumer information overload?
- What “key information” should be disclosed to Ontario’s online consumers?
- Should online “market contexts” and “deceptive practices” be disclosed to Ontario’s online consumers? If so, what contexts or practices should be disclosed?
- Are reforms enacted or proposed in other jurisdictions (such as the EU and by the American Law Institute) appropriate for Ontario?

Question 7:

There are many other options to improve notice for online consumers, including standard terms, prohibiting certain practices, trustmarks, etc. Which options should be adopted in Ontario, if any?

Question 8:

How should potential reforms to provide better or more meaningful notice to consumers be balanced against the legitimate interests of online suppliers?

Dark Patterns

Question 9:

Should Ontario’s consumers have more protections against “dark patterns” in the digital marketplace? If so, should the CPA be amended to prohibit these practices? How would “dark pattern” practices be defined in the CPA?

Question 10:

In addition to a statutory definition, should the CPA be amended to include a list of “dark pattern” practices that should be prohibited or proscribed? If so, which practices should be identified?

Question 11:

What other reforms or initiatives should be adopted to improve consumer protections in this area?

Protecting Youth, Elderly, and other Vulnerable Consumers

Question 12:

Do CPA sections 5 and s.15(2) provide sufficient consumer protections to youth, elderly and other vulnerable communities against consumer risks in the digital marketplace? Are additional or more specific consumer protections necessary? If so, could this be achieved by:

- Creating regulations or best practices guidelines to clarify CPA s. 5's "comprehensibility" requirement?
- A defined regime for parental or substitute consent with "best interests" fiduciary duties that takes into account childhood development goals, freedom of expression, and vulnerable groups
- Development of standard terms or procurement rules for institutions like government services, schools, or long-term care homes requiring specific platforms or products where consumers have little choice but to agree
- Improved, mandatory, upfront forms of notice and disclosure when youth or parental consent is required. This could include newly mandated disclosure and notice provisions requiring lifetime or yearly projections of an average users costs, as well as other identifiable piece of "key information" and "market contexts" such as health risks or the addictiveness of a product or platform
- Expanded limitation periods to raise unfair practices and subject to the principle of discovery
- Expanded access of consumer to legal and legal aid services to assist with consumer protection issues under the CPA
- A statutory duty for online suppliers to protect youth
- An expanded list of what constitutes a false, misleading or unconscionable representation to include practices and issues of particular concern to vulnerable groups

- Additional measures to protect persons with disabilities, address language barriers, literacy levels, income, class, cultural norms, or age-related and age vulnerabilities (including the elderly and youth)?
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Deception and Unconscionability

Question 13:

Should the CPA be amended to provide more consumer protections against deceptive and unconscionable practices in the digital marketplace? If so, how would these practices be defined in the CPA?

Question 14:

In addition to a statutory definition, should the CPA be amended to include a list of online deceptive and unconscionable practices that should be prohibited or proscribed? If so, which practices should be identified?

Question 15:

Regulation of deceptive practices in the digital marketplace potentially affects jurisdiction within Canada and internationally. Should these rules be harmonized? If so, what does or doesn't need harmonization?

Access to Justice

Question 16:

Do access to justice, dispute resolution, enforcement and remedies need to be improved for Ontario's consumers in the digital marketplace? If so, could these be achieved by:

- *Providing clearer guidance/directives to Ontario's courts adjudicating online consumer disputes?*
- *Amending the CPA to provide more certainty regarding Ontario's jurisdiction in online consumer disputes?*
- *Amending the CPA to prohibit online supplier reprisals?*
- *Establishing minimum standards for Ministry complaints?*
- *Establishing regulations or best practices governing private or internal consumer dispute resolution mechanisms?*
- *Amending the CPA to create a collective right of redress or "super-complaints" system?*
- *Improved support for consumer advocacy organizations or public education?*
- *Direct to public consumer legal tools?*
- *A ToS registry?*

Question 17:

How should potential reforms to improve consumer's access to justice, dispute resolution, enforcement and remedies be balanced against the legitimate interests of online suppliers?

Question 18:

Should the Ministry of Public and Business Service Delivery be given a stronger mandate to investigate and prosecute consumer complaints in the digital marketplace? If so, what additional powers should be given to the Ministry?

Question 19:

What other initiatives could supplement improved consumer protection laws in Ontario?