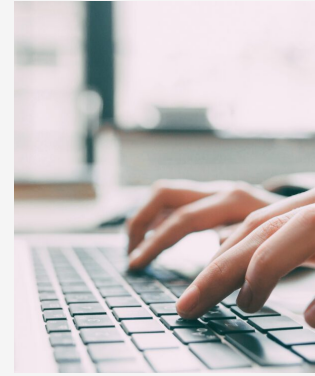


Automatic renewals in Canadian consumer protection law

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Introduction

With the explosion of online service offerings over the last decade, subscription plans have become a significant source of income for many consumer-facing businesses. To create a reliable and predictable income stream, these plans typically last for an indefinite period by automatically renewing at a regular frequency. However, to be effective in Canada, these contract structures must comply with provincial consumer protection legislation.

As a result of [updated guidance from the US Federal Trade Commission](#) and changes in [California's Automatic Renewal Law](#), many U.S. retailers have had the opportunity to reconsider the automatic renewal of their consumer agreements over the last two years. However, despite no recent changes to analogous Canadian legislation, there remains confusion regarding the regulation of automatic renewals in Canada. Furthermore, some provinces, such as Ontario, are starting to take a closer look at the practice. It is therefore a good time for retailers and other subscription-based consumer businesses to reevaluate their approaches to automatic renewals in Canada.

Current state of the law

Canadian consumer protection legislation has long regulated automatic renewals and subscription-based services, although perhaps not in an obvious way. Some provinces, like Ontario, have legislative provisions that clearly and explicitly establish a mandatory renewal process for many consumer contracts. In other provinces, however, the act of automatically renewing a consumer contract can implicate a variety of disparate consumer protection issues, including unsolicited goods and services, unfair practices, and renewal obligations specific to certain types of consumer contracts. For example, depending on the province, there are specific renewal provisions to consider for fitness or dance contracts, telecommunications contracts and dating contracts, among others. Some provinces also create unique considerations for free or discounted trial periods, a common feature of subscription plans.

In almost all cases, a single renewal process, often including various degrees of disclosure, consent and/or notice, can be constructed that is compliant across all Canadian provinces. The risks of not complying with applicable renewal legislation depend on the specific

circumstances, including the services being provided and the province in question. However, depending on the legislative provisions implicated, purported “automatic” renewals may not be effective, and consumers may be entitled to a full refund right for any payments made pursuant to the improper renewals.

Potential changes

While the relevant consumer protection provisions have not changed for many years, the status quo may be shifting. On December 1, 2020, Ontario’s Ministry of Government and Consumer Services (as it was then called) issued a consultation paper proposing the first major overhaul to Ontario’s *Consumer Protection Act* in more than 15 years. Following the initial consultation, the Ontario government followed up with another consultation paper on February 6, 2023, with more detailed change proposals and some draft legislative language, including stricter regulation of contract “continuations” (i.e., extensions and renewals) and the exiting of “subscription-based contracts”. Subject to some exceptions, this proposed language creates a default requirement of explicit consent for every contract renewal. The consultation period on these proposed changes ended on March 17, 2023, and results of the consultation have not yet been revealed. It is unclear when or if such changes will come into force, or whether the overwhelming popularity of streaming services and online subscriptions will invite further scrutiny in other provinces. In any event, retailers and other subscription-based consumer businesses with automatically renewing and subscription-based contracts should be ready to revisit their renewal process in Canada’s most populous province.

As noted above, automatic renewals and subscription-based services are permitted in Canada. However, they must be structured appropriately to ensure such renewals and subscriptions are effective. Please reach out to us if you have questions about your automatic renewal or subscription process or the regulation of automatic renewals and subscriptions in Canada.