

# Information Technology

INFORMATION TECHNOLOGY AND ELECTRONIC COMMERCE SECTION

SECTION DES TECHNOLOGIES DE L'INFORMATION ET DU COMMERCE ÉLECTRONIQUE

## E-Commerce Regulations Coming Soon

*Andrew Bernstein and Ryan Morris\**

The Ontario *Consumer Protection Act, 2002* (CPA 2002)<sup>1</sup> regulates (among other things) several different aspects of consumer internet agreements. In particular, the CPA 2002 makes an internet agreement voidable by the consumer within a specified period unless the internet vendor makes full disclosure of specified information before the consumer makes a final commitment to the contract, and provides a copy of the agreement in writing to the consumer. The CPA 2002 is not yet in force because the regulations that put the flesh on this otherwise skeletal regime have not yet been promulgated. The provincial government has proposed draft regulations so it is very likely that the statute will be proclaimed into force within the next several months. It is therefore important for counsel on consumer-based e-commerce matters to properly advise their clients about the requirements of the regime and the consequences of failing to comply.

### Foundations

The internet agreement provisions in the CPA 2002 and the draft regulations are modeled on the Internet Sales Contract Harmonization Template approved in May 2001 by the federal, provincial and territorial ministers responsible for consumer affairs. The CPA 2002 requirements are also aligned with the Canadian Code of Practice for Consumer Protection in Electronic Commerce, endorsed by the federal, provincial and territorial ministers responsible for consumer affairs in January 2004. While the provisions in the CPA 2002 apply only in Ontario, they have been designed with national standards in mind.

The internet provisions in the CPA 2002, the national Internet Sales Contract Harmonization template, and the Canadian Code of Practice for Consumer Protection in Electronic Commerce approach internet regulation by adapting existing common law and statutory modes of regulating transactions to internet transactions.

### Application

The CPA 2002 defines an "internet agreement" as an agreement between a supplier and a consumer for the supply of goods or services for payment formed by text-based internet communications. For the purposes of the CPA 2002, consumers do not include persons acting for business purposes. The CPA 2002 applies to a transaction if the consumer or the vendor is located in Ontario when the transaction takes place, and the consumer's total potential payment obligation under the agreement exceeds \$50 (an amount stipulated in the draft regulations for ease of amendment).

### Disclosure Provisions

The disclosure provisions are the core of the new legislation and aim to ensure that consumers make an informed choice about whether and how to make a purchase online. The disclosure provisions pertaining to internet agreements in the CPA 2002 are clearly descendants of the disclosure provisions for paper-based executory contracts in the current *Consumer Protection Act*.<sup>2</sup>

Disclosure of information pertaining to internet agreements under the CPA 2002

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must be clear, comprehensible and prominent. Information about the transaction must also be accessible in a way that ensures that the consumer has accessed the information and is able to retain and print it. In addition, the information must be included in the internet agreement itself.

The draft regulations set out the specific information that must be disclosed. This includes the supplier's contact information; a description of the goods or services to be supplied, with any additional charges specified; the total amount payable; the currency in which the amount is expressed; and the terms and methods of payment. Suppliers must also disclose to consumers the date and location for delivery or performance, and any contractual rights that the consumer will have in relation to cancellation, returns, exchanges or refunds. Any credit provisions must also be disclosed.

### **Delivery Provisions**

The delivery provisions in the CPA 2002 clearly reveal the Consumer Protection Act's roots in the regulation of paper-based transactions. Suppliers are required to deliver internet agreements in writing to the consumer within 15 days of the consumer's entering into the agreement. A copy of the agreement can be delivered by e-mail, fax or mail to an address that the consumer has given the supplier for the purpose of receiving a copy of the agreement. Suppliers can also provide a copy of the agreement to the consumer in any other manner that allows the supplier to prove that the consumer has received it.

### **Cancellation Provisions**

To ensure that the consumer's agreement to contract is fully intentional, the CPA 2002 provides that a consumer may cancel an internet agreement in any of three situations: (i) if the supplier does not disclose the required information to the consumer; (ii) if the supplier has not given the consumer an express opportunity to accept or decline the agreement, or to correct errors immediately before entering into the agreement; or (iii) if the supplier does not provide the consumer with a copy of the agreement.

In the first two cases, the agreement can be cancelled at any time from the date it was entered into until seven days after the consumer receives a copy of the agreement. In the third case, the

agreement can be cancelled within 30 days of the date of entering into it.

### **Amendment, Renewal and Extension Provisions**

The most vendor-friendly provisions of the CPA 2002 and draft regulations pertain to amendment, renewal and extension of internet agreements. The draft regulations allows vendors to make changes to internet agreements by way of notice, without affirmative consent from the consumer, provided the original agreement disclosed the possibility of amendment, the consumer was given adequate notice, and the consumer was provided with the option to terminate the agreement or retain the agreement unchanged.

The vendor's notice of amendment, renewal or extension must further disclose all proposed changes to the agreement, the date on which the changes would become effective, the means by which the consumer can respond to the notice, and the consequences of not responding. The notice must be provided to the consumer at least 30 days, but not more than 90 days before the date on which the proposed change is to take effect.

Any purported amendment, renewal or extension that does not comply with the requirements in the draft regulations is not effective.

### **Conclusions**

Although the draft regulations to the CPA 2002 are not yet final, they are unlikely to change radically from their current form. As a result, it is expected that the CPA 2002 will be proclaimed in late 2004 or early 2005. When it is, prudent e-commerce providers (and their counsel) will have to ensure that they follow or exceed the legislated requirements. If suppliers fail to comply with the new legislation, they risk the uncertainties that exist when every sale is potentially reversible by the consumer.

*\*Andrew Bernstein is an associate in the litigation department of Torys LLP specializing in IP and technology issues, (416) 865-7678. Ryan Morris is an articling student at Torys LLP, (416) 865-8141.*

<sup>1</sup> S.O. 2002, c. 30, Schedule A.  
<sup>2</sup> R.S.O. 1990, c. C.31, s. 19(1).