

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL  
CORPORATE POLICY AND PLANNING OFFICE  
BRIEFING NOTE**

Prepared for the information of the Honourable John van Dongen, Minister of Public Safety and Solicitor General.

**ISSUE**

Information provided for a meeting with the Multi-Store Gift Card Coalition (MGCC) on June 5, 2008, concerning gift card regulations.

**MINISTRY'S SUGGESTED RESPONSE:**

- Gift card legislation has been approved and government is now in the process of developing regulations concerning expiry dates, fees, disclosure requirements and other matters.
- PSSG staff are reviewing the results of a consultation held earlier this year, have conducted further interviews with stakeholders, including the MGCC, and are consulting with provincial colleagues across the country.
- Government is aware of the differences in the administration of single-retailer cards and multi-retailer cards. We understand the need to recover costs and realize some financial benefits in order to keep their product in the market.
- At the same time, we know that consumers want to get full value for their money. They don't want the recipient of a gift card to be surprised by dormancy fees.

**BACKGROUND**

- The MGCC represents a number of parties involved in issuing and distributing multi-store cards (see MGCC letter dated April 16, 2008). Multi-retailer gift cards are sold by mall companies and may be used in a number of stores in a mall and other malls owned by the same company.
- The MGCC recommends that BC allow fees on purchase and dormancy fees of \$2.50 per month beginning one year after purchase, until the balance is depleted. Their main arguments for these fees are:
  - Their costs are higher than single-retailer cards because they must use a credit card network to reconcile payment; and
  - Unredeemed balances must remain in the bank account of the issuer in perpetuity, unlike single-retailer cards, where the retailer may eventually take unredeemed balances into revenues according to generally accepted accounting principles.

- A number of options are being considered in the process of developing regulations,  
s.13

- Other jurisdictions treatment of multi-retailer cards:
  - Ontario has temporarily permitted multi-multi cards to charge fees on purchase and dormancy fees, pending further research. It is likely that they will continue this approach.
  - Manitoba does not allow fees on purchase but does allow monthly dormancy fees on multi-retailer cards after a period of inactivity. Cadillac Fairview has discontinued its mall card in Manitoba. One reason is the inability to cover costs without fees on purchase.
  - s.16
- The MGCC may also note that credit card network rules require that multi-retailer cards expire for security reasons, but cardholders can request and receive a new card. This practice would not be prohibited.
- Regulations are expected to take effect prior to the 2008 Christmas season. MGCC asks for six months notice prior to implementation to bring in new card stock and to train staff. Six months notice may not be practical or necessary, as BC will allow retailers to continue to use up old stock as long as consumers are informed of any new requirements at the time of purchase.

**Prepared by:** Susan Walker, Senior Policy and Legislation Analyst  
**Phone:** 250 387-3386  
**Date:** May 23, 2008

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL  
CORPORATE POLICY AND PLANNING OFFICE  
BRIEFING NOTE**

Prepared for the Honourable John van Dongen, Minister of Public Safety and Solicitor General

**ISSUE**

Prepaid Purchase Card Regulation

**BACKGROUND ON SPECIAL ISSUES**

Promotional cards

- The regulation allows expiry dates on cards issued for promotional purposes. These products are intended to attract new customers and provide incentives for existing customers to return. It is not expected that the goods and services will be available and at the same price indefinitely, and it is reasonable that these offers are time limited. Some examples of promotional cards are:
  - Loyalty and rewards cards issued to repeat customers or for points accumulated from previous purchases
  - Free or discount cards or vouchers included in membership fees
  - Free or discount cards or vouchers issued for specific promotional events – for example, a half price coupon for a new restaurant
  - Coupon books to promote certain businesses – for example Entertainment Books that are purchased and include discount coupons for restaurants and other businesses
- This exemption was requested by business organizations and consumers generally agree with expiry dates on these cards. Businesses will not be permitted to charge additional fees on promotional cards and they must provide full disclosure of terms and conditions, including expiry.
- Ontario exempts free and discounted promotional cards from the legislation entirely. Manitoba exempts cards issued for free from fee and expiry date provisions. Other provinces are expected to have similar exemptions as Ontario, Manitoba and BC.
- During second reading and debate of the prepaid purchase card Bill in the Legislature, it was noted that promotional cards might be exempted from expiry date provisions by regulation.
- Complaints about expiry dates on promotional cards will be monitored. If it appears that businesses are taking unfair advantage of the exemption, a change to regulations can be considered.

### Mall cards (for use at multiple unaffiliated sellers)

- Cards that can be used at multiple unaffiliated sellers have special provisions that allow pre-purchase fees and post-purchase fees after 15 months, with full disclosure to consumers. Consumers have the option of postponing post-purchase fees for an additional three months on request.
- Fees are necessary to recover the additional costs of issuing and processing these cards through a credit card payment network. Unlike businesses issuing single-retailer cards, they do not have the benefit of use of the unredeemed balances and interest collected on the money. Without the fees, these mall cards would likely be discontinued, removing a popular product from the marketplace.
- Special disclosure provisions will ensure that consumers are aware of these fees, so they can make an informed decision when they decide to purchase the card. A notice on the card will remind them to use up the unredeemed balance before post-purchase fees take effect.
- Ontario allows the same fees and Manitoba allows post-purchase fees after a period of inactivity.
- Retail BC and the Multi-Store Gift Card Coalition support special fees for mall cards. Consumers may oppose these special fees. Communications materials will be developed around this issue.

### Compliance

- If a business contravenes a provision of the Act or Regulations, for example by charging unauthorized fees on gift cards, the director could enter into an undertaking with the business or make an order to stop the business from charging fees. Failure to comply with an undertaking or compliance order could result in administrative penalties of up to \$50,000.

**Prepared by:** Susan Walker

**Telephone:** 250-387-3386

**Date:** July 18, 2008



-----  
From: s.22

Sent: Friday, February 22, 2008 12:46 AM

To: PSSG WEBFEEDBACK SG:EX

Subject: Gift Cards

To Whom It May Concern,

It has been brought to my attention that the BC Government is considering regulating Gift Cards.

I would like a clarification on whether or not the "Yacht Bucks" our private Yacht Club issues would be considered gift cards.

Each year, as part of the membership dues, the Yacht Club charges \$100 to each member as a prepaid credit on their account.

As members must physically come to the Club to spend the "Yacht Bucks" the \$100 encourages them to participate in the activities at the Club.

Members have one year to redeem the "Yacht Bucks" at which time they expire and are forfeited and with their next year's membership, a new \$100 prepaid credit is charged.

In the past the "Yacht Bucks" were printed in \$10 denominations but currently they are issued as a credit on our computerized till system.

Do these prepaid credits constitute a gift card and would the proposed regulation apply to them?

Sincerely,

Page 06 of 72

Withheld pursuant to/removed as

s.22

**Vermaning, Tiny SG:EX**

**From:** Max Logan [mlogan@retailcouncil.org]  
**Sent:** Wednesday, March 12, 2008 11:24 AM  
**To:** Minister, SG SG:EX  
**Subject:** letter to the Minister  
**Attachments:** BC RCC Gift Card Letter March 12 08.pdf

Good morning, please find attached a letter to Minister Les from Retail Council of Canada.

Thank you,

Max

**Max Logan**  
 Director, Government Relations and  
 Membership Services (British Columbia)  
 Retail Council of Canada  
 701 West Georgia Street  
 Suite 1500  
 Vancouver, B.C. V7Y 1C6  
 Phone: (604) 601-5619  
 Toll free: (888) 246-7705  
 Email: [mlogan@retailcouncil.org](mailto:mlogan@retailcouncil.org)

*This e-mail message, including all attachments, is confidential and any dissemination or use of this message by a person other than the intended recipient is unauthorized. If you are not the intended recipient, please notify me at (604) 601-5619 or by return e-mail and delete this communication and any copy.*

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| <b>RECEIVED</b><br>MINISTER OF PUBLIC SAFETY<br>AND SOLICITOR GENERAL |  |
| <b>MAR 12 2008</b>  |  |
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2008-03-12



**Retail Council of Canada**

701 West Georgia Street, Suite 1500, Vancouver, British Columbia V7Y 1C6

Telephone 604-601-5619 Toll Free 1-888-246-7705

[www.retailcouncil.org](http://www.retailcouncil.org)

March 12, 2008

Honourable John Les  
Minister of Public Safety and Solicitor General  
Room 236  
Parliament Buildings  
Victoria, BC

Dear Minister Les:

I understand that your office and officials in your Ministry have been considering legislation that would govern the use of retail gift cards in British Columbia and that there is a possibility that this legislation could be introduced during the current Legislative session. As you know, Retail Council of Canada has participated in the consultation on this file and has previously made a submission on this subject. I wanted to take another opportunity to relay the position of Retail Council of Canada and reiterate our commitment to work with your office as legislation and regulations are developed.

Retail Council of Canada and the thousands of retailers we speak for across the province believe first and foremost that British Columbia ought to strive for consistency between any new legislation introduced in B.C. and that which already exists elsewhere in Canada. With many Retail Council members operating nationally, we feel this course is fundamental to better customer service and a level playing field for all retailers. It is our hope that B.C. will mirror Ontario's legislation with respect to:

1. The treatment of expiry dates.
2. Requirements for disclosure of terms and conditions.
3. Differentiating between those fees that may be charged at the time of purchase and those that may affect the balance of the gift card by accruing after the purchase.
4. Ensuring any new regulations apply only to those gift cards purchased by consumers, and exclude those gift cards that may be given away for customer service or promotional purposes.
5. Excluding any requirement that retailers refund the balance on a gift card.

Retail Council would be pleased to act as a resource to your office as you consider this legislation. RCC played an active role in helping the governments of both Ontario and Manitoba develop their applicable legislation and regulations and we would be pleased to do the same in B.C. If it would be helpful to discuss this endeavour in more detail, I would be pleased to make myself available to meet with you at your convenience.

Sincerely,

Max Logan  
Director of Government Relations and Membership Services (B.C.)  
Retail Council of Canada

May 1, 2008

Mr. Max Logan  
Director of Government Relations  
and Membership Services (B.C.)  
Retail Council of Canada  
1500 - 701 Georgia Street W  
Vancouver BC V7Y 1C6

Dear Mr. Logan:

I am writing in response to your March 12, 2008 e-mail and accompanying letter, regarding British Columbia's gift card legislation.

I am very pleased to accept your offer to act as a resource on the development of regulations on gift cards. Your knowledge and expertise on the issues will be appreciated as we move forward on the details of exemptions, expiry dates and fees. Ministry of Public Safety and Solicitor General staff will contact you to arrange a meeting to discuss some of the issues.

In addition, I would like to thank you for participating in the 2007 consultation and for your continued support for moving forward on this legislation.

Yours sincerely,

*Original signed by:*

John van Dongen  
Solicitor General

360044

Please include the following line in all replies.  
Tracking number: ST20080410\_0000000172

We are forwarding the following e-mail for your attention. Please respond to the original sender. Thank you.

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SERVICE BC CALL CENTRE

Hours of Operation: 7:30am to 5pm, Monday through Friday, except on statutory holidays.

In Vancouver (604) 660-2421

In Victoria (250) 387-6121

Elsewhere in BC 1-(800) 663-7867 (toll free)

> -----Original Message-----

> From: "Jason McLean" <jason@mcleangroup.com>

> Sent: Apr 10, 2008 5:15:06 PM PDT

> To: <EnquiryBC@gov.bc.ca>

>

> Dear Sirs/Mesdames,

>

>

>

> We have a helicopter business which sells gift certificates for  
> tourist flights that typically expire if unused after a period of  
> time. Will the new Gift Card Certainty Act which purports to ban the  
> expiry of gift cards affect our gift certificates as well? As you can  
> imagine, the price of fuel among other cost variables makes the  
> prospect of a never-expiring gift certificate a bit daunting.

>

>

>

> I attach a copy of the press release for your ease of reference. I  
> look forward to hearing from you.

>

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>

> Regards,

>

>

>

> Jason McLean

>

> s.22

>

>

>

>

>

>

## Vermaning, Tiny SG:EX

**From:** Wacker, Sherri [Sherri.Wacker@leg.bc.ca]  
**Sent:** Thursday, April 17, 2008 9:42 AM  
**To:** Minister, SG SG:EX  
**Subject:** FW: Gift cards

Sherri Wacker  
 Constituency Assistant to  
 Honourable John van Dongen,  
 Minister of Public Safety and Solicitor General and  
 Minister of State for Intergovernmental Relations

Phone: 604-870-5945  
 Fax: 604-870-5950  
 Email: [sherri.wacker@leg.bc.ca](mailto:sherri.wacker@leg.bc.ca)

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| MINISTER OF PUBLIC SAFETY<br>AND SOLICITOR GENERAL |                                       |
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**From:** s.22  
**Sent:** Thursday, April 17, 2008 12:05 AM  
**To:** van Dongen.MLA, John  
**Subject:** Gift cards

## B.C. law to protect value of gift cards

**Mr. John van Dongen**

I am so pleased that our government has finally decided to protect us. I am a senior and have been scammed by Sears out of a \$40.00 gift card that had run out as I did not know or read the fine print about an expire date. I received it for Christmas 3 years ago and found it in my drawer. When I went to use it they say it had expired. I just don't have that kind of money just to throw away to big business.

Over the past year I have e-mailed many MP's who said they would discuss this problem.

I thank you so much for protecting all of BC residents from this scam.

Informed from

[http://www.bclocalnews.com/surrey\\_area/peacearchnews/news/17748769.html](http://www.bclocalnews.com/surrey_area/peacearchnews/news/17748769.html)

s.22

**Surrey BC.** s.22

2008-04-17

May 21, 2008

s.22

E-mail: s.22

Dear s.22

I am responding to your April 17, 2008 e-mail supporting British Columbia's legislation on gift cards.

I am sure there are many people that share your experience of trying to use a gift card that has expired. The new legislation prohibits expiry dates, except in limited circumstances. That means that a consumer will be able to go back to the retailer any time and get full value from the card. Consumers will also be able to ask for advice and assistance from the Business Practices and Consumer Protection Authority when they have concerns about expiry dates or other matters covered by the legislation.

I appreciate that you have taken the time to share your views with me. Thank you for writing.

Yours sincerely,

*Original signed by:*

John van Dongen  
Solicitor General

361531



## Vermaning, Tiny SG:EX

**From:** Louie, Toby I SG:EX  
**Sent:** Thursday, April 17, 2008 2:24 PM  
**To:** Vermaning, Tiny SG:EX  
**Subject:** FYI: Mitchell Toker Call

Tiny - FYI - Mitchell Toker has sent a letter to the Minister, requesting a meeting (see below). Susan Walker in my office has been in touch with him. Susan and I are talking to him next Tuesday.

-----Original Message-----

**From:** Mitchell Toker [mailto:mitchellt@campbellstrategies.com]  
**Sent:** Thursday, April 17, 2008 12:41 PM  
**To:** 'johnvandongen.mla@leg.bc.ca'  
**Subject:** Multi-Store Gift Card Coalition Letter to Minister van Dongen

### Attention Minister John van Dongen, Minister of Public Safety and Solicitor General

Dear Minister:

Attached please find a letter and attachments on behalf of the Multi-Store Gift Card Coalition. These materials are being sent by regular mail, but in the interest of time, are also being forwarded to you and to your staff electronically.

We represent companies and individuals very interested in speaking with you and the Government as you work to develop gift card regulations under Bill 17.

We look forward to speaking with you further in the very near future.

|   |                                       |
|---|---------------------------------------|
| <h1 style="margin: 0;">R E C E I V E D</h1> <p style="margin: 0;">MINISTER OF PUBLIC SAFETY<br/>AND SOLICITOR GENERAL</p> <p style="margin: 0;">APR 18 2008</p> |                                       |
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April 16, 2008

The Honourable John van Dongen  
Ministry of Public Safety and Solicitor General  
PO Box 9061, Station Provincial Government  
Victoria BC, V8W 9E2

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| MINISTER OF PUBLIC SAFETY<br>AND SOLICITOR GENERAL |  |
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**Re: Bill 17, Public Safety and Solicitor General (Gift Card Certainty)  
Statutes Amendment Act, 2008**

Dear Minister:

I am writing this letter to introduce myself and our Coalition to you and to request a meeting with you at your earliest convenience to discuss Bill 17 and the future gift card regulations.

The Multi-Store Gift Card Coalition formed in late 2006 in response to the huge demand by consumers for our products and their associated services and the growing interest by provincial governments to ensure there is appropriate consumer protection in place.

Members of the Multi-Store Gift Card Coalition are as follows:

- |  |   |
|--|---|
| <input type="checkbox"/> StoreFinancial Services of Canada Co.     | <input type="checkbox"/> 20 Vic Management        |
| <input type="checkbox"/> GE Money                                  | <input type="checkbox"/> Bosa Development         |
| <input type="checkbox"/> The Cadillac Fairview Corporation Limited | <input type="checkbox"/> Redcliff Realty          |
| <input type="checkbox"/> Ivanhoe Cambridge                         | <input type="checkbox"/> Darton Property Advisors |
|  | <input type="checkbox"/> Oxford Properties        |

In British Columbia, our members offer multi-retailer gift card programs at many malls and shopping centres across the province, including: Pacific Centre, Metropolis at Metrotown and Coquitlam Centre.

Our coalition has been working with provincial governments, retailers and the media to ensure that there is a clear understanding of the bank-issued, prepaid multi-retailer store gift card product to ensure that the popularity of this product continues in a consumer-friendly and fully transparent manner.

We have actively participated in consultations in Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick. We also participated in the consultations which took place last summer in British Columbia – providing a detailed response to the questions contained in the consultations (a copy is enclosed).

We understand the politics of this issue and the desire to appeal to the broadest perceived sense of consumer equity. We also know that it is important that policymakers understand and make decisions based on the substance of the issue, develop a response that meets the needs of consumers, respects the business model of prepaid cards and retains consumer choice for these very popular products.

From the outset, our Coalition has aggressively supported the need for consumer protection regulations that establish stringent disclosure requirements, bans expiry dates and regulates fees. For this reason, in our news release of April 15<sup>th</sup>, we publicly supported the Government's gift card legislation, Bill 17 (a copy is enclosed).

We have also stressed that multi-retailer gift cards -- a category of prepaid cards -- are very different from single retailer gift cards. Regulations must therefore take into account these differences so that consumers can make informed decisions and then, make choices.

Fully understanding the unique features of multi-store gift cards starts with having a constructive dialogue. I will be contacting your office in the very near future to arrange an appropriate day and time to meet with you and your staff to discuss these very important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mitchell', written in a cursive style.

Mitchell Toker  
Attachments



## **Coalition Looks Forward to Working with BC Government on Gift Card Legislation and Regulations**

**(Victoria, BC) – April 15, 2008** – Copyright

Copyright

Mitchell Toker  
(416) 368-7353 x230  
[mitchellt@campbellstrategies.com](mailto:mitchellt@campbellstrategies.com)



June 27, 2007

**Attention: Toby Louie, Director**

Ministry of Public Safety and Solicitor General  
Corporate Policy and Planning Office  
PO Box 9283, Station Provincial Government  
Victoria, B.C. V8W 9J7

**Re: Multi-Store Gift Card Coalition Response to British Columbia's Consultation Paper and Questionnaire on "Regulating Gift Cards and Certificates"**

Dear Mr. Louie:

On behalf of the Multi-Store Gift Card Coalition we are pleased to provide our comments to B.C.'s consultation paper on gift cards and certificates. I understand that Peter Sharpe of Cadillac Fairview and Kim McInnes of Ivanhoe Cambridge, both members of our Coalition, have previously indicated that each company supports the position as set out below.

As you know, the growth in popularity of multi-retailer gift and prepaid cards has drawn the attention of consumers, governments and even the media. These new products and related services are clearly very popular with consumers. Regulators are appropriately responding with disclosure and consumer protection requirements for gift cards.

In response to this growth and interest in these, owners and managers of shopping malls have joined with issuers and service providers to form the Multi-Store Gift Card Coalition. The coalition is working with consumers, governments, retailers and the media to ensure that there is a clear understanding of the multi-store gift card product and its related services, and to ensure that the popularity of this product continues in a consumer-friendly and fully transparent manner.

Over the last several months, we have worked very closely with the Ontario Government, which, as you are aware, has passed legislation and most recently a regulation governing gift cards. We have also been consulting with Manitoba, which has legislation in place and recently completed a consultation similar to B.C.'s. We have also been in contact with officials from Alberta who are studying this issue closely.

On June 4<sup>th</sup>, our Coalition hosted its first Regulatory Update Meeting where we brought together Coalition members, VISA Canada, provincial officials, banking experts and US legal experts to discuss regulatory developments in Canada and the U.S. Susan Walker of your office attended by teleconference. The meeting proved to be very informative for all participants. I am attaching the materials from that meeting.

From the outset, our Coalition has aggressively supported the need for consumer protection regulations that establish stringent disclosure requirements, ban expiry dates and regulate fees. What we have also stressed is that multi-retailer gift cards – a category of prepaid cards -- are very different than single retailer gift cards. Legislation and/or regulations must therefore take into account these differences so that consumers can make informed decisions and then make choices.

In responding to the issues raised in the B.C. consultation paper we have deviated from the questionnaire format. Rather than provide a check mark in either the "YES" or "NO" boxes to each question, we have provided a detailed response to each question, believing it is critical that regulators have the benefit of as much information and analysis as possible, including the experience of other jurisdictions which have already regulated in this area.

We note that B.C.'s consultation paper and questionnaire references only gift cards issued by 'the retailer'. This could leave the impression that B.C. is contemplating regulating only gift cards issued by retailers, and not other issuers of forms of gift cards. We do not know if this is intentional or an oversight. Our Coalition represents companies who issue multi-retailer gift and prepaid cards – they are not retailers. For purposes of this consultation we have assumed that the definition of gift cards will not be restricted to those issued only by retailers. Having said that and as detailed below, we believe it is critical that any subsequent regulations make the distinction between single retailer cards and multi-retailer pre-paid cards.

Once again, thank you for the opportunity to share our insights on these important issues.

Sincerely,

Mitchell Toker



## **MULTI-STORE GIFT CARD COALITION RESPONSE TO BRITISH COLUMBIA CONSULTATION PAPER AND QUESTIONNAIRE REGULATING GIFT CARDS AND CERTIFICATES**

### **A. INTRODUCTION**

The Multi-Store Gift Card Coalition is very pleased to have an opportunity to provide input into the consultation paper and questionnaire on regulating the business practices related to gift cards under the *Business Practices and Consumer Protection Act*.

As a newly established Coalition, one of our main objectives is to work with governments to effect consumer protection legislation and regulations that protect consumers' interests and also recognize the unique services provided by multi-retailer gift/prepaid cards. In addition, we work to:

- Promote and represent the interests of companies providing and processing multi-retailer gift card programs for shopping centres and districts and other bankcard network prepaid card programs throughout Canada.
- Raise the profile and the use of multi-retailer gift cards within Canada, promoting the industry to consumers, businesses, government and other interested parties.
- Work on behalf of its members in the following ways:
  - as a source of information and education to consumers about the industry and multi-retailer gift cards;
  - providing a networking forum where members can share ideas and source information about all aspects of the multi-retailer gift card market;
  - being the voice of the industry to government, media and other stakeholders; and
  - providing a standard benchmark of business practice.

Members of the Multi-Store Gift Card Coalition are:

- |   |                            |
|---|----------------------------|
| □ StoreFinancial Services of Canada Co.     | □ 20 Vic Management        |
| □ GE Money                                  | □ Bosa Development         |
| □ The Cadillac Fairview Corporation Limited | □ Redcliff Realty          |
| □ Ivanhoe Cambridge                         | □ Darton Property Advisors |

In this paper, we have answered the questions posed in the questionnaire and provided additional comments and references where appropriate. Because of our members' extensive U.S. experience, where appropriate, we have also suggested approaches taken in several U.S. jurisdictions.

In the answers and comments that follow, we have repeated the discussion paper questions (in italics in text box) with our answers below.

## **B. RESPONSES TO QUESTIONS POSED IN DISCUSSION PAPER**

### **Question 1: Types of gift cards and certificates**

*There are two main types of gift cards and certificates*

*Prepaid – A prepaid gift card or certificate includes an electronic card, written certificate or voucher that is sold to a consumer in exchange for future purchase of goods and services.*

*Promotional – A gift card, certificate or voucher issued by a retailer for promotional or charitable purposes where purchase is involved.*

*1.1 Should the government regulate prepaid gift cards and certificates?*

*1.2 Should the government regulate promotional gift cards and certificates?*

#### **Answer:**

- **We believe that all classes of cards should be covered by the legislation, but that the regulations must distinguish between different classes of cards, in particular as regulations relate to fees.**

#### **Rationale:**

As we detail below, we believe that for certain regulatory provisions, most notably any regulatory provisions dealing with fees, the regulations must distinguish between the **single retailer cards** -- which can only be redeemed at the retailer selling the gift card; and **multiple retailer cards, or prepaid cards** -- which are redeemable at multiple unaffiliated retailers/sellers.

There are two distinct and very different classes of prepaid purchase cards – single retailer gift cards and a multiple retailer/prepaid program.

**Single Retailer Cards** - In a typical single retailer program, gift cards are sold by a retailer to consumers who may use the cards to purchase goods or services at the



retailer. In these programs, the retailer controls the program, sells the card, and receives and holds the funds. The cards may be used only to purchase goods or services from the retailer, the program accounting is on the retailer's books, and the program is operated on the retailer's internal infrastructure. The cardholder agreement is between the cardholder and the retailer. When the card is used to make purchases, the retailer is responsible for authorization, settlement, and remitting or crediting the funds to cover the transaction. In these systems, the cards operate just like store certificates, store coupons, or store credit memoranda.

**Multiple Retailer/Prepaid Card Programs** - In a typical multiple retailer program, the structure is materially different. The cards are designed to be usable at multiple unaffiliated retailers. Therefore, the cards require a third party bankcard payment network that is capable of effectively reaching large numbers of unrelated retailers. To date, four such networks are available; namely, the networks operated by MasterCard, Visa, American Express and Discover. Cards that utilize these networks must be issued or sponsored by a bank or financial institution that is a member of the underlying bankcard network. Thus, a typical multiple retailer program requires one of the networks, a sponsor or issuing bank, one or more network certified transaction processors, and often a third party administrator.

In these programs, the role of the retailer is limited. While the cards may be used to purchase goods or services at multiple retailers, these retailers do not operate the program, sell the cards, receive or manage the card funds, or maintain the program accounting. The cardholder agreement is not between the cardholder and the retailer. When a card is used to make purchases, the retailer is not responsible for remitting or crediting funds to cover the transactions. These functions are performed by various third parties using the network. As a result, the gift cards in multiple retailer programs typically are bank sponsored payment instruments that operate on the bank sponsored networks just like a network credit card or debit card.

The multiple retailer programs can be further subdivided into two subcategories; namely, the **"open loop"** programs, and the **"partially closed loop"** programs. In the open loop programs, the gift cards will bear the brand of the network (i.e., the MasterCard logo) and may be used by the cardholder at all of the retailers in the network (i.e. everywhere that MasterCard is accepted). In the partially closed loop programs, the gift cards will operate on the same network, but the gift cards may be used in only a limited number of the retailers in the network (i.e., Cadillac Fairview's *shop! Card* which is good only at retailers within Cadillac Fairview properties that accept MasterCard)

### **Unique Features of Multiple Retailer/Prepaid Cards**

Multiple retailer/prepaid cards provide many benefits that are not provided by single retailer cards and are in the consumer's interest:

- Unlike single retailer gift cards, the recipient of a multi-retailer gift card can use the gift card at multiple retailers located within a shopping centre, or for an open loop prepaid card at any retailer that accepts cards bearing the brand of the payment network as a form of payment
- Cardholders can return merchandise to the retailer with funds credited back to the gift card account.
- Cardholders, retailers and shopping centre personnel can access, free of charge, information about the card on a 24/7 basis through the internet, automated phone inquiry and typically a toll free customer service line.
- Daily reconciliation of individual gift card accounts.
- A program to replace lost, stolen or damaged gift cards.
- Funds held in a restricted deposit account by a sponsor or issuing bank until spent (unlike retail store cards; if retailer goes bankrupt, gift card funds are rendered worthless).

## **Question 2: Expiry Dates**

*Gift cards and certificates are used instead of money to purchase goods and services. Consumers take the position that they are as good as money and they should not expire. Retailers are concerned about their accounting practices – carrying over a liability, possibly for many years, if the card or certificate is unused or lost.*

*There are several approaches to regulation of expiry dates:*

- *No regulation of expiry dates – allow retailers to make their own decision about when cards expire.*
- *Prohibit expiry dates entirely – retailers would need to honour cards indefinitely.*
- *Establish a reasonable minimum active period, for example a card may not expire until at least three years after the date of purchase.*
- *Establish different requirements for different types of cards.*

**2.1** *Should government regulate expiry dates?*

**2.2** *Should expiry dates be allowed?*

**2.3** *If yes, should reasonable minimum active periods be required?*

**2.4** *If yes, how long should the gift card or certificate remain active before expiry?*

**2.5** *Should only certain types of gift cards or certificates be allowed to have expiry dates?*

**2.6** *If yes, what types of gift cards or certificates should be allowed to have expiry dates?*

## **Answer:**

- **The Multi-Store Gift Card Coalition believes that all classes of prepaid purchase cards should be regulated.**
- **We believe that all classes of prepaid cards should be prohibited from placing an expiry date on the card account.**

- **Subject to the comments below, the Multi-Store Gift Card Coalition supports the principle that the 'account' should not expire.**

### **Rationale:**

#### **Anti-Fraud Concerns**

Multiple retailer/prepaid cards are bank-issued/sponsored cards that work similar to any other debit or credit card issued by a bank. It is generally considered good practice that bank issued cards be taken out of circulation for anti-fraud purposes. Therefore, for anti-fraud reasons, regulations need to contemplate, and therefore permit, that *plastic cards* can be rendered unusable after a certain period of time (i.e., 3 years), at which time the cardholder may obtain a replacement card with the remaining value transferred to it, at no additional charge. The emphasis therefore needs to be on the principle that the cardholder's account never expires, not the actual plastic. An example is the case of a prepaid plastic card with a remaining value of \$50. After three years, the card would be rendered unusable but the cardholder would be issued a new plastic card, at no cost, with the full \$50 value on it restored.

#### **Relationship Between 'No Expiry' and 'Fees'**

As we detail below, there are various costs associated with offering and operating multiple retailer/prepaid cards. The costs of a program are directly related to the length of time that these cards are available for use by the consumer. As long as a card account remains "open or active" the issuer and provider of a multi-store prepaid card must provide or be prepared to provide the services at any time to the cardholder. The ongoing costs of maintaining a bankcard account open or active are not insignificant given that the maintenance of this account must abide by the security and fraud guidelines that are required of the bankcard networks and any industry practices relevant to these types of card products. Thus, where legislation bans expiry dates, the time period during which services must be provided to the consumer will increase and multi-retailer/prepaid card provider will be exposed to the program costs and risks for sustained and potentially indefinite periods of time after a card is sold.

**Therefore, in a 'no expiry' regime, card providers must be permitted to recover legitimate costs, through reasonable fees, charged at some point in time.**

### **Question 3: Additional Charges or Fees**

#### **Question 3: Additional charges or fees**

*Some retailers have additional charges such as fees for purchasing or activating a gift card, monthly fees inactivity or dormancy fees if the gift card is not used within a certain period of time, and replacement fees for lost or stolen cards. Fees compensate the retailer for administering transactions on the card. On the other hand, there are significant benefits to retailers issuing gift cards, and retailers may be able to absorb these administration costs.*

*There are several approaches to regulation of fees:*

- No regulation of fees – allow retailers to make their own policies about charging fees.*
- Prohibit all fees.*
- Prohibit some types of fees and establish maximum allowable fees.*

**3.1** *Should government regulate fees?*

**3.2** *Should all types of fees be prohibited?*

**3.3** *If no, what types of fees should be allowed?*

**3.4** *If fees are allowed, should maximum allowable fees be established?*

**3.5** *If yes, how should they be calculated?*

#### **Answer:**

- For the reasons and explanations that follow below, our Coalition believes that it is appropriate for government to regulate, but not to prohibit fees.**
- Fees should not be prohibited by regulation. As explained below, there are real costs associated with being able to offer and administer multiple retailer/prepaid cards.**
- An inability to charge reasonable fees at some point in time negatively impacts the economic viability of offering multiple retailer prepaid cards, and would have the effect of denying consumers choice (because in a no-fee environment they simply would not likely be offered).**
- As demonstrated by some of the approaches taken in the United States, regulatory approaches with stringent disclosure requirements and some limits on the amount and timing of maintenance fees, can strike the right balance for consumers and providers of multiple retailer/prepaid cards.**
- In addition to the disclosure requirements, multiple retailer/prepaid cards should be permitted to charge regulated fees where limits are placed on the timing and amount of the fees.**

- **With respect to the limits upon timing and the amount of the fees, our Coalition recommends that regulations preclude the imposition of the service fee for 12 months following the purchase of the card, and to limit the amount of the fee to \$2.50 per month. This reflects the current practice of our members.**

### **Rationale:**

### **Costs Associated with Offering Multiple Retailer/Prepaid Cards**

Like all businesses, the operation of a gift card program is subject to costs and overhead. For the purpose of discussion, these costs may be divided into two categories: (a) the costs incurred up until the point of sale of a gift card to a customer, and (b) the costs incurred to support the gift card after it has been sold to a consumer.

### ***Costs Incurred up Until the Point of Sale***

Through the point when a gift card is sold to a consumer, the gift card program will incur or be subjected to numerous costs. These "costs of goods sold" include, without limitation, the following:

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| <b><u>Card Inventory</u></b>                          | Each program requires an inventory of physical gift cards. The type of card can range from a simple magnetic stripe card for use in a single retailer program to a card with anti-counterfeiting measures such as a security hologram for use in a network branded multiple retailer program.  |
| <b><u>Cardholder Agreement</u></b>                    | Each gift card typically is accompanied by a cardholder agreement.   |
| <b><u>Card Packaging</u></b>                          | Each gift card is typically accompanied by packaging. The style of the packaging can range from a simple sleeve to Hallmark level packaging holding the gift card. Depending upon the style, the packaging may range from \$0.25 to \$2.00 per card.   |
| <b><u>Product Shipping</u></b>                        | The card inventory, the cardholder agreements, and the packaging must be shipped to the point of sale. Each of these items is subject to shipping costs. In some programs, the cards can be shipped by mail. In other cases, more expensive carriers such as secure armored vehicles may be required.  |
| <b><u>Card Purchase Charges – Interchange Fee</u></b> | Customers purchase gift cards by using one of several payment methods (i.e., credit card, debit card, cheque, or cash). When a consumer uses a credit or debit card to buy a gift card, the seller of the gift card will incur and pay an interchange fee to customer's credit or debit card network. This interchange fee will be in an amount of about 1.5% to 3.0% of the amount of a sale. As an example, if a consumer uses a credit card to buy a \$100.00 card, the seller of a gift card will incur a charge of about \$1.50 to \$3.00. For each gift card program, these charges will be substantial. In a typical gift card program, it can be expected that at least 60% or more of the gift cards will be purchased by consumers using a credit or debit card. |
| <b><u>Sales Labour or Commissions</u></b>             | The cards are sold to consumers by one or more sales distribution systems. In these systems, the sales may be made in person at point of sale, through an automated machine, by telephone, or over the Internet. In each distribution method, there will be labour or commission costs associated with the making of the sales. In a single retailer program, these costs may be lower because the gift card usually is an   |



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|  | incremental product added to the retailer's products sold by a regular sales staff. In certain multiple retailer programs, these costs may be higher because the program may require a new or materially different staff or distribution channels for the sale and distribution of the products.   |
| <b><u>Activation Costs</u></b>                           | The gift cards can be sold off the shelf in pre-activated and pre-set denominated amounts. In the alternative or as an additional service, the gift cards can be activated at the point of sale for the consumer in an amount selected by the consumer at the time of purchase. If the point of sale activation service is provided, equipment will be needed at each point of sale, usually consisting of one or more swipe devices, a personal computer, specialized activation software, and encrypted communication systems. Training will also be required of the sales and distribution staff. |
| <b><u>Money Laundering and Suspicious Activities</u></b> | Depending upon the type of gift card program, the gift card provider may be required to observe some level of compliance with procedures designed to monitor money laundering or other suspicious activities in the sale of gift cards. The level of compliance can range from little to no such work in a single retailer program, to full bank level compliance with procedures set by a sponsor bank and/or regulators in an open loop multiple retailer program that uses reloadable cards. These systems add compliance costs to a program.   |
| <b><u>Bad Debt Risk</u></b>                              | As stated above, customers purchase gift cards by using one of several payment methods (i.e., credit card, debit card, cheque, or cash). Each purchase is subject to the usual collection risks associated with payment, such as the use of a bad cheque or a stolen credit or debit card to buy a gift card. Costs are incurred in the program for implementing systems to minimize these risks, and for the bad debt losses incurred as a result of such risks.  |
| <b><u>Other</u></b>                                      | Many other costs are associated with selling gift cards. As examples, design work and proofs are required for the artwork for the card front; legal work is required for the terms and conditions on the card back and cardholder agreement; intellectual property work is required to manage the participants' trade names and trade brands; and costs may be incurred to advertise or market the gift cards. If an automated sales machine is offered as an added feature, that feature will result in additional capital and maintenance costs.   |

### ***Costs Incurred After the Point of Sale***

The cost of operating a gift card program does not end upon the sale of the gift card. Instead, the gift card is a service to the consumer, and the gift card provider is required to provide numerous services in support of the card following its sale. These services and the related costs include, without limitation, the following:

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| <b><u>Card Account Maintenance</u></b> | In each program, the gift card provider must create, maintain, process, and reconcile the accounts for the gift card. This includes accounting for the activation of the card, the loading of funds on the card, and each transaction using the card. In a typical multiple retailer program, the funds for a program may be held in a pooled account at the sponsor bank. However, each gift card usually is assigned a separate number and is tracked and reconciled daily for accounting purposes as a separate account. In many programs, the average sale amount of these gift card accounts is less than \$60.00 or \$50.00, and the average daily balance on the accounts is even lower as some cards are partially used. And the typical card is not reloadable. As a result, the typical gift card account is an extremely low dollar and low volume account. However, the day-to-day maintenance costs are not unlike the costs incurred by a |
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|   | bank to maintain a small dollar and small volume chequing or debit account, with the exception that a periodic statement is not sent to the cardholder.   |
| <b><u>Card Transaction Authorization</u></b>          | When a card is used at a retailer, the gift card provider must authorize the use of a gift card on a real time basis when the card is presented to and swiped at the retailer. Among other things, this authorization service requires that the gift card provider determine and advise the retailer that the card is being used in an authorized amount at or below its available balance. In a multiple retailer program, the provider must also determine if the card is being used at an authorized retailer of the network. In a single retailer program, this authorization can be completed internally at the retailer. In a multiple retailer program, the authorization process requires the use of the bankcard payment network, and the capability to authorize thousands of transactions on a real time basis at hundreds or thousands of different retailers |
| <b><u>Card Transaction Settlement and Payment</u></b> | When a card is used at a retailer, the gift card provider must also provide a method for settling and paying for the transaction. In the typical single retailer program, the settlement and payment is an internal function as the retailer settles with itself and pays itself. To accomplish these services in a multiple retailer program, the provider must cause the issuing sponsor bank to daily settle the transactions and to remit funds to an acquirer bank for remittance to the retailers. In a typical multiple retailer program, the settlement and payment processes will require use of all the participants in the entire network, and the provider must be able to settle and pay thousands of transactions to scores of acquirer banks for remittance to hundreds or thousands of retailers.   |
| <b><u>Sponsor or Issuing Bank</u></b>                 | In all programs, the card funds initially will be deposited and held in a bank. In the typical single retailer program, the retailer is liable to remit or credit payment when a card is used. In a typical multiple retailer program, however, the card funds will be deposited with the sponsor bank, which is the issuing bank under the bankcard network operating guidelines and who bears the primary responsibility to settle and remit funds for payment to the acquirer banks for remittance to the redeeming retailers. The use of a sponsor bank willing to assume the program liability adds costs to a multiple retailer program.  |
| <b><u>Transaction Processor</u></b>                   | The operation of a gift card program requires the computer processing of the sale of the gift card, the activation of the gift card for use, the authorization of card transactions, the settlement of card transactions, and the payment of card transactions. In a typical multiple retailer program, these tasks are performed by specialized processing companies who must be certified or approved by bankcard payment networks to process transactions between retailers and banks using the network. Each processor has a variety of fees and charges for its services which add to the costs of the gift card program.  |
| <b><u>Balance and Transaction History Inquiry</u></b> | As stated above, in a gift card program the cardholder is not provided a periodic statement. However, in lieu of a statement, the gift card provider must provide methods for the consumer to make inquiries about the available balance and transaction history of the gift card. These systems may include automated phone inquiries, Internet access inquiries, methods to check balance at points of sale at the retailer, automated machine inquiries, purchase receipt print-outs, penny authorization practices, balance recording spaces on card backs, and human inquiries through customer service systems. Each of these systems has associated costs.   |
| <b><u>Immediate Use Service</u></b>                   | In many programs, the card is activated for use at the time of sale. If this service is provided, a consumer is permitted to use a gift card immediately upon purchase without waiting a period of time to allow the funds used to pay for the gift card to be collected by the gift card provider. If this feature is provided, the provider will be exposed to economic risk resulting from the ability of the cardholder to use the gift   |

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|  | card before the funds used to buy the card are deposited at and cleared at the provider's bank. With the exception of purchases by cash, the payment methods used to buy a card (i.e., cheque, credit card, and debit card) are subject to payment float risk (i.e., a bad cheque or charge back for fraudulent credit card use). Depending on the date of purchase, this exposure float period can be as long as four to five calendar days. Costs are incurred to provide the immediate use service, to control the risk, and as bad debt expenses in the event of a loss. From an economic standpoint, the risks and related costs of this feature are greater in a multiple retailer program than a single retailer program.   |
| <b><u>Funded or Bank Back Protection Service</u></b> | Depending upon the card program, the funds used to pay for a gift card may be held and managed by the gift card provider in one of several different ways. In a single retailer program, some retailers may take the funds to revenue (immediately or after a period of time) and leave the card backed solely by the credit of the retailer. In such programs, the card is viewed as representing a payable which can become an unfunded liability in the discretion of the retailer subject, perhaps, to the observance of accounting rules. In a typical multiple retailer program, the funds used to pay for the gift card will be held by the sponsor bank and, in some programs, the funds may be held in the name of the sponsor bank. In these programs, the gift card provider usually will not take the funds to revenue except by fees that are disclosed in the cardholder agreement. In such programs, the card is viewed as being a "stored value" card representing a funded liability backed by cash and/or a bank. This latter feature provides the consumer with added security against bankruptcies and defaults. However, the feature may result in lower revenues and/or added program costs. |
| <b><u>Other Special Features</u></b>                 | Depending upon the card program, the gift card provider can provide many optional or special features. Examples are various programs for lost and stolen cards; cash refund programs; programs for reloading of the cards; programs to credit the cards in the event of returned merchandise; programs for the use of the cards in multiple countries with management of the related currency exchange; and programs for the transfer of small balances to new cards. Each of these programs has associated costs.   |
| <b><u>Customer Service</u></b>                       | Each gift card program must have a customer service system to process inquiries and complaints for the card and to administer the special features of the card program. Depending upon the program, these services may be automated systems, human systems, or both. In a typical single retailer program, this system must support inquiries from the cardholder. In a typical multiple retailer program, these systems must support inquiries from cardholders, all of the multiple retailers, and all of the other participants in the network system. In a typical multiple retailer program, the customer service programs also may be subject to service level standards governing the services, such as limits on consumer answer and response times, and limits upon computer downtimes. In some locations or programs, these services must be provided in multiple languages. The provision of these services adds associated costs to the program, which vary depending upon the type and level of service provided.   |
| <b><u>Intellectual Property – License Fees</u></b>   | Electronic gift card programs use various technologies, processes and methods to authorize, activate, and process the cards. Numerous patents have been issued or are pending concerning prepaid cards. Therefore, depending upon the type of program, the operation of the program may be subject to licensing fees and exposure to infringement claims. These attributes add costs to programs.  |
| <b><u>Audits</u></b>                                 | In a single retailer program, the retailer may or may not be subject to audits. In a typical multiple retailer program, the network and sponsor bank likely will require several audits of the program books and electronic financial systems. The required audits typically include annual accounting audits of the financials by an independent  |



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|  | certified public accountant; regular SAS 70 audits of the program systems by an independent certified public accountant; and regular compliance audits by the bankcard payment networks. These audits add to the security of the product provided to the cardholder, but also add significant costs to a multiple retailer gift card program.  |
| <b><u>Money Laundering and Suspicious Activities</u></b> | Depending upon the type of program, the gift card provider may be required to observe some level of compliance with procedures designed to monitor money laundering or other suspicious activities in the use of gift cards. In a multiple retailer program, the monitoring practices may include the monitoring of the use of the cards after purchase for suspicious activities.   |
| <b><u>Processing Infrastructure</u></b>                  | The processing of all gift card programs requires a computer operating system. In a typical single retailer program, the program operates using the internal point of sale and computer system of the retailer and software installed on that system. In a typical multiple retailer program, the program requires a system that can manage millions of transactions at thousands of different and unrelated retailers at different locations. Furthermore, because the multiple retailer programs access the major card networks and sponsor banks, the programs usually must have dedicated technicians, network compliance personnel, guaranteed up times, disaster plans, and a variety of security features, including encrypted messaging and one or more hardened secure data facilities.   |
| <b><u>Fraud and Misuse Risk</u></b>                      | The cards used in a gift card program are subject to risk from fraud, errors, and misuse. In the multiple retailer programs, these risks are significant because the cards utilize the major bankcard payment networks. Because these programs use the networks, each card is a portal on major bank systems. As a result, the cards are subject to all of the fraud and abuse risks associated with credit and debit cards. If not managed, these risks can turn \$50.00 cards into large losses. In addition, because multiple retailer gift cards are high volume, low dollar, and anonymous products, they regularly are subject to additional risks of fraud and misuse that arise from errors in data entry at the time of sale; from errors or forced transactions at a retailer above the card balance amount; from the placing of fraudulent credits on the card purportedly for returned merchandise; from the failure of retailers to authorize transactions below a perceived floor limit; and from use of the card at retailers which typically preauthorize a transaction above the ultimate purchase amount such as a restaurant, hotel, or a pay at the pump gas station. These risks are higher in a multiple retailer program than a single retailer program. Costs are incurred for implementing systems to minimize these risks, to purchase fidelity and other specialized insurance coverages for these risks, and for the losses that result from such risks. |

As outlined above, the operation of any gift card program is subject to substantial costs and risks which are incurred before the card is purchased and which continue after the card is sold. The costs listed above do not include the general administrative overhead of each participant in the networks. In a multiple retailer program, several participants perform functions in the process, including the network, the issuing or sponsor bank, the acquirer banks, the program administrators, one or more transaction processors, sales and distribution companies, and retailers. Each of these entities has its own overhead which will be allocated to the gift card program.

The costs of the gift card programs will vary depending upon the level of service desired by and provided to the consumer.

- An embossed card with a pharmaceutical folded cardholder agreement and premier or custom packaging costs more than a simple magnetic stripe card in an envelope sleeve.
- A program that invested in a computer system with capacity to reliably activate cards within seconds at the time of sale costs more than a program which is slow or spotty on activation causing the customer to wait in line.
- A program that assists the consumers with lost and stolen cards costs more than a program which lacks the feature.
- A program that provides added security of a card backed by cash and a bank/financial institution costs more than one which uses unfunded liability.
- A program that provides consumers access to automated telephone balance inquiries will cost more than one which lacks the feature.
- A program that provides the customer with 24 hour human operated customer service with an answer time of less than 5 seconds per call costs more than one which lacks these features and conveniences.
- A program that is accompanied by the security of audited financials and systems costs more than an unaudited program.
- A program with the security of encrypted messaging and hardened facilities costs more than one without these features.

Finally, as noted earlier, the costs of a program are directly related to the length of time that the gift cards are available for use by the consumer. As the time period a card remains in use increases, the amount of expenses required to support the card will increase because the gift card provider must provide or be prepared to provide the services at any time to the cardholder. Thus, if legislation bans or delays the imposition of expiration dates, the time period during which services must be provided will be increased. Similarly, if a consumer waits to use the entire balance of the card, the gift card provider will be required to provide services for a longer period of time until the card is exhausted. Therefore, a gift card provider will be exposed to the program costs and risks for sustained periods of time after a card is sold.

### **Multiple Retailer/Prepaid Card Cost Structure vs. Single Retailer Cost Structure**

As explained earlier, some gift card programs are single retailer programs. Other gift card programs are multiple retailer programs. The differences between these two types of programs will impact the fees models for the programs.

As well, we have shown that many of the costs and business risks of operating a gift card program are greater for the typical multiple retailer program than the typical single retailer program. The disparity in costs is primarily due to the added costs, overhead, and business risks that are inherent in using the infrastructure of the third party bankcard networks to facilitate card acceptance and settlement between the card issuer and the redeeming retailer. As previously outlined, retailers accepting multi-retailer gift

cards as a form of payment will be reimbursed by the issuing bank in a manner similar to a transaction using a network credit card or debit card. **Therefore, the need to assess fees is necessary to sustain the costs of a multiple retailer program.**

More importantly, distinct differences also exist in the economic models of the two types of programs that impact the need for fees.

***Different Economic Models Between Single Retailer Cards and Multi-Retailer/Prepaid Cards-*** In a single retailer program, the retailer that issues the card is the same retailer where the card will be used. Therefore, when the card is used, the retailer will make its regular profit from the sale. For example, when a \$50.00 purchase is made at the retailer using a \$50.00 card issued by the retailer, the retailer will receive \$20.00 in profit if its bottom line profit margin is 40% on its goods sold. Consequently, in a single retailer program, the single retailer can work with its profit margin to defray the costs of the card program.

In this example, the retailer can incur costs of up to \$20.00 per gift card and still break even with the card. In fact, in the single retailer program, the retailer can sell its cards at a discount and still make a profit. In the example above, the retailer could even sell a \$50.00 card for \$45.00 dollars and still make a \$15.00 profit when the card is used for a \$50.00 purchase. The retailer can also adjust its prices higher to meet program costs.

In a multiple retailer/prepaid program however, the gift card provider/issuer does not have the same cushion. In a multiple retailer program, the gift card provider/issuer is NOT the retailer where the cards will be redeemed for goods and services. Thus, the provider will NOT participate in the bottom-line profit margin when the goods are sold.

As an example: Let's use an independent Dress Shop located within a shopping mall that has accepted a \$50.00 multi-retailer/prepaid card as a form of payment for a dress in their store. Under the example above, when a \$50.00 purchase is made at the dress shop using a \$50.00 multiple retailer/prepaid card, the dress shop accepting the multi-retailer/prepaid card will receive its \$20.00 in profit if its bottom line profit margin is 40% on the dress sold, but the gift card provider/issuer will be required to remit through the bankcard network to the Dress Shop the entire \$50.00 for the sale.

Furthermore, in a multiple retailer/prepaid program, the provider cannot sell the cards at a discount. In the example above, if the provider sold a \$50.00 multi-retailer card for \$45.00, the provider/issuer will still be required to pay \$50.00 to the Dress Shop at the time of sale and absorb a \$5.00 loss per card. Moreover, the gift card provider cannot adjust the unrelated retailers' (i.e., The Dress Shop) prices to meet program costs. **Thus, fees are essential in a multiple retailer program.**

This disparity between the two types of programs may be slightly mitigated by the interchange fees that are paid to the issuer of a multi-retailer card through a transaction fee known as interchange. This is a standard fee which is collected by the bankcard network from the retailer that has accepted a multi-retailer card as a form of payment. This fee is collected from the retailer by the bankcard network and paid to the bank that issued the multi-retailer card. This interchange fee paid by the retailer to the bankcard network will typically range from 2% to 3% of the amount of the sale. In a single retailer program, this fee will not apply because single retailer gift cards do not utilize the infrastructure of a bankcard payment network. However, in a typical multiple retailer program this fee will apply because the gift cards use the bankcard network infrastructure, similar to a credit or debit card transaction.

Therefore, when a multiple retailer gift card is used at any retailer, the retailer will pay an interchange fee that is collected by the bankcard network. The interchange fee may be split among the various participants in the administration of the card program. Depending upon the program, the gift card provider may participate in the issuing bank's split. In many gift card programs, about 0.5% to 1.5% is available for the gift card provider and sponsor bank. This results in about ten cents to thirty cents in revenue when a \$20.00 card is used to make a \$20.00 purchase.

Therefore, in a single retailer program, the gift card provider will have the added benefit of its bottom line profit margin on its goods sold. In a multiple retailer program, the gift card provider will have the benefit of some interchange fees. The resultant comparison of the two models is shown in the two tables below.

The tables assume that the total cost of the card in the two types of programs is the same at \$1.50 per card; that the card was purchased from the provider using a credit card; that the bottom line profit margin of the single retailer is 20% on its goods sold; that the multiple retailer gift card provider receives 1.5% in interchange fees of when the card is used; and that the gift card provider in both programs will assess no card fees as a part of the programs.

| <b>Table 1- Card Sold at Face Value</b>      |                                |                                  |
|--|--------------------------------|----------------------------------|
| <b>Item</b>                                  | <b>Single Retailer Program</b> | <b>Multiple Retailer Program</b> |
| Card Denomination or Face Value              | \$ 50.00                       | \$ 50.00                         |
| Amount Paid by Purchaser for Card            | \$ 50.00                       | \$ 50.00                         |
| Interchange Fee Paid by Provider at 2.0%     | \$ 1.00                        | \$ 1.00                          |
| Cost of Card to Provider                     | \$ 1.50                        | \$ 1.50                          |
| Fees Charged to Purchaser                    | \$ 0.00                        | \$ 0.00                          |
| Service Fee Charged to Card or Cardholder    | \$ 0.00                        | \$ 0.00                          |
| Amount of Purchase at Retailer               | \$ 50.00                       | \$ 50.00                         |
| 20% Bottom Line Profit to Provider From Sale | \$ 10.00                       | \$ 0.00                          |
| 1.5% Interchange Fee to Provider From Sale   | \$ 0.00                        | \$ 0.75                          |
| Profit or Loss to Provider                   | \$ 7.50 Profit                 | \$ 1.75 Loss                     |

| <b>Table 1- Card Sold at Face Value</b> |                                |                                  |
|---|--------------------------------|----------------------------------|
| <b>Item</b>                             | <b>Single Retailer Program</b> | <b>Multiple Retailer Program</b> |
| Fees Needed to Break Even               | None                           | \$ 1.75 per card                 |

| <b>Table 2- Card Sold at a 10% Discount</b>  |                                |                                  |
|--|--------------------------------|----------------------------------|
| <b>Item</b>                                  | <b>Single Retailer Program</b> | <b>Multiple Retailer Program</b> |
| Card Denomination or Face Value              | \$ 50.00                       | \$ 50.00                         |
| Discounted Amount Paid by Purchaser for Card | \$ 45.00                       | \$ 45.00                         |
| Interchange Fee Paid by Provider at 2.0%     | \$ 1.00                        | \$ 1.00                          |
| Cost of Card to Provider                     | \$ 1.50                        | \$ 1.50                          |
| Fees Charged to Purchaser                    | \$ 0.00                        | \$ 0.00                          |
| Service Fee Charged to Card or Cardholder    | \$ 0.00                        | \$ 0.00                          |
| Amount of Purchase at Retailer               | \$ 50.00                       | \$ 50.00                         |
| Bottom Line Profit to Provider From Sale     | \$ 5.00                        | \$ 0.00                          |
| 1.5% Interchange Fee to Provider From Sale   | \$ 0.00                        | \$ 0.75                          |
| Profit or Loss to Provider                   | \$ 2.50 Profit                 | \$ 6.75 Loss                     |
| Fees Needed to Break Even                    | None                           | \$ 6.75 per card                 |

The two tables above show that fees may not be essential for a single retailer program, depending upon the costs of the card and the amount of bottom-line profit which may be realized by the retailer on its goods sold. In fact, a profit may be realized by the single retailer from a fee-free card even if the card is sold at a discount.

In contrast, the two charts show that fees are essential for a multiple retailer program. The interchange fee alone that is paid by the redeeming retailer to the multi-retailer card issuer is insufficient to pay for the program costs. This is particularly true for a full service multiple retailer card program with upscale cards and packaging in which the cost of the program is much higher per card. In that regard, the two charts also support the need for a service fee assessed against the card balance. As the amount of interchange is lowered and the cost of the card is raised in particular programs, it becomes impracticable to allocate all of the costs to one onerous front-end fee charged to every card purchaser.

**The Impact of 'Interest'** - In both types of programs, the gift card provider may be able to augment the program income from interest earned on the so-called "float" on the card funds held by the provider. In the single retailer program, this float likely will add incremental income to the program. In a multiple retailer program, however, the float will add income, but the revenue from the float is not sufficient to defray all of the program costs. In a typical multiple retailer program, 90% or more of the cards may be used within three months of purchase. The following table shows the float on typical \$10.00, \$20.00 and \$50.00 cards assuming that the cards are used within three months:



| CARD AMOUNT | 3 MONTHS @ 3% | 3 MONTHS @ 4% | 3 MONTHS @ 5% | 3 MONTHS @ 6% |
|-------------|---------------|---------------|---------------|---------------|
| \$10.00     | 7.5 cents     | 10 cents      | 12.5 cents    | 15 cents      |
| \$20.00     | 15 cents      | 20 cents      | 25 cents      | 30 cents      |
| \$50.00     | 37.5 cents    | 50 cents      | 62.5 cents    | 75 cents      |

Furthermore, the float is neither a practical nor an efficient source of direct income to operate a gift card program. While the sale of the gift cards results in immediate costs, the payment of interest will be delayed. At a 5% rate, a \$10.00 card would need to remain unused for five years to recoup the costs of a card if such costs were \$2.50. At a 5% rate, a \$50.00 card would need to remain unused for four years to recoup costs of a program if the program costs were \$10.00 per card.

Moreover, because the cost of the cards and program are immediate, a provider relying upon the float for its income would be required to borrow money to finance the direct costs of the card and program. The resulting finance charge to a provider would reduce float earned on large denomination cards and overcome the float on some small denomination cards. And, any float model cannot rely upon the fact that the cards will remain unused for extended periods of time. As shown above, most cards are used within three months of purchase resulting in insufficient float to pay for the cost of the card.

***The Impact of 'Accounting' – Taking Cards Funds into Revenue*** - On the revenue side of gift card programs, the disparity between the single retailer program and a multiple retailer program is accentuated by accounting techniques used in single retailer programs to take unredeemed funds backing the cards into the earnings/revenues of the retailer. As shown by the public financial disclosures of several well known publicly held retailers in the U.S., retailers have used these techniques, essentially leaving the cards backed by the credit of the retailer.

These accounting techniques accomplish indirectly what is accomplished directly through the use of service fees – namely, the taking of the unused card funds to revenue by the individual retailer that issues their own cards.

If accounting techniques become prevalent, the retailer in a single retailer program will be provided with yet another method to operate a gift card program without needing to charge a fee.

Because the funds are held by the sponsor bank, a multiple retailer program is not able to take card funds into revenue because it runs counter to traditional bank practices. It seems counterintuitive for a bank to take unused funds from a deposit account to earnings, rather than hold the funds for the depositor.

## Types of Gift Card Fees

As shown above, depending upon the gift card program, the consumer of a gift card is provided with different levels of products and services. As also shown above, depending upon the level of product and services provided, the gift card program is subject to a variety of costs and business risks. As a result, consistent with ordinary business practices, the gift card provider may develop a business model under which it charges a fee for operating and providing the gift card program.

The use of a fee-based business model is legitimate and reasonable for at least four business reasons. First, as explained above, the gift card provider provides a variety of services to the consumer, including services directly to the cardholder after the card is sold. It is legitimate to seek fees in exchange for these services. Second, a gift card has intangible value to certain purchasers, because it is more convenient to buy than a tangible gift, it avoids the risk of selecting a bad tangible gift, and a gift card is considered to be a more personal gift or better than cash. It is legitimate to charge a fee for these conveniences and related values which are inherent in a gift card. Third, fees are needed to defray the costs and business risks associated with operating a program. Finally, because the gift card industry operates in the "for profit" sector, fees are charged to make a profit after costs and overhead.

Since the gift card is sold to and used by a consumer, it is a logical business model to provide that the fees be charged to the consumer. The types of fees that might be charged to the consumer include the following:

| FEE TYPE                           | DESCRIPTION  |
|------------------------------------|--|
| <b>Purchase Or Activation Fees</b> | In some programs, the gift card provider might elect to charge a fee to the purchaser at the time of sale. This type of fee is paid by the purchaser of the gift card and not by the ultimate cardholder who will receive the card as a gift from the purchaser.   |
| <b>Service or Maintenance Fee</b>  | In some programs, the gift card provider might elect to assess a fee against the balance of the card after it is purchased. This service fee is paid by the cardholder who receives many of the services after the card is purchased, and who also receives the benefit of reduced gift selection risk in that the cardholder will select the purchase using the card. In most multi-retailer programs, this fee typically is not charged for a period of time which ranges from 6 months to 24 months after the date of purchase. As a result, with respect to this service fee, the cardholder is given the volition to avoid the fee by using the card within the stated time period. |
| <b>Transaction or Use Fee</b>      | A gift card provider might elect to charge a user fee to the cardholder when the cardholder uses the card to make a purchase. This type of fee appears to be rare for gift cards and would be paid by the cardholder at the time the cardholder uses the card to purchase goods and services by assessing the fee against the card balance.  |
| <b>Other Fees</b>                  | In some programs, the gift card provider might charge fees for miscellaneous tasks, such as fees for balance inquiries, for customer service calls, for reloading a card, for processing a cash refund, or for replacing a lost or stolen card.  |

In analyzing these categories of fees, it must be remembered that a gift card is a unique product, in the sense that the actual customer who makes the decision to purchase a particular gift card is not the ultimate cardholder who uses the card after receipt as a gift from the purchaser. As a result, gift cards might be viewed as having two consumers. The first and primary consumer is the purchaser who selects and buys the card. The second consumer is the gift recipient who becomes the cardholder that uses the card after receipt of the card as a gift from the purchaser.

With respect to the categories of fees, from the standpoint of the card provider, it legitimately may be argued that the best fee model is to assess some portion of a fee to the purchaser at the time of sale to defray the "costs of goods," and then to provide the post-sale services to the cardholder in exchange for a service fee assessed against the balance of the card balance after a stated period of time. This model assists the primary consumer by avoiding a large front end load to the purchaser, and solves the problem of excessive front end fees on low denomination cards. It also properly allocates some fees between the purchaser who bears the costs of goods and the cardholder who receives the post-sales services. It also allocates the inherent benefits of a gift card to both consumers. It also accounts for the ongoing risk of providing post-sale services over a long period of time. Finally, the model provides a product that is "fee free" to the gift recipient if the card is used within the stated period of time.

From the standpoint of the purchaser as the primary consumer, a service fee charged against the balance of the gift card cannot be classified as an unfriendly consumer fee. By allowing some of the fee to be charged to a card after a stated period of time, the purchaser is able to purchase the card at a lower price. The purchaser is also able to buy low denomination cards. Furthermore, the allocation of fees to the card does not impose an undue or heavy burden on the gift recipient. As explained above, the service fee typically is not assessed for a stated period of time (typically 6-24 months). Therefore, the card will be "fee free" to the cardholder, if it is simply used by the cardholder within the stated period of time.

Lastly, from the standpoint of the cardholder as the secondary consumer, the service fee should not be classified as a consumer unfriendly fee. While some cardholders may prefer that the entire fee be paid by the gift purchaser, that preference should be a matter of gift selection available and left to the gift buyer. Furthermore, as explained above, there is a logical and reasonable basis for not requiring the purchaser to bear the entire fee. Moreover, the cardholder is not left holding any ball. As explained above, in the typical gift card program, the service fee is not assessed for a period of time. Therefore, the cardholder may elect to entirely avoid the service fee by simply using the card before the fee begins.

In fact, an argument can be made that a service fee assessed against a card after a stated time period is the most consumer friendly of the various types of consumer fees.



If a program provider assesses all program fees as such a service fee, the cardholder has the power to make the product entirely "fee free" by simply timely using the card. Indeed, in such a program, the consumers will have two opportunities to avoid the service fee. The purchaser can elect not to purchase a card with the fee, and the cardholder can timely use the card and avoid the fee.

## Various US Approaches to the Regulation of Fees

United States legislatures have taken a variety of approaches to regulating service fees. In some states, proposed legislation is offered but never passed. In some states, legislation is enacted. We have attempted to categorize the various approaches below and have provided some commentary.

| REGULATORY FEE MODELS   | DESCRIPTION  | STATES   | COMMENT  |
|---|--|--|--|
| <b>States with No Consumer Statute Addressing Gift Cards</b>  | Legislation and/or regulations addressing gift cards (e.g. Consumer Protection Act) do not exist.  | Alabama, Alaska, Colorado, Delaware, Idaho, Indiana, Mississippi, Missouri, North Carolina, Pennsylvania*, South Dakota, West Virginia, Wisconsin, and Wyoming<br><br><b>Total: 14</b>   | These states have yet to take legislative steps to regulate gift cards   |
| *Pennsylvania has no consumer statute, but its <i>Unclaimed Property Act</i> has a Multiple Retailer exemption. |  |  |  |
| <b>States with Enacted Statute Allowing Fees on Multiple Retailer Cards</b>                                     | Service fees are permitted against the gift card balance provided that proper disclosures of the fees are made.  | Arizona, Arkansas, California, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Washington<br><br><b>Total: 26</b> | These states address the issue with full disclosure and leave the free market place to address the fee.  |
| <b>States with Pending Statute Allowing Fees on Multiple Retailer Cards</b>                                     | Consumer protection legislation under which service fees are permitted against the gift card balance provided that proper disclosures of the fees are made and the service fees are not taken until after a designated period of time. | Florida, Michigan, and Oregon*<br><br><b>Total: 3</b>  | These states find balance with strict disclosure requirements, plus limits on fee amount and timing, thus allowing consumer to use-up card balances before onset of any fee. |

| REGULATORY<br>FEE MODELS  | DESCRIPTION   | STATES   | COMMENT   |
|---|---|--|---|
| <p>* With respect to the 3 states with pending legislation:</p> <ul style="list-style-type: none"> <li>the Coalition expects that the Florida statute will pass with a multiple retailer exemption;</li> <li>the Michigan statute is in the Michigan Senate with a multiple retailer exemption; and</li> <li>the version of the Oregon statute in the Oregon House does not have a multiple retailer exemption while the version in the Oregon Senate has a multiple retailer exemption.</li> </ul>   |   |  |   |
| <b>States with Enacted Statute Allowing Fees on Multiple Retailer Cards After Stated Time Period</b>  | Consumer protection legislation which bans service fees for the single retailer programs, but which exempt multiple retailer programs from the ban. | Massachusetts and New York<br><br><b>Total: 2</b>                                      | These states recognize the differences in the model and exclude the multiple retailer cards from the ban.                 |
| <b>States that Ban Fees on Multiple Retailer cards</b>  | A limited number of states have enacted consumer protection legislation that outright bans service fee.   | Connecticut, Hawaii, Rhode Island, New Hampshire, and Vermont**<br><br><b>Total: 5</b> | Severely restricts ability to offer multi-retailer gift/prepaid card because initial purchase fee would be too expensive. |
| <p>** With respect to the 5 states that ban fees on multiple retailer cards, the following recap is provided:</p> <ul style="list-style-type: none"> <li><u>Connecticut</u>. A Connecticut statute bans fees. However, the Connecticut statute is under judicial challenge and will be tested under the First Circuit decision affirming a preemption-based judicial multiple retailer exemption for bank issued cards.</li> <li><u>Hawaii</u>. The Hawaii consumer statute bans service fees, but permits expiration dates after 2 years. Further, the Hawaii statute is written in a manner that it may not apply to multiple retailer cards, because it only applies to cards issued by retail sellers of goods or services. Further, the Hawaii statute likely will be challenged under the First Circuit decision affirming a preemption-based judicial multiple retailer exemption for bank issued cards.</li> <li><u>New Hampshire</u>. A New Hampshire statute bans fees. However, the First Circuit decision has affirmed a preemption-based judicial multiple retailer exemption for bank issued cards in New Hampshire. (See <i>Recent Legal Developments in the United States</i> section directly below.)</li> <li><u>Rhode Island</u>. A Rhode Island statute bans fees. However, the statute is written in a manner that it may not apply to multiple retailer cards, because it only applies to cards issued by retail sellers of goods or services. Further, Rhode Island is in the First Circuit and will be subject to the First Circuit decision affirming a preemption-based judicial multiple retailer exemption for bank issued cards. (See <i>Recent Legal Developments in the United States</i> section directly below.)</li> <li><u>Vermont</u>. A Vermont statute bans fees. However, the Vermont statute will be judicially challenged under the First Circuit decision affirming a preemption-based judicial multiple retailer exemption for bank issued cards.</li> </ul> |   |  |   |

## Recent Legal Developments in the United States

Several recent legal cases have examined the question of whether states can regulate gift cards issued by federally-chartered banks. In recent cases, US courts have supported the principle that federal laws pre-empt state laws with respect to federal financial institutions.

On May 30, 2007 the First Circuit Court of Appeals affirmed the position of the New Hampshire District Court (see *SPGGC, LLC, et al. v. Ayotte, New Hampshire Attorney General [the Simon case]*) that state laws banning fees and expiry dates do not apply to cards issued by federally-chartered banks.<sup>1</sup> In other words, such cards are considered 'bank products' and do not fall under state regulatory jurisdiction. The Court further laid out what criteria should be used in determining what constitutes a 'bank product.'

As noted earlier, five states currently ban fees on multi-retailer gift cards: Connecticut, Hawaii, New Hampshire, Rhode Island, and Vermont. But by virtue of the *Simon* decision, a judicial exemption now exists in New Hampshire and Rhode Island since they both fall under First Circuit jurisdiction. It should further be noted that legal challenges to regulations banning fees on multi-retailer gift cards are pending in the 2<sup>nd</sup> and 10<sup>th</sup> Circuits, which cover the remaining three states with bans.

### **Question 4: Refunds of Unused Amounts on a Gift Card or Certificate**

#### ***Question 4: Refunds of unused amounts on a gift card or certificate***

*Retailers often require consumers to use gift cards and certificates for purchases and do not refund the cash value. As a result, a consumer may need to make a purchase higher than the value remaining on the card to realize its full value.*

*Approaches to regulation of refunds are:*

- *No regulation of refunds – allow retailers to set their own policies about refunds.*
- *Require retailers to refund the full value of the card at any time at the request of the consumer.*
- *Require a refund if the balance remaining is small, for example under \$5.00.*

**4.1** *Should retailers be required to refund unused amounts on the gift card or certificate at the request of the consumer?*

**4.2** *If yes, should there be a limit to the amount the retailer is required to refund?*

**4.3** *If yes, how should the refund be calculated?*

<sup>1</sup> The decision can be accessed at <http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=06-2326.01A>

**Answer:**

- The Coalition has no comment on retailer policies.
- Multi-retailer cards typically do not provide cash back access for cards issued anonymously or those that are not reloadable.
- Reloadable prepaid cards typically have cash access through ABM's or for a transaction fee if requested in writing to the issuing bank/financial institution.
- Multi-retailer mall cards currently do not have a cash back policy due to concerns with fraud and anti-money laundering regulations.
- Members are currently reviewing a policy that would allow cardholders to receive a full cash refund within 30 days of a card's activation.

**Question 5: Disclosure**

***Question 5: Disclosure***

*Gift cards and certificates are often sold without written disclosure of the terms and conditions of use. A consumer may not know that the gift card or certificate expires after a period of time, or that fees are deducted from the balance. Gift cards are often sold with extra packaging, which could clearly state the terms and conditions of use.*

*Approaches to regulation include:*

- *Do not regulate disclosure – allow retailers to set their own policies about disclosure.*
- *Require full disclosure of expiry dates, fees, refunds and other terms and conditions at the time of purchase.*
- *Require disclosure of the most important terms and conditions.*

**5.1** *Should retailers be required to provide the purchaser with written disclosure of any terms and conditions associated with the purchase or use of the gift card or certificate?*

**5.2** *If yes, what terms and conditions should the disclosure include?*

**Answer:**

- Our Coalition supports very stringent disclosure requirements in the regulations.
- There are both advantages and disadvantages associated with various

**approaches - performance based requirements (e.g., 'displayed in a prominent manner') versus very prescriptive requirements (e.g., font size).**

- **Our experience in the U.S. suggests that some combination of performance-based and prescriptive approaches may work best in ensuring complete disclosure and providing the necessary clarity to card providers to meet their disclosure obligations.**

### **Rationale:**

#### **Current Practices**

Coalition members' currently adhere to proactive full disclosure as follows:

- Terms and conditions are clearly explained at the point of purchase both verbally and with signage at the customer service desk where the cards are sold to the consumer.
- Terms and conditions are clearly printed on the purchase receipt for the gift card.
- Terms and conditions of the cards are either printed clearly on the cardholder packaging or on the cardholder agreement.
- Any monthly maintenance fees that may be charged against outstanding balances after a certain number of months (not less than 12) after the card has been purchased is also clearly printed on the back of the gift card.
- Electronically on website where cardholders can obtain their gift card account balance and review their gift card account transaction history.

#### **Type of Information**

We believe that any relevant term and condition should be disclosed clearly, including:

- Disclosure of Status. The terms and conditions accompanying the Card must outline all terms associated with the use of the card and the responsibilities of the provider and card issuer.
- No Expiry Dates - The plastic card may be rendered unusable after 3 years, at which time the Cardholder may obtain a replacement card with the remaining value transferred to it, at no additional charge."
- Regulated Maintenance Fee. Where fees are charged on the card, the card and any accompanying cardholder agreement should indicate that: "A maintenance fee cannot be charged against the card balance in the first XX months from the date of issue. Any maintenance fees charged after the first XX months shall not exceed \$Y per month."
- Disclosures of Other Terms and Conditions on the Gift Card. The card should indicate that: "This Card is subject to other terms and conditions (note the web site); and, a customer service number."

## Location of Information, Format, Font Size etc. – the U.S. Experience

Our experience in the United States reveals various approaches to disclosure. One jurisdiction with very stringent disclosure requirements is **New York**. We have reproduced the relevant section of the **New York statute** below.

*4. The terms and conditions of a gift certificate store credit shall be clearly and conspicuously stated thereon. Terms and conditions shall include the expiration date, whether any fees are assessed against the balance of the gift certificate, and whether a fee will be charged for the replacement of a gift certificate that is lost, stolen, or destroyed. Additional terms and conditions including, but not be limited to, policies related to refunds, warranties, changes in terms and conditions, assignment and waiver shall be conspicuously printed: (a) on the gift certificate; or (b) on an envelope or packaging containing the gift certificate, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate; or (c) on an accompanying printed document, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate.*  
(New York, General Business, Article 26, 39610)

Another jurisdiction with stringent disclosure requirements is the state of **Texas**

*§ 35.42. (f) An expiration date or policy, fee, or other material restriction or contract term applicable to a stored value card must be clearly and conspicuously disclosed to a person at the time the card is sold or issued to the person to enable the person to make an informed decision before the person purchases the card. A disclosure regarding expiration or a periodic fee that reduces the unredeemed value of the stored value card must also be legibly printed on the card. A stored value card that is sold without the disclosure as required by this section of an expiration date or policy, fee, or other material restriction or contract term applicable to the card is valid until redeemed or replaced.*  
(State of Texas Business and Commerce Code, Title 4. Miscellaneous commercial provisions, Chapter 35.)

## **C. CONCLUSION**

The Multi-Store Gift Card Coalition appreciates having the opportunity to provide input to the BC Government in the development of gift card regulations.

While not specifically asked in the consultation or questionnaire, we would like to provide some comments on implementation.

Any new regulatory requirements will require sufficient time for our members to review and prepare for the new requirements. Card issuers will need to consider such things as:

- Ensuring that all contracts with both consumers/purchasers of cards as well and suppliers and third parties comply with new requirements;
- Reviewing and revising the terms and conditions on card contracts;
- Reviewing and revising new advertising, marketing materials, plastic cards and internet sites; and
- Staffing training.

For these reasons, we would ask that any regulations provide adequate lead time. Our recommendation is that any new requirements come into effect six months following the public registration of the regulation. We look forward to having an opportunity to further discuss these issues with you.



-----  
From: s.22

Sent: Sunday, April 27, 2008 7:55 PM

To: PSSG WEBFEEDBACK SG:EX

Subject: Regulations on Gift Cards and Certificates

Hi -

Could you kindly advise if legislature has been passed in Ontario protecting the consumer regarding the balance on gift cards and certificates? If I purchase an item at a store with a GC, am I entitled to the balance in the form of another gift certificate or am I obligated to spend the entire amount all at once?

With thanks.

s.22

s.22

E-mail: s.22

Dear s.22

I am responding to your April 27, 2008 e-mail, regarding gift card legislation in Ontario.

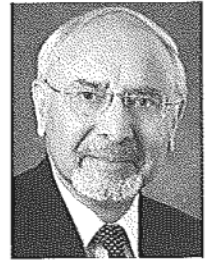
Ontario passed and implemented gift card legislation in 2007. I suggest that you contact the Ontario Consumer Protection Branch directly concerning your enquiry, at 1-800-889-9768. Further information about gift card legislation in Ontario is available on the Ontario Consumer Protection Branch website at [http://www.gov.on.ca/mgs/en/ConsProt/STEL02\\_170050.html](http://www.gov.on.ca/mgs/en/ConsProt/STEL02_170050.html)

I trust this information will be useful to you.



Province of  
British Columbia

Legislative Assembly



John Nuraney, M.L.A.  
(Burnaby - Willingdon)

Legislative Office:  
East Annex, Parliament Buildings  
Victoria, B.C. V8V 1X4  
Phone: 250 952-6784  
Fax: 250 387-9091

Constituency Office:  
M-5 -- 4277 Kingsway  
Burnaby, B.C. V5H 3Z2  
Phone: 604 775-2414  
Fax: 604 775-2550  
e-mail: john.nuraney.mla@leg.bc.ca

August 18, 2008

Hon. John van Dongen  
Minister of Public Safety and Solicitor General  
Room 236  
Parliament Buildings  
Victoria BC  
V8V 1X4

Dear Minister,

I have been approached by the shopping mall representatives  
concerning the presentation they made to you under the Multi-  
Store Gift Card/Coalition.

I believe there were certain recommendations made by them  
regarding Bill 17 and I will appreciate information on the status of  
their request.

Sincerely,

John Nuraney, MLA  
Burnaby-Willingdon

|  |                                       |
|--|---------------------------------------|
| <b>RECEIVED</b>                                    |                                       |
| MINISTER OF PUBLIC SAFETY<br>AND SOLICITOR GENERAL |                                       |
| AUG 20 2008  |                                       |
| REFER TO MAIL REGISTRY                             |                                       |
| OTHER  | 366362                                |
| <input type="checkbox"/> DRAFT REPLY               | <input type="checkbox"/> REPLY DIRECT |
| <input type="checkbox"/> ATTN FILE                 | <input type="checkbox"/> INFORMATION  |

P.S. A copy of their recommendations is attached.



Meeting with the  
Honourable John van Dongen

June 5, 2008

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## Coalition Representatives

- Michael Miroslaw, StoreFinancial Services of Canada Co.
- Susan Williams, The Cadillac Fairview Corporation Limited
- Ted Williams, Ivanhoe Cambridge
- Mitchell Toker, Campbell Strategies

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## Introduction

- Multi-Store Gift Card Coalition welcomes opportunity to discuss gift card regulations
- Coalition has been working with provincial governments, retailers and the media to:
  - ensure there is a clear understanding of multi-store mall gift cards, and
  - ensure their popularity continues in a consumer-friendly and fully transparent manner

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# Our Objectives

- Objectives today are to:
  - Introduce the Coalition
  - Outline the unique features of our multi-store mall gift card products
  - Make recommendations regarding the gift card regulations



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## About our Coalition

- Coalition formed in late 2006 in response to demand by consumers for our products and their associated services and the growing interest by provincial governments to ensure there is appropriate consumer protection in place
- In BC, Coalition members offer 'multi-store mall gift cards' -- at many malls and shopping centres across the province, including: Pacific Centre, Metropolis at Metrotown Centre, Sevenoaks, Cottonwood Mall, Guildford Town Centre Mall, Mayfair Mall and Coquitlam Centre
- Members of the Multi-Store Gift Card Coalition include:
  - StoreFinancial Services of Canada Co.
  - The Cadillac Fairview Corporation Limited
  - Ivanhoe Cambridge
  - 20 Vic Management
  - Bosa Development
  - Redcliff Realty
  - Darton Property Advisors
  - Oxford Properties
  - GE Money

(See Appendix for full list of shopping centres)

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# Gift Card Programs: An Overview

- ***Gift card programs typically come in two forms.***
  - **A single retailer card program** sells cards that are redeemed at the specific retailer selling the gift card
    - a gift card sold (by the Bay) and redeemable at the Bay
  - **A multi-store gift card program** sells cards that are redeemed at multiple unaffiliated retailers/sellers
    - a multi-store “open loop” branded gift card
      - sold at grocery, pharmacies and convenience stores and redeemable at any retailer accepting credit cards and internet
    - a multi-store mall gift card
      - sold at Guildford Town Centre and redeemable at any store or merchant located in Guildford Town Centre

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# Popularity of Multi-Store Mall Gift Cards

- ***Multi-store mall gift cards are very popular with BC consumers.***
  - Multi-store mall gift card programs have been offered in BC shopping centres since 2004
  - In 2007, 19 BC shopping centres offered multi-store mall gift cards
    - Over 265,000 cards activated
    - Over \$15 million in volume
  - Between 2006 and 2007 there was a 49% increase in the number of cards sold and a 50% increase in the volume of cards sold
- ***Studies show that consumers prefer multi-store gift cards.***
  - A February 2007 (US) *Post Holiday Gift Card Study Report* found that 'consumers express the most interest in gift cards that are redeemable at multiple locations  
(Source: The Marketing Workshop Inc. Norcross, Georgia)
- ***Other studies predict growth of multi-store cards in Canada.***
  - *2006 MasterCard Prepaid Market Sizing Report* predicted that by 2010 penetration of prepaid cards in Canadian market would outpace all other countries in study (including US, China, UK, France, Russia, India, Hong Kong)  
(Source: Richard Garlein & Associates completed April 2007)

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## Coalition Members' Practices

- ***Coalition members are committed to offering consumers an attractive product, with associated services, in a fully disclosed manner.***
  - **Coalition members are required to:**
    - Provide a summary of the terms and conditions of the gift cardholder agreement on both the card back and the purchase receipt that is provided to the consumer at the time of purchase. In addition, a complete cardholder agreement is provided to the consumer with each card purchase or printed directly on the gift card packaging.
    - Provide a telephone/website with the terms and conditions of the cardholder agreement.
    - Provide clear and visible signage at the point of sale regarding any fees associated with the gift card.
    - At a minimum, ensure that there is no maintenance fee until 12 months from the date at which the card is activated.
    - Provide consumers with the highest standards of service and promptness when dealing with cardholder inquiries.
  - Card accounts do not expire
  - Coalition statistics show that 95% of card values are redeemed before any maintenance fees are applied
  - Of the over 265,000 cards issued in BC in 2007, there have been only 78 occasions where people have made an inquiry pertaining to fees. This represents less than 1 % inquiry rate.
-

## Single Retailer Cards vs. Multi-Store Mall Gift Cards



Illustration for  
example only



Illustration for  
example only

| FEATURES                         | Single Retailer Cards  | Multi-Store Mall Gift Cards   |
|----------------------------------|--|---|
| Issued by...                     | Issued by retailer   | Issued by sponsoring bank / financial institution   |
| Agreement is between....         | Agreement is between retailer and cardholder   | Agreement is between third party issuer and the cardholder  |
| Bank-card Network used           | Does not use bankcard network  | Uses MasterCard®, VISA® or American Express® networks (without logo)  |
| Cardholder Funds                 | Funds held by retailer   | Funds held in trust and guaranteed by sponsoring bank   |
| Rules with respect to Funds Held | Accounting governed by GAAP rules  | Accounting governed by banking and bankcard regulations; processed by certified bankcard network                                    |
| Security of Funds                | Cardholder Funds not protected in event of retailer bankruptcy (e.g., Record World, The Sharper Image, Linens 'n Things) | Cardholder Funds are protected in event of retailer bankruptcy or bankruptcy of distributor or third party issuer                   |
| Revenue generated by...          | Revenue generated from gross margins on sale of goods  | Revenue generated from fees on cards  |
| Logo used                        | Retailer's logo used   | Logo of shopping centre   |
| Expiry Provisions                | Varies   | Coalition members' do <u>not</u> expire (by choice)   |
| Fee Provisions                   | Varies   | Disclosed reasonable fees for each card purchased - monthly fees up to \$2.50 after 12th month; in some cases after 15th month      |
| Where Card can be Redeemed       | Can only be redeemed at the issuing retailer   | Can be redeemed at multiple unaffiliated retailers (i.e., shopping centre(s), malls, other 'defined' locations such as ski resorts) |

# Multi-Store Mall Gift Cards vs. “Branded” MasterCard®/ VISA®/American Express® Gift Cards



Illustration for  
example only



Illustration for  
example only

| FEATURES                         | Gift Cards That Utilize the Bankcard Network  |  |
|----------------------------------|---|--|
|                                  | Multi-Store Mall Gift Cards   | "Branded" (MasterCard®, VISA® or American Express®) Gift Cards   |
| Similarities                     |   |  |
| Issued by...                     | •Sponsoring bank / financial institution  |  |
| Agreement is between....         | •Third party issuer and the cardholder  |  |
| Bank-card Network used           | •MasterCard®, VISA® or American Express®  |  |
| Cardholder Funds                 | •Funds held by and guaranteed by sponsoring bank  |  |
| Rules with respect to Funds Held | •Bankcard network rules<br>•Cards must be processed by certified bankcard network   |  |
| Security of Funds                | •Protected in event of retailer bankruptcy or bankruptcy of distributor or third party issuer   |  |
| Revenue generated by...          | •Disclosed fees to consumers/cardholders  |  |
| Differences                      |   |  |
| Logo used                        | •No 'network' logo on the card. Typically use logo of shopping mall/district  | •MasterCard®, VISA® or American Express®   |
| Expiry Provisions                | •Cards <b>Do not</b> expire   | •Typically these cards expire  |
| Fee Provisions                   | •Many cards have no up front fees; In case of Cadillac Fairview's shop! card (good across Canada) a fully disclosed \$1.50 up front fee<br>•Monthly fees up to \$2.50 after 12 <sup>th</sup> month; in some cases after 15 <sup>th</sup> month                              | •Typically \$3.95-\$5.95 up front fee to consumer for each card purchased<br>•Typically \$2.50 per month after 6 months<br>•May have other transaction fees (i.e. for balance inquiries) |
| Where Card can be Redeemed       | •Redeemable at multiple unaffiliated retailers (i.e., shopping centre(s), malls, other 'defined' locations)<br>•Redemption is restricted to the shopping venue or groups of shopping centres always located within Canada<br>• <b>Cannot</b> be used for internet purchases | •Redeemable anywhere in the world where a MasterCard®, VISA® or American Express® credit/debit card is accepted<br>Can be used for Internet purchases                                    |
| Economic Benefits                | •Facilitates purchasing to a particular location located in British Columbia, i.e. Metropolis at Metrotown Gift Card can only be redeemed at retailers located at Metropolis at Metrotown   | •Can be used anywhere in the world that MasterCard®, VISA® or American Express® are accepted<br>•Limited ability to direct where funds are spent   |

MGCC Proprietary/Confidential Information

10

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## Recommendations

- Regulations under *the Business Practices and Consumer Protection Act* (Bill 17) should:
  - Permit multi-store gift cards to charge up to a \$2.50 monthly maintenance fee, commencing a minimum of 12 months from the card's initial activation/purchase date;
  - Do not prohibit upfront fees;
  - Include clear and unambiguous disclosure requirements.



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# Implications

- Represents a balanced approach to consumer protection
  - Consumers will be able to continue to enjoy the benefits and convenience of multi-store gift cards.
  - BC could say it has the most stringent regulatory approach to multi-retailer gift cards in North America
- Consumers will continue to have the added benefit of knowing the funds on multi-store gift **cards are 'protected' in the case of a retailer bankruptcy** (e.g., avoid the problems associated with 'The Sharper Image' or 'Linens 'n Things').
- Allows a mechanism to **ensure that gift card spending remains in BC** with added potential to **promote local economic development** by restricting card use to retailers in geographic location (e.g., Tourist destinations, business districts, ski resorts, etc.).
- A \$2.50 monthly maintenance fee after 12 months of the card's purchase is one of the lowest cost (if not the lowest) prepaid bankcard network card programs in North America.
  - Without the ability to charge reasonable fees, these types of multi-store cards are not economically feasible.

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## Appendix

### Coalition Members' BC Properties

- Cherry Lane Shopping Centre
- Coquitlam Centre
- Cottonwood Mall
- Lynn Valley Centre
- Park Royal Shopping Centre
- Semiahmoo Shopping Centre
- Sevenoaks Shopping Centre
- The Bay Centre
- Brentwood Town Centre
- Guildford Town Centre
- Hillside Centre
- Lougheed Town Centre
- Mayfair Shopping Centre
- Metropolis at Metrotown
- Oakridge Centre
- Pacific Centre
- Pine Centre
- Richmond Centre
- Waterfront Properties
- Woodgrove Centre

September 19, 2008

Mr. John Nuraney, MLA  
Burnaby-Willingdon  
M-5 – 4277 Kingsway  
Burnaby BC V5H 3Z2

Dear Mr. Nuraney:

I am responding to your August 18, 2008 letter regarding the status of Bill 17 and recommendations made by the Multi-Store Gift Card Coalition.

The recommendations of the Coalition are being taken into consideration in the development of regulations implementing Bill 17. I expect the legislation to come into force sometime later this year.

My Ministry is in regular contact with the Coalition and will keep them advised of progress.

Thank you for writing.

Yours sincerely,

*Original signed by:*

John van Dongen  
Solicitor General

366362

Page 61 of 72 to/à Page 63 of 72

Withheld pursuant to/removed as

s.16

**Vermaning, Tiny SG:EX**

**From:** Wacker, Sherri [Sherri.Wacker@leg.bc.ca]  
**Sent:** Thursday, September 11, 2008 9:26 AM  
**To:** Minister, SG SG:EX  
**Subject:** FW: Gift Cards

This letter was sent to the constituency office.

Sherri Wacker  
 Constituency Assistant to  
 Honourable John van Dongen,  
 Minister of Public Safety and Solicitor General  
 Phone: 604-870-5945  
 Fax: 604-870-5950  
 Email: [sherri.wacker@leg.bc.ca](mailto:sherri.wacker@leg.bc.ca)

|  |  |
|--|--|
| <b>RECEIVED</b>                                    |  |
| MINISTER OF PUBLIC SAFETY<br>AND SOLICITOR GENERAL |  |
| SEP 11 2008  |  |
| REFER TO MAIL REGISTRY                             |  |
| OTHER 366847                                       |  |
| <input type="checkbox"/> DRAFT REPLY               | <input type="checkbox"/> REPLY DIRECT                              |
| <input type="checkbox"/> ATTN FILE                 | <input type="checkbox"/> FILE <input type="checkbox"/> INFORMATION |

**From:** s.22  
**Sent:** Thursday, September 11, 2008 8:05 AM  
**To:** Karagianis.MLA, Maurine; Gordon Campbell ; van Dongen.MLA, John  
**Subject:** Gift Cards

*Respond on behalf of Premier*

Good Morning

This is an article taken from the first page of today's Calgary Herald. This is a widespread problem that plagues many grandparents and others who look for an easy way to gift others especially at Christmas and birthdays. It is a long-overdue piece of legislation.

- ☐ Article rank
- ☐ 11 Sep 2008
- ☐ Calgary Herald
- ☐ TAMARA GIGNAC CALGARY HERALD

### **"New retail rules kick in Nov. 1**

Pesky expiry dates and jarring fees on retail gift cards will become a thing of the past after new provincial rules come into play Nov. 1.

Gift cards are wildly popular in Alberta, with more people likely to buy them as presents than anywhere else in Canada, according to a 2007 study.

A whopping \$1.2 billion in gift cards are sold every year — but it's estimated up to \$180 million is lost from people failing to use them in time or forgetting they

even exist.

But the pieces of plastic are not without detractors, many of whom consider it unfair for merchants to place time limits on their use or subtract money from the amount if the card sits dormant for a length of time.

It's bad practice — and consumers aren't being treated fairly, said Service Alberta Minister Heather Klimchuk.

"A grandparent buys a gift card for a grandchild, and by the time a child uses it, a bunch of money has been eaten up," she said Wednesday.

New legislation, announced Wednesday, will force retailers to eliminate expiry dates and other fees that erode the value of the card when it is used."

To reduce the amount of a gift card is tantamount to stealing from the consumer. To charge a fee for the gift card antagonizes the public. Our son, s.22 decided to try this route for Christmas for presents to us, living in BC and our daughter and granddaughter s.22 He was extremely annoyed when he discovered that the Corporation that owns a particular mall charged for gift cards. He wished to give recipients a choice of which store to use when using the card. He is unlikely to repeat this exercise again. So it isn't just the stores that are at fault, but also large mall corporations.

My question is this --- what does BC do or is planning to do in this area? After all, Christmas is only three months away!

Thank you,

s.22

October 8, 2008

s.22

E-mail: s.22

Dear s.22

I am responding to your September 11, 2008 e-mail, addressed to the Honourable Gordon Campbell, Premier; Ms. Maurine Karagianis, MLA for Esquimalt-Metchosin; and to me, regarding gift card legislation.

Our government passed legislation in April 2008 prohibiting expiry dates and fees on gift cards, except in limited circumstances. We intend to bring this legislation into effect before this year's Christmas shopping season.

Fees may be permitted in some situations where businesses incur extra costs associated with the card itself or processing payment. Any permitted fees must be fully disclosed to consumers so they can make an informed choice about purchasing and using cards. We will be advising businesses and consumers of the situations where fees are permitted soon.

Your comments and suggestions are appreciated.

Yours sincerely,

*Original signed by:*

John van Dongen  
Solicitor General

pc: The Honourable Gordon Campbell  
Ms. Maurine Karagianis, MLA

366847



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From: Thompson, Rebecca LCS:EX  
Sent: Wednesday, October 8, 2008 14:47  
To: PSSG WEBFEEDBACK SG:EX  
Subject: Question about Gift Card Expiry Dates

I had a business owner call me this morning in regards to the issue of expiry dates on gift cards/certificates. A customer had purchased a gift certificate for a friend, and the friend called in to complain that the gift certificate had an expiry date on it (it was the last day of the month, one year later - ie. Oct 31.09) and said that the business owner was not following the law, that the law stated gift certificates can not have expiry dates. The business owner googled the issue, then brought her questions to us about the matter. I've done a bit of research online, but all I can see is that in June '07 PSSG did a survey on the topic. Any information you can give me on this topic is greatly appreciated.

Regards,  
Rebecca (Becky) Thompson  
Customer Service Representative  
Service BC Centre Burns Lake  
161 Hwy 16, Bag 3500, Burns Lake, BC, V0J 1E0  
Tel: (250) 692-2528 / Fax: (250) 692-2530  
Email: Rebecca.Thompson@gov.bc.ca  
Web: <http://www.servicebc.gov.bc.ca/>



October 10, 2008

Rebecca Thompson  
E-mail: [Rebecca.Thompson@gov.bc.ca](mailto:Rebecca.Thompson@gov.bc.ca)

Dear Ms. Thompson:

I am responding to your October 8, 2008 e-mail, regarding expiry dates on gift cards.

The Province of British Columbia approved gift card legislation in May of this year. It is expected to come into force sometime prior to this Christmas season. The legislation will prohibit expiry dates, with a few exceptions.

The legislation will not apply to gift cards and gift certificates already in circulation, so there is no law prohibiting expiry dates on cards issued or sold before the date the legislation comes into force.

If you have any further questions about gift cards, please do not hesitate to e-mail me.

Susan Walker  
Manager Consumer Policy

[Susan.Walker@gov.bc.ca](mailto:Susan.Walker@gov.bc.ca)

---

**Ministry of Public Safety &  
Solicitor General**

CORPORATE POLICY &  
PLANNING OFFICE

Mailing Address:  
PO Box 9283 Stn Prov Govt  
Victoria BC V8W 9J7  
Telephone: 250-387-3386  
Facsimile: 250-387-2631

Location:  
11<sup>th</sup> Floor  
1001 Douglas Street  
Victoria BC

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL**  
**Corporate Policy and Planning Office**  
**BRIEFING NOTE**

**PURPOSE:** For Minister Mike Morris for DECISION regarding prepaid purchase cards

**ISSUE:** A proposed regulatory amendment to exempt gift cards issued by federally regulated financial institutions from the *Business Practices and Consumer Protection Act* (BPCPA).

**DECISION REQUIRED / RECOMMENDATION:**

- **OPTION 2:** Amend the Prepaid Purchase Cards Regulation to exempt prepaid purchase cards issued by a federally regulated institution from the prohibitions on expiry dates and fees

**SUMMARY:**

- The *Business Practices and Consumer Protection Act* (BPCPA) prohibit expiry dates and fees on prepaid purchase cards (gift cards), except as permitted by regulation.
- By policy, the ministry has exempted credit card-branded gift cards that are issued by federally regulated financial institutions from the BPCPA's provisions.
- A recent BC Supreme Court decision (Jiang case) asserts that this exemption by policy is incongruent with the law.
- A number of financial institutions are seeking an amendment to a regulation made under the BPCPA, in order to explicitly exempt their cards.

**BACKGROUND:**

- The *Business Practices and Consumer Protection Act* (BPCPA) prohibit expiry dates and fees on prepaid purchase cards (gift cards), except as permitted by regulation.
- The BPCPA permits the regulation to extend or limit the meaning of "prepaid purchase card".
- The Prepaid Purchase Cards Regulation, made under the authority of the BPCPA, exempts the following types of cards from the expiry date prohibition:
  - cards that are issued or sold for a specific good or service; for a charitable purpose; or for a marketing, advertising or promotional purpose; and
  - cards that are issued or sold for less than their full monetary value.
- The regulation also sets out the circumstances in which a fee may be charged on a prepaid purchase card (for example, specific fees are permitted for cards that can be used at multiple retailers within a shopping mall).
- When the BPCPA provisions were passed in 2008, the intent was for them not to apply to cards with credit card branding, which can be used at various retailers. This is because:

- banking/credit card services are within federal jurisdiction, and
- unlike traditional store-specific gift cards, credit card-branded cards do not have a built-in profit for the issuer since there is no guarantee of where they will be spent (as such, they rely on a fee charged at the time of purchase).
- The funds on credit card-branded gift cards do not expire (the card itself expires, similar to a credit card, and funds can be transferred to a new card).
- Although these cards were not explicitly exempted from the BPCPA provisions, this policy intent was confirmed in 2008 Hansard statements made by then-Minister Van Dongen.

## DISCUSSION:

- A 2007 Supreme Court of Canada decision found that federally regulated financial institutions must comply with provincial consumer protection legislation.
- The federal Prepaid Payment Products Regulation regulates credit card-branded gift cards issued by federally regulated financial institutions. It sets out requirements related to disclosures, fee changes and maintenance fees, and it also prohibits expiry dates on funds.
- In 2015, a proposed class action lawsuit was brought against a number of financial institutions that supply credit card-branded gift cards, alleging that their fees and expiry dates contravene the BPCPA (Jiang case).
- The court refused to certify the lawsuit due to a technicality. However, the court noted that the ministry erred in its 2008 assertion that credit cards and bank cards are not captured by provincial legislation.
- Ministry staff have been contacted by representatives from financial institutions that supply credit card-branded gift cards, seeking an explicit exemption from the BPCPA's prohibition on fees.
- All credit card-branded gift cards currently available on the market use a federally regulated network (including those issued by provincial credit unions). Credit unions report that they have no plans to sell their own cards.
- Alberta explicitly exempts credit card-branded cards from its legislation, including cards issued by federally regulated institutions and cards issued by provincially regulated institutions/credit unions.
- Ontario's legislation does not explicitly exempt cards issued by federally regulated financial institutions. Similar to BC, Ontario has adopted the position that its legislation does not apply to federally regulated cards.
- Such an exemption in BC could be achieved through a regulation amendment,

s.13

- s.13

**OPTIONS:**

**OPTION 1:** s.13

s.13

**OPTION 2:** Amend the Prepaid Purchase Cards Regulation to exempt prepaid purchase cards issued by a federally regulated institution from the prohibition on expiry dates and fees

s.13

**OTHER MINISTRIES IMPACTED/CONSULTED:**

- Ministry of Finance consulted.

**DECISION APPROVED / NOT APPROVED**

**DATE:**

---

Honourable Mike Morris  
Minister of Public Safety  
and Solicitor General

**Prepared by:**  
Kristina Ponce  
Senior Policy and Legislation Analyst  
Corporate Policy and Planning Office  
250-387-4774

**Approved by:**  
Meagan Gergley  
Director, Policy and Legislation  
Corporate Policy and Planning Office  
250-356-2932

Toby Louie  
Executive Director  
Corporate Policy and Planning Office  
250-356-6389

Lori Wanamaker  
Deputy Solicitor General  
250-356-0149

February 18, 2016

The Honourable Mike Morris, M.L.A.  
Minister of Public Safety and Solicitor General  
PO BOX 9010 STN PROV GOVT  
Victoria, British Columbia  
V8W 9L5

|  |                                    |
|--|------------------------------------|
| Ministry of Public Safety<br>and Solicitor General |                                    |
| <b>RECEIVED</b>                                    |                                    |
| FEB 23 2016  |                                    |
| <input type="checkbox"/> MO Response               | <input type="checkbox"/> INFO FILE |
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| OTHER: _____                                       |                                    |

Dear Minister,

We are writing to request your support on an important issue affecting the general-use prepaid card industry in British Columbia.

In 2008, when legislation governing prepaid purchase cards was enacted, the Government's intentions were clear that that the legislation did not apply to cards that can be used like credit cards and have credit card branding. The accompanying FAQ for prepaid purchase cards in British Columbia clearly identifies that "cards that can be used like credit cards and have credit card branding, such as VISA, MasterCard or American Express" are not considered prepaid purchase cards.

British Columbia's then Minister of Public Safety and Solicitor General, John Van Dongen also clearly stated in the Legislature in April 2008 that preloaded credit cards issued by the financial services sector were not intended to be covered by the legislation:

*"The main other area that is not within the jurisdiction of this legislation.... They are things like preloaded credit cards issued by the financial services sector, most of which are under federal legislation as well."* - John Van Dongen, Former Minister of Public Safety and Solicitor General (Hansard, April 16, 2008  
<http://www.leg.bc.ca/hansard/38th4th/h80416p.htm#11450> )

In addition, under the federal *Prepaid Payment Products Regulations*, issuers of general-use prepaid cards must disclose key information to consumers related to their prepaid products and there are significant restrictions on what fees may be charged. These regulations include:

- o Prohibition on setting an expiry date on the funds loaded onto prepaid products;
- o Requirements to disclose key information to consumers before issuing a prepaid product, when issuing the product and directly on the product;

- Prohibition on charging maintenance fees for at least one year after the prepaid product is activated unless it relates to a promotional product or a reloadable product and the cardholder has given express consent; and
- Prohibition on charging overdraft fees or interest for prepaid products unless the cardholder gives express consent.

However, despite the clarity in the British Columbia government's intentions and policy rationale and the federal *regulations*, an opportunistic lawsuit alleges that the British Columbia legislation applies to general-use prepaid cards. Although the claim is being vigorously defended, this is a matter that jeopardizes the viability of the industry in British Columbia and if unchecked could result in a loss of jobs in British Columbia and the availability of the product for British Columbia consumers.

The Government of British Columbia had good reasons for not including general-use prepaid cards in the legislation. These cards provide useful tools for consumers and businesses and are a very different product than cards issued by retailers.

General-use prepaid cards *enable financial inclusion* by providing an alternative for people who do not qualify for credit cards or who prefer not to have credit available to them, allowing them to shop and pay bills online, by phone or by mail, and opening up sales channels not otherwise available to individuals who do not have credit cards, *e.g.* car rental, accommodations bookings, *etc.*

General-use prepaid cards are *convenient when travelling* internationally, as they are safer to carry than cash, and allow for global ATM access. Parents can use general-use prepaid cards as a convenient means of *helping students* with finances and budgeting when attending university or college. They can also be used by *businesses for employee expenses* while travelling, allowing employers to track spending patterns, for loyalty or customer incentive programs and *all consumers can use general-use prepaid cards to help them budget.*

We have been working with Toby Louic, Executive Director of the Corporate Policy & Planning Office on a regulatory clarification regarding general-use prepaid cards, to confirm for greater certainty that general-use prepaid cards are not covered by the *Business Practices and Consumer Protection Act*. As British Columbia's new Solicitor General and Minister of Public Safety, we ask that you consider supporting these efforts in order to maintain the availability of general-use prepaid cards and secure industry jobs in British Columbia.

British Columbia is home to a multimillion dollar general-use prepaid card industry and is the premier setting for innovation in general-use prepaid cards. Our industry creates well-paying jobs and contributes significant tax revenue to the government of British Columbia each year. General-use prepaid cards provide a useful tool for consumers and businesses and represent a growing industry in British Columbia that is currently at risk. We hope that you



Page 3

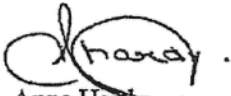
will support making a regulatory clarification to help secure these important financial sector jobs. If you have any questions please do not hesitate to contact us.

Thank you for considering this request.

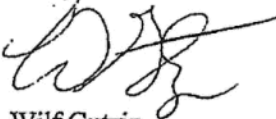
Sincerely,



Darren Kozol  
General Counsel & Corporate Secretary  
Peoples Trust Company



Anna Hardy  
Regional Director (B.C.)  
Government Relations  
Central 1 Credit Union



Wilf Gutzin  
Vice President, Senior Counsel & Corporate Secretary  
Amex Bank of Canada

#### **About Peoples Trust**

Peoples Trust is a financial institution headquartered in Vancouver, B.C., with offices across Canada. The company is active in originating and servicing mortgages, with over \$6 billion in assets under administration, and offers very competitive deposit products. Peoples Trust is one of the largest issuers of prepaid cards in Canada. Peoples Trust, through its subsidiary Peoples Card Services, is a pioneer sponsor of prepaid and credit card programs in Canada, and a market leader in both reloadable and non-reloadable prepaid card products of Visa and MasterCard. Innovation, driven by today's digitization of payments, has fast become a key to Peoples Trust's card product success. From contactless to the first virtual products, to multiple currencies and to leading edge mobile wallet products, Peoples strives to remain at the forefront of sponsoring digital payment solutions for Canadians.

#### **About Central 1**

Central 1 is the primary financial facility and trade association for the networks of independent credit unions in B.C. and Ontario, Central 1 provides leadership, support and a multitude of services to its members/owners. Central 1 is headquartered at the Credit Union Centre in Vancouver with offices in Toronto and Mississauga. Together, Central 1's active member credit unions, which numbered 43 in B.C. and 84 in Ontario as at December 31,

2014, operated over 872 branches and delivered a wide range of financial services to more than 3.2 million members.

**About American Express**

American Express in Canada operates as Amex Bank of Canada and Amex Canada Inc. Both are wholly owned subsidiaries of the New York based American Express Travel Related Services Company, Inc., the largest operating unit of the American Express Company. Amex Bank of Canada is the issuer of American Express charge cards, credit cards and prepaid cards. Amex Canada Inc. provides travel services to consumers and operates the Travellers Cheques division in Canada. American Express opened its first offices in Toronto and Hamilton in 1853 and now employs 1,700 Canadians coast-to-coast.



APR 13 2016

Mr. Darren Kozol  
Peoples Trust Company  
Ms. Anna Hardy  
Central 1 Credit Union  
Mr. Wilf Gutzin  
Amex Bank of Canada  
c/o Suite 1400, 888 Dunsmuir Street  
Vancouver BC V6C 3K4

Dear Mr. Kozol, Ms. Hardy and Mr. Gutzin:

Thank you for your February 18, 2016 letter, regarding general-use prepaid cards. I appreciate your raising this issue with me and I can certainly understand the value which your product provides to BC's economy and to consumers.

I understand that you have been working with ministry staff to address your concerns and I have asked staff to continue working with you on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Morris", is written over a light grey circular stamp.

Mike Morris  
Minister of Public Safety  
and Solicitor General

Page 006 of 159 to/à Page 014 of 159

Withheld pursuant to/removed as

s.12

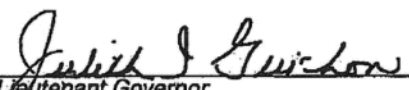
Page 015 of 159

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s.12 ; s.14

**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

Order in Council No. 545 , Approved and Ordered July 19, 2016

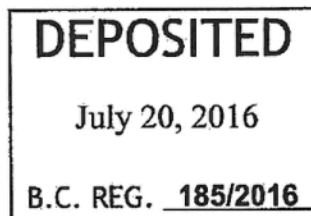
  
Lieutenant Governor


**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Prepaid Purchase Cards Regulation, B.C. Reg. 292/2008, is amended by adding the following section:

**Limitation on meaning of "prepaid purchase card"**

- 1.1 For the purposes of Part 4.1 of the Act, "prepaid purchase card" does not include a prepaid purchase card issued by
- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or
  - (b) a company to which the *Trust and Loan Companies Act* (Canada) applies.



  
Minister of Public Safety and  
Solicitor General

  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, s. 56.5 (a)

Other: OIC 748/2008

June 20, 2016

R/479/2016/2

Page 017 of 159 to/à Page 049 of 159

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s.12

**MINISTRY OF PUBLIC SAFETY  
AND SOLICITOR GENERAL**

**COMMUNICATIONS PLAN**

February 15, 2008

**SUBJECT:**

Legislative change to the Business Practices and Consumer Protection Act to allow for the regulation of gift cards to eliminate expiry dates and service charges/fees.

**AFFECTED MINISTRIES:**

Ministry of Public Safety and Solicitor General

Ministry of Economic Development has been consulted on TILMA implications and is consulting with Alberta.

**BACKGROUND**

The Ministry of Public Safety and Solicitor General proposes to amend the Business Practices and Consumer Protection Act to regulate gift cards and certificates that are purchased by consumers.

The legislation will:

- Add a definition for “gift card contracts.”
- Prohibit expiry of cards and expiry dates (except where allowed by regulation.)
- Prohibit fees (except where allowed by regulation.)
- Require disclosure of terms and conditions.

Gift cards have become enormously popular with consumers and businesses because of the convenience for gift-giving as an alternative to cash. However, although consumers view gift cards as equivalent to cash, an increasing number have complained to the Business Practices and Consumer Protection Authority (BPCPA) and the Better Business Bureau.

Consumers are concerned about expiry dates that render the cards worthless; service charges such as activation and dormancy fees and conditions of the card’s use which are not disclosed at the time of purchase.



Last summer the Ministry consulted with stakeholders and the public through a consultation paper posted on the Ministry website.

Selected responses:

- 87% of consumers who responded favoured regulation of pre-paid gift cards.
- 84% said fees should be prohibited.
- 84% said the government should regulate expiry dates.
- The Consumers Council of Canada and Retail Council of Canada support regulation of pre-paid gift cards.
- Retail B.C. and the Better Business Bureau of B.C. do not support regulation.

## **SITUATIONAL ANALYSIS**

Ontario and Manitoba have enacted legislation to ban expiry dates and service charges (except in limited circumstances) and Alberta, New Brunswick, Saskatchewan and Nova Scotia are developing regulations.

With similar legislation, consumers in B.C. will be protected from loss of spending power due to expiry dates and services charges.

The regulations will only apply to gift cards that can be regulated provincially. Pre-paid bank cards and telephone cards will not be covered by regulations.

The media have been calling for legislation to provide additional protection for consumers. In May, 2007 a Member's Bill to regulate gift cards was introduced into the B.C. Legislature.

## **COMMUNICATIONS OBJECTIVES**

The announcement will inform the public that their interests are being protected by regulations that prevent loss of value on gift cards because of expiry dates and service charges and/or fees. This is a positive message that shows that the government is acting to protect consumers.

It will alert the public to the fact that they should not pay activation fees or other service charges on cards they purchase once the regulations are in effect.

As well, the announcement will alert retailers and other relevant businesses that regulations could require them to change the way gift cards are issued and redeemed.

## **POSITIONING STATEMENT**

- Gift cards are increasingly popular in today's marketplace, and fair, consistent rules are needed to ensure that people get what they paid for
- When people buy a \$10 coffee card, or a \$500 boutique gift card, they should not see the value of the card reduced by service charges or expiry dates.

- We are making legislative changes to make sure consumers get their money's worth.

## **SECONDARY MESSAGES**

The proliferation of gift cards is part of the shift away from using cash in the marketplace. By regulating consumer protection, the government is demonstrating that it is in step with changing technologies.

## **STAKEHOLDERS**

Retail Council of Canada has supported regulation of gift cards in Canada.

The B.C. branch of the Retail Council and the Better Business Bureau did not support regulation of gift cards, preferring voluntary compliance and consumer education.

However, either or both could be approached to see if they now support regulation.

The Consumer's Council of Canada, which is based in Ontario, supports regulation of retail gift cards. This is not a well-known organization locally, but may have a local representative who could be approached to participate in an announcement.

## **STRATEGIES**

s.13

### **Option #2**

Media conference in one of the upstairs meeting rooms after the Minister introduces the legislation (similar to the birth certificate announcement with Ministers Les and Abbott) with the Minister taking questions and a conference call for out-of-town media. This would require media feeds and drape background.

s.13

### **Recommendation – Option #2**

Event planning has recommended Option #2. Rationale is that Option #1 would require a solid guest list, which it does not think would be the case.

## **MATERIALS**

News Release, Backgrounder, Q&A, Media Advisory, Event Profile, Speaking Notes

## **BUDGET**

n/a

## **EVALUATION/MEASUREMENT**

- 30 -

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Withheld pursuant to/removed as

s.12

**BILL 17 – 2008**  
**PUBLIC SAFETY AND SOLICITOR GENERAL (Gift Card Certainty)**  
**STATUTES AMENDMENT ACT, 2008**

**FIRST READING SPEAKING NOTES**

**SOLICITOR GENERAL** : “Mister Speaker, I have the honour to present a message from his Honour the Lieutenant Governor.”

[Page takes the message to the Speaker]  
[The Speaker reads the message]

**SOLICITOR GENERAL** : “I move that the Bill be introduced and read a first time now.”

[The Speaker puts the question on the motion.]

**SOLICITOR GENERAL** : “Mister Speaker I am pleased to introduce the *Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act, 2008*. This Bill amends the *Business Practices and Consumer Protection Act, Civil Forfeiture Act, Commercial Transport Act, Liquor Control and Licensing Act* and the *Motor Vehicle Act*.

**Amendments to the *Business Practices and Consumer Protection Act* provide for the regulation of gift cards and gift certificates. In particular, amendments address expiry dates, fees, and require disclosure of relevant terms and conditions to the purchaser. This legislation ensures that consumers get full value for their money when they use gift cards, while allowing for expiry dates and fees where warranted.**

**The *Civil Forfeiture Act* authorizes the forfeiture of property gained by or used for unlawful activity. Amendments respond to guidance provided by the judiciary and legal counsel in the course of court proceedings in the 2 years that the legislation has been in force. The key amendments provide clarification of legal terminology to ensure the original intent of the legislation is clear. Additional amendments involve subtle clarifications designed to refine the operation of the legislation.**

**The *Commercial Transport Act* is amended to align legislation with longstanding policies and practices on trailer licensing and permits.**

**Amendments to the *Liquor Control and Licensing Act* will allow temporary licences for Olympic/Paralympic Winter Games related facilities and services. This new, temporary licence category is limited to the period surrounding the Games and restricted to facilities that are directly tied to the Games for which existing licence categories are not suitable.**

**Finally, Mr. Speaker, the *Motor Vehicle Act* amendments will remove barriers, repeal redundant sections, and eliminate, streamline or update requirements.**

**“Mister Speaker, I move that the Bill be placed on the Orders of the Day for second reading at the next sitting of the House after today.”**

**[The Speaker puts the motion]**

BILL 17XX – 2008

**PUBLIC SAFETY AND SOLICITOR GENERAL (Gift Card Certainty)**  
**STATUTES AMENDMENT ACT, 2008**

**SECOND READING SPEAKING NOTES**

**House Leader:** "I call Second Reading of Bill 17X, 2008, Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act, 2008"

**Speaker:** "I call upon the Solicitor General"

**SOLICITOR GENERAL:** "I move that the Bill be now read a second time.

"Mister Speaker, the *Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act* amends five statutes: the *Business Practices and Consumer Protection Act*, *Civil Forfeiture Act*, *Commercial Transport Act*, *Liquor Control and Licensing Act* and the *Motor Vehicle Act*.



This legislation introduces a new part to the *Business Practices and Consumer Protection Act* concerning gift cards and gift certificates.

Most of us have either purchased a gift card or certificate to give to someone else, or ~~we have~~ received one as a gift. They are becoming a very common form of commerce – in 2006, Statistics Canada found that 82% of large retailers offer gift cards.

All too often, these cards have expiry dates, and consumers who don't use the cards right away ~~find that~~ later discover they can't redeem them. This legislation prohibits expiry dates, except under limited circumstances. That means that the consumer can go back to the supplier anytime and get full value from the card.

This legislation prohibits fees, except in limited circumstances. This includes up-front fees that are paid on purchase, user fees and dormancy fees that draw down the balance on the card.

Mr. Speaker, consumers have a right to know what they are purchasing at the time of purchase, so they can make an informed decision. Suppliers will need to disclose all ~~the~~ relevant terms and conditions on ~~the a~~ card or ~~the its~~ packaging – such as restrictions, limitations, and, if allowed, fees and expiry dates.

Notably, tThe legislation gives ~~us the Province~~ the authority to establish regulations that will allow expiry dates and fees in certain circumstances. For example, we are considering allowing expiry dates on cards used for charitable or promotional purposes; and we may allow a small fee to replace a lost card or to personalize a card. Regulations will also establish what terms and conditions need to be disclosed to the purchaser.

This legislation brings us in line with other provinces that either have, or are working toward, ~~have~~ consumer protection provisions for gift cards ~~in place or are working towards such provisions.~~

Mister Speaker, the amendments to the *Civil Forfeiture Act* provide clarification in response to guidance provided by the judiciary and legal counsel since the legislation came into force~~over the past 2 two years that the legislation has been in force~~years ago. It is common to make minor adjustments to legislation once it has faced the tests of legal proceedings and interpretation. In this case, many of the amendments involve subtle clarifications designed to refine and clarify the intent and purpose of the legislation.

The law enforcement community has strongly endorsed the Act, and the expectation of a continuing civil forfeiture framework in the Province has developed. Therefore, the intent of the amendments is to make strong legislation stronger and further the message that unlawful activity doesn't pay.

For example, the amendments will expressly clarify that civil forfeiture actions are "in rem" actions – that is, they are against property and not people. The current wording of the Act clearly

**implies “in rem” proceedings, but does not literally set it out.**

**Some members of the BC Supreme Court judiciary have suggested that an explicit “in rem” declaration is required, to ensure the constitutional validity of the Act.**

**The amendments also address specific legal definitions, such as “instruments of unlawful activity”. Currently, the Act states that property used for unlawful activity must actually generate profit before being subject to a forfeiture application. The amendments will ensure that property used for unlawful activity that is likely to generate profit is also subject to forfeiture, such as where police officers interrupt a marijuana grow operation prior to harvest of the crop.**

**Other definitions addressed by the amendments relate to property owners. Currently, a gap in the Act allows landlords to knowingly allow their property to be used for unlawful activity and financially benefit from that activity, such as in the case of landlords who knowingly rent their houses to tenants so that a**

**marijuana grow operation can be built. The amendments will ensure that these owners cannot be considered 'uninvolved interest holders'.**

**Other "housekeeping" changes include administrative matters, such as the provision of express authority for the Director of Civil Forfeiture to receive information from law enforcement agencies and to make payments out of the Special Account as approved by the Treasury Board. ~~—~~Those authorities are already implied in the current Act, and are simply being clarified here.**

**Mister Speaker, the amendments to the *Liquor Control and Licensing Act* provide for a temporary licence category called an Olympic/Paralympic licence.**

**VANOC, Games sponsors, and National Olympic Committees are expected to make requests for liquor licences ~~which~~ that will not fit within the structure of the current liquor licensing regime.**

**These amendments are designed to ensure ~~that~~ the province can respond fairly and effectively to these requests.**

**The new licence category will be restricted to those having a direct relation to the Games, such as Games suppliers and sponsors. Also, it will be restricted to parts of the province which are hosting official Games events or facilities.**

**It is expected that the earliest date when these licences will be available will be October 15, 2009<sub>z</sub> and the latest date will be March 31, 2010.**

**Local and First Nations governments will have the opportunity to comment on applications for these licences. The Liquor Control and Licensing Branch will take these comments into account when considering the applications.**

**Compliance with the provisions of a liquor licence is enforced by an administrative process ~~which~~that includes the imposition of licence suspensions and monetary penalties. In some cases<sub>z</sub> the**

**administrative enforcement process will not be completed in the life of the licence. The amendments allow for regulations to require that applicants post security to ensure ~~that~~ they pay any monetary penalty ~~which may be~~ imposed if they contravene the rules.**

**The amendments also provide for Olympic/Paralympic licensees to be exempted by regulation from current provisions of the Act where those provisions are ineffective or inappropriate. To ensure fairness, existing licensed establishments operating in the areas in which this licence is available may also be exempted from the same provisions.**

**The amendments will be repealed soon after the Games are over. The amendments also contain housekeeping changes to the regulation-making authority. The changes ensure that different fees may be charged depending on the type of licence, and confirm the power to make regulations governing liquor delivery services.**

**Finally, Mr. Speaker, in this bill, government is proposing some minor amendments to update the *Commercial Transport Act* and *Motor Vehicle Act*.**

**The amendments to the *Commercial Transport Act* clarify personal or pleasure use versus commercial use. The definitions of 'trailer' and 'semi-trailer' will exclude trailers used exclusively for a non-commercial purpose, to provide legislative clarity and be consistent with longstanding practices.**

**The limit on the number of single-use, non-resident permits for commercial vehicles is removed, as it is inconsistent with current practice. The amendments also move the authority for issuing those permits into regulation, to be consistent with the framework for other, similar permits.**



The amendments to the *Motor Vehicle Act* provide more licensing flexibility to vehicle manufacturers, commercial operators and non-residents. They repeal redundant driver and vehicle licensing provisions, and streamline various provisions.

The amendments remove barriers to business and provide a flexible licensing option for vehicle manufacturers. They repeal the section that provides the authority for motor vehicle dealers to issue Interim Vehicle Licences, since these licences are no longer used.

Out-of-province vehicle licensing/registration requirements are amended to provide greater flexibility to commercial operators to meet BC's insurance requirements and eliminate unnecessary burdens on motorists coming into BC with tow dollies.

Name change notification requirements are updated from "in writing" to "in person" to be consistent with business practices and increase security of licences. As well, a redundant provision

**that a person under the age of 19 is not permitted to act as a taxi driver is repealed.**

**Process for Completing Second Reading**

**Minister sits down, others debate on the principle**

**Solicitor General may reply to issues raised in the debate**

**The Speaker puts the motion when debate is finished**

**Solicitor General states the following if 2<sup>nd</sup> reading motion  
passes**

**SOLICITOR GENERAL: "Mister Speaker, I move that the Bill be  
referred to a Committee of the Whole House to be considered at  
the next sitting of the House after today." (or by leave, now)**

**The Speaker puts the motion that the Bill be referred to  
Committee of the Whole House**

**PUBLIC SAFETY AND SOLICITOR GENERAL  
(GIFT CARD CERTAINTY) STATUTES AMENDMENT ACT**

**Bill XX, 2008**

**Section Notes for Committee Stage Debate**

**BUSINESS PRACTICES AND CONSUMER PROTECTION ACT AMENDMENTS**

**Section 1**

(a) Section 1(1) is amended to include prepaid purchase cards in the definition of “goods”, so it is clear that a transaction that includes a prepaid purchase card is a “consumer transaction” and subject to the Act.

(b) Section 1(1) adds a definition of “prepaid purchase card”.

**Section 2**

(a) Section 17 is amended to exclude prepaid purchase cards from the definition of “direct sales contract” and therefore, not subject to the same provisions as direct sales contracts.

(b) Section 17 is amended to exclude prepaid purchase cards from the definition of “distance sales contract” and therefore, not subject to the same provisions as distance sales contracts.

(c) Section 17 is amended to exclude prepaid purchase cards from the definition of “future performance contract” and therefore, not subject to the same provisions as future performance contracts.

Prepaid purchase cards have their own specific provisions in new Part 4.1.

**Section 3**

Section 3 adds new Part 4.1, specific provisions for prepaid purchase cards.

56.1 This provision defines “prepaid purchase card”.

- Excludes cash cards issued by payday lenders instead of cash.

56.2 This provision prohibits expiry dates, unless allowed by regulation. An expiry date on a card is invalid, and the consumer may continue to use it. The intent is to give the consumer full value for their money.

The regulations will set out the circumstances where expiry dates are permitted. For example, cards given away for charitable or promotional purposes may be allowed to have expiry dates.

56.3 This provision prohibits fees, unless allowed by regulation. A consumer has a right to return of money paid for fees that are prohibited. The intent is to give the consumer full value for their money.

The regulations will set out the circumstances where fees are permitted. For example, fees may be allowed to personalize a card, or to replace a lost card.

56.4 This provision requires disclosure of terms and conditions and how a consumer can obtain information, such as the balance remaining on the card. The intent of this provision is to ensure that there is sufficient information to make informed decisions about purchasing and using the card.

Key terms and conditions that must be disclosed, and the manner of disclosure, will be established in regulation.

56.5 This provision authorizes regulations:

- further defining “prepaid purchase card”
- exempting cards or suppliers from all or part of new Part 4.1
- exempting cards or suppliers from expiry date provisions
- establishing restrictions, limitations and other terms
- establishing what fees may be charged and the amount of fees
- establishing what information must be disclosed and the manner of disclosure

## **Section 4**

203.01 This provision allows suppliers to continue to charge fees and have expiry dates on cards that were issued or sold prior to legislation coming into force. If such a card has no expiry date, it must remain valid until it is fully redeemed or replaced.

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Withheld pursuant to/removed as

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**MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL  
BILL 17 – 2008  
PUBLIC SAFETY AND SOLICITOR GENERAL (GIFT  
CARD CERTAINTY) STATUTES AMENDMENT ACT, 2008**

**Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 1**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the  
Province of British Columbia, enacts as follows:

***Business Practices and Consumer Protection Act***

***1 Section 1 (1) of the Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2,  
is amended***

***(a) in the definition of “goods” by striking out “fixtures and credit,” and substituting  
“fixtures, credit and prepaid purchase cards,”, and***

***(b) by adding the following definition:***

***“prepaid purchase card” has the meaning given to it in section 56.1 [definitions];.***

---

Redlined version showing effect of amendment to the Section:

**(a) Amends Section 1(1)**

1(1) In this Act

“goods” means personal property, fixtures and credit and prepaid purchase cards, but  
does not include a security as defined in the *Securities Act* or contracts of insurance under  
the *Insurance Act*

**(b) Amends Section 1(1)**

1(1) In this Act

“prepaid purchase card” has the meaning given to it in section 56.1 [definitions]



*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Section Notes – Section 1*

**Section 1 – Business Practices and Consumer Protection Act**

(a) Section 1(1) is amended to include prepaid purchase cards in the definition of “goods”, so it is clear that a transaction that includes a prepaid purchase card is a “consumer transaction” and subject to the Act.

(b) Section 1(1) adds a definition of “prepaid purchase card”.

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 2*

*Business Practices and Consumer Protection Act*

*2 Section 17 is amended*

*(a) in the definition of “direct sales contract” by striking out everything after “place of business,” and substituting the following:*

*but does not include any of the following:*

- (a) a funeral contract, interment right contract or preneed cemetery or funeral services contract;*
- (b) a contract for which the total price payable by the consumer, not including the total cost of credit, is less than a prescribed amount;*
- (c) a prepaid purchase card; ,*

*(b) in the definition of “distance sales contract” by striking out “before the contract is entered into,” and substituting “before the contract is entered into, but does not include a prepaid purchase card;”, and*

*(c) in the definition of “future performance contract” by striking out everything after “partly executed,” and substituting the following:*

*but does not include any of the following:*

- (a) a contract for which the total price payable by the consumer, not including the total cost of credit, is less than a prescribed amount;*
- (b) a contract for the supply of goods or services under a credit agreement, as defined in section 57 [definitions], if the goods or services have been supplied;*
- (c) a time share contract;*
- (d) a prepaid purchase card; .*

---

Redlined version showing effect of amendment to the Section:

**The effect of the amendment to Section 17 is to add subparagraph (c)**

**"direct sales contract" means a contract between a supplier and a consumer for the supply of goods or services that is entered into in person at a place other than the supplier's permanent place of business, but does not include any of the following:**

- (a) a funeral contract, interment right contract or preneed cemetery or funeral services contract, or**
- (b) a contract for which the total price payable by the consumer, not including the total cost of credit, is less than a prescribed amount;**
- (c) a prepaid purchase card;**

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Section Notes – Section 2*

**Section 2 – Business Practices and Consumer Protection Act**

(a) Section 17 is amended to exclude prepaid purchase cards from the definition of “direct sales contract” and therefore, not subject to the same provisions as direct sales contracts.

(b) Section 17 is amended to exclude prepaid purchase cards from the definition of “distance sales contract” and therefore, not subject to the same provisions as distance sales contracts.

(c) Section 17 is amended to exclude prepaid purchase cards from the definition of “future performance contract” and therefore, not subject to the same provisions as future performance contracts.

Prepaid purchase cards have their own specific provisions in new Part 4.1.

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Redlined version showing effect of amendment to the Section:

(b) “**distance sales contract**” means a contract for the supply of goods or services between a supplier and a consumer that is not entered into in person and, with respect to goods, for which the consumer does not have the opportunity to inspect the goods that are the subject of the contract before the contract is entered into, but does not include a prepaid purchase card;

(c) “**future performance contract**” means a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed, but does not include any of the following:

(a) a contract for which the total price payable by the consumer, not including the total cost of credit, is less than a prescribed amount,

(b) a contract for the supply of goods or services under a credit agreement, as defined in section 57 [definitions], if the goods or services have been supplied, or

(c) a time share contract;

(d) a prepaid purchase card;

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 3*

*Business Practices and Consumer Protection Act*

*3 The following Part is added:*

**PART 4.1 – PREPAID PURCHASE CARDS**

**Definitions**

**56.1** In this Part, but subject to the regulations, “**prepaid purchase card**” means a card, written certificate or other voucher or device with a monetary value that is issued or sold to a person in exchange for the future supply of goods or services to a consumer, and includes a gift card and gift certificate, but does not include a cash card as defined in Part 6.1 [*Payday Loans*].

**No expiry date**

**56.2** (1) Except as may be provided by the regulations under section 56.5 [*regulations respecting prepaid purchase cards*], a supplier must not issue or sell a prepaid purchase card that has an expiry date.

(2) A prepaid purchase card that is

- (a) issued or sold with an expiry date in contravention of subsection (1) is redeemable as if it had no expiry date, and
- (b) issued or sold without an expiry date is valid until fully redeemed or replaced.

**Fees prohibited except as permitted by regulation**

**56.3** (1) A supplier must not charge a fee to a consumer for anything in relation to a prepaid purchase card, except as may be permitted by the regulations under section 56.5 [*regulations respecting prepaid purchase cards*].

(2) If a supplier has charged a fee in contravention of subsection (1), the consumer who paid the fee may demand a refund in the amount of the fee by giving written notice to the supplier within one year of the date on which the fee was paid.

(3) A supplier who receives notice under subsection (2) must provide the refund to the consumer within 15 days of receiving the notice.

**Information to be provided**

**56.4** (1) At the time a prepaid purchase card is issued or sold, the supplier must provide the following information to the person to whom the prepaid purchase card is issued or sold:

- (a) all restrictions, limitations, terms and conditions imposed in respect of use, redemption or replacement of the prepaid purchase card, including, without limitation, any permitted fee or expiry date;
- (b) a description of the way in which a consumer can obtain information respecting the prepaid purchase card, including any remaining balance;
- (c) any other information that may be prescribed by regulation for the purpose of this section.

(2) The supplier must provide the information described in subsection (1) in accordance with the regulations, if any, that may be prescribed under section 56.5 [*regulations respecting prepaid purchase cards*].

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Section Notes – Section 3*

**Section 3 – Business Practices and Consumer Protection Act**

Section 3 adds new Part 4.1, specific provisions for prepaid purchase cards.

56.1 This provision defines “prepaid purchase card”.

- Excludes cash cards issued by payday lenders instead of cash.

56.2 This provision prohibits expiry dates, unless allowed by regulation. An expiry date on a card is invalid, and the consumer may continue to use it. The intent is to give the consumer full value for their money.

The regulations will set out the circumstances where expiry dates are permitted. For example, cards given away for charitable or promotional purposes may be allowed to have expiry dates.

56.3 This provision prohibits fees, unless allowed by regulation. A consumer has a right to return of money paid for fees that are prohibited. The intent is to give the consumer full value for their money.

The regulations will set out the circumstances where fees are permitted. For example, fees may be allowed to personalize a card, or to replace a lost card.

56.4 This provision requires disclosure of terms and conditions and how a consumer can obtain information, such as the balance remaining on the card. The intent of this provision is to ensure that there is sufficient information to make informed decisions about purchasing and using the card.

Key terms and conditions that must be disclosed, and the manner of disclosure, will be established in regulation.

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**Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 3 (continued)**

***Business Practices and Consumer Protection Act***

**56.5** The Lieutenant Governor in Council may make regulations as follows:

- (a) extending or limiting the meaning of “prepaid purchase card”;
- (b) exempting classes of prepaid purchase cards and classes of persons who issue, sell or redeem them from the application of all or part of this Part;
- (c) governing the use of expiry dates for prepaid purchase cards that are exempt from section 56.2 (1) *[no expiry date]*;
- (d) respecting the imposition of restrictions, limitations and other terms and conditions on the issuance, sale, use, redemption and replacement of prepaid purchase cards;
- (e) governing the fees, including inactivity fees or service fees, that may be charged in relation to prepaid purchase cards, including prescribing the amount of a fee or a method of determining the amount of a fee and prescribing circumstances in which no fee is payable;
- (f) respecting information that must be provided in relation to prepaid purchase cards under section 56.4 *[information to be provided]*, and the form, timing and manner of providing that information.

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment – Section 3 (continued)*  
*Section Notes*

*Business Practices and Consumer Protection Act*

- 56.5 This provision authorizes regulations:
- further defining "prepaid purchase card"
  - exempting cards or suppliers from all or part of new Part 4.1
  - exempting cards or suppliers from expiry date provisions
  - establishing restrictions, limitations and other terms
  - establishing what fees may be charged and the amount of fees
  - establishing what information must be disclosed and the manner of disclosure

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 4*

*Business Practices and Consumer Protection Act*

*4 The following section is added:*

**Transitional – prepaid purchase cards**

**203.01** (1) Sections 56.2 (1) and (2) (a), 56.3 and 56.4 and the regulations made under section 56.5 do not apply in respect of prepaid purchase cards issued or sold before this subsection comes into force.

(2) This section may be repealed by regulation of the Lieutenant Governor in Council.



*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Section Notes – Section 4*

**Section 4 – Business Practices and Consumer Protection Act**

203.01 This provision allows suppliers to continue to charge fees and have expiry dates on cards that were issued or sold prior to legislation coming into force. If such a card has no expiry date, it must remain valid until it is fully redeemed or replaced.

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**Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Amendment - Section 24**

24 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

| Item | Column 1<br>Provisions of Act                | Column 2<br>Commencement                            |
|------|--|---|
| 1    | Anything not elsewhere covered by this table | The date of Royal Assent                            |
| 2    | Sections 1 to 4                              | By regulation of the Lieutenant Governor in Council |
| 3    | Sections 14 to 17                            | By regulation of the Lieutenant Governor in Council |

*Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act –  
Section Notes – Section 24*

**Section 24**

Commencement for amendments to the *Business Practices and Consumer Protection Act*, the *Liquor Control and Licensing Act*, and section 6 and section 11 of the *Commercial Transport Act* are by regulation.

Amendments to the *Civil Forfeiture Act*, the *Motor Vehicle Act* and section 1 of the *Commercial Transport Act* come into force with Royal Assent.

## Louie, Toby I PSSG:EX

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**From:** Don Moors <dmoors@tsa.ca>  
**Sent:** February 9, 2016 9:07 AM  
**To:** Louie, Toby I JAG:EX  
**Subject:** Call today

Hi Toby, we are looking forward to the call today at 1 pm Pacific.

Here is a list of attendees and a draft agenda of the items we would like to discuss.

Is there anything on your end you want added to the agenda? Looking forward to our call.

**Attending on our end will be:**

Darren Kozol Peoples Trust  
Chista Kavoosi Peoples Trust  
Wilf Gutzin American Express  
Anna Hardy Central One  
Don Moors Temple Scott Associates

**Suggested Agenda**

1. Briefing on progress of court case (Wilf/Darren)
2. Briefing on progress of prepaid regulatory change (Toby)
3. Discussion (all)
4. Organize time for future meeting/communications (all)

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**Don Moors, Principal**  
Temple Scott Associates Inc.  
**Government Relations | Communications | Event Management**  
(T) 613.241.6000, ext. 234 | (F) 613.241.6001  
[dmoors@tsa.ca](mailto:dmoors@tsa.ca) | [www.TSA.ca](http://www.TSA.ca)



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## Louie, Toby I PSSG:EX

---

**From:** Don Moors <dmoors@tsa.ca>  
**Sent:** March 8, 2016 5:10 PM  
**To:** Louie, Toby I JAG:EX  
**Cc:** Marg Copping  
**Subject:** Re: Application for Certification

Toby, how about this Thursday at 10 am Pacific, I will send call in details.

Sent from my iPhone

> On Mar 7, 2016, at 11:10 PM, Louie, Toby I JAG:EX <Toby.Louie@gov.bc.ca> wrote:

>

> Hi Don.

>

> Thanks for sending the decision.

>

> I'm available this Thursday (10 am Pacific), March 14 (10:30am onwards), March 16 (10 am). Would one of these times work? Please suggest another time if these do not work.

>

> Toby

> From: Don Moors

> Sent: Monday, March 7, 2016 12:56 PM

> To: Louie, Toby I JAG:EX

> Reply To: dmoors@tsa.ca

> Subject: Application for Certification

>

>

> Good afternoon Toby, s.22 so I was asked to forward you the Judge's decision in the court case the Jiang v. Peoples Trust Company, which was released late last week.

>

> Given that the decision is now released we were wondering if there was any ability to move the call scheduled for March 17 forward?

>

> Let me know.

>

> Thank you.

> \_\_\_\_\_

>

> Don Moors, Principal

> Temple Scott Associates Inc.

> Government

> Relations<[http://www.tsa.ca/index.php?option=com\\_content&view=article&id=35&Itemid=4](http://www.tsa.ca/index.php?option=com_content&view=article&id=35&Itemid=4)> |

> Communications<[http://www.tsa.ca/index.php?option=com\\_content&view=article&id=40&Itemid=3](http://www.tsa.ca/index.php?option=com_content&view=article&id=40&Itemid=3)> | Event

> Management<[http://www.tsa.ca/index.php?option=com\\_content&view=article&id=2&Itemid=11](http://www.tsa.ca/index.php?option=com_content&view=article&id=2&Itemid=11)>

> (T) 613.241.6000, ext. 234 | (F) 613.241.6001

> dmoors@tsa.ca<mailto:dmoors@tsa.ca> | www.TSA.ca<http://www.tsa.ca/>

> [cid:image001.jpg@01CC1BAF.DF592590]

>

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>

## Louie, Toby I PSSG:EX

---

**From:** Don Moors <dmoors@tsa.ca>  
**Sent:** July 20, 2016 2:20 PM  
**To:** Ponce, Kristina PSSG:EX  
**Cc:** Anna Hardy; Darren Kozol; wilf.s.gutzin@aexp.com; Louie, Toby I PSSG:EX  
**Subject:** Re: Prepaid Purchase Cards Regulation

Thank you Kristina and Toby for your hard work on this file.

Sent from my iPhone

On Jul 20, 2016, at 5:01 PM, Ponce, Kristina PSSG:EX <[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)> wrote:

Hello everyone,

Further to my email below, please find attached a copy of the approved Order in Council making the amendment to the Prepaid Purchase Cards Regulation.

Thank you,

**Kristina Ponce**

Senior Policy and Legislation Analyst  
Corporate Policy and Planning Office  
Ministry of Public Safety and Solicitor General  
250-387-4774  
[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)

---

**From:** Ponce, Kristina PSSG:EX  
**Sent:** Wednesday, July 20, 2016 11:41 AM  
**To:** 'Anna Hardy'; 'Darren Kozol'; '[wilf.s.gutzin@aexp.com](mailto:wilf.s.gutzin@aexp.com)'; '[dmoors@tsa.ca](mailto:dmoors@tsa.ca)'  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** Prepaid Purchase Cards Regulation

Hello everyone,

I wanted to let you know, confidentially, that the amendment to the Prepaid Purchase Cards Regulation has been approved. We should be receiving an official deposited copy of the amendment shortly, at which time it will be in force. We will provide that copy to you once we receive it. Please feel free to contact me if you have any questions.

Thank you,

**Kristina Ponce**

Senior Policy and Legislation Analyst  
Corporate Policy and Planning Office  
Ministry of Public Safety and Solicitor General  
250-387-4774  
[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)



<185\_2016.pdf>

## **Louie, Toby I PSSG:EX**

---

**From:** Darren Kozol <DarrenK@peoplestrust.com>  
**Sent:** March 2, 2016 10:11 AM  
**To:** Louie, Toby I JAG:EX  
**Cc:** Chista Kavoosi  
**Subject:** Reasons for Judgement on Certification

Hello,

Just to let you know, we expect the reasons for judgement on the certification of the class action to come down tomorrow at 10:30 am.

Thank you

Yours truly,

**Darren Kozol**  
**General Counsel & Corporate Secretary**  
**Peoples Trust Company**  
14th Floor, 888 Dunsmuir Street  
Vancouver, BC, V6C 3K4

Tel: 604-331-2238

[www.peoplestrust.com](http://www.peoplestrust.com)

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## Louie, Toby I PSSG:EX

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**From:** Wilf S Gutzin <Wilf.S.Gutzin@aexp.com>  
**Sent:** May 27, 2016 9:00 AM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** RE: American Express / Amex Bank of Canada

Thanks – confirmed for the 17<sup>th</sup> - 10 am Pacific / 1 Eastern.

Wilf Gutzin I VP & Senior Counsel I Amex Bank of Canada I American Express - General Counsel's Organization  
Tel: 437.836.6195 I Fax: 905.474.9985 I wilf.s.gutzin@aexp.com I 2225 Sheppard Avenue East, Suite 100, Toronto, ON M2J 5C2  
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---

**From:** Louie, Toby I PSSG:EX [mailto:Toby.Louie@gov.bc.ca]  
**Sent:** Friday, May 27, 2016 11:55 AM  
**To:** Wilf S Gutzin  
**Subject:** RE: American Express / Amex Bank of Canada

Wilf – June 17<sup>th</sup> between 1 pm and 4 pm Eastern is good for me.

---

**From:** Wilf S Gutzin [mailto:Wilf.S.Gutzin@aexp.com]  
**Sent:** Thursday, May 26, 2016 1:58 PM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** RE: American Express / Amex Bank of Canada

Thank you Toby,  
Please let me know if you have a time you can suggest on the 13<sup>th</sup> or 17<sup>th</sup>.

Wilf Gutzin I VP & Senior Counsel I Amex Bank of Canada I American Express - General Counsel's Organization  
Tel: 437.836.6195 I Fax: 905.474.9985 I wilf.s.gutzin@aexp.com I 2225 Sheppard Avenue East, Suite 100, Toronto, ON M2J 5C2  
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**From:** Louie, Toby I PSSG:EX [mailto:Toby.Louie@gov.bc.ca]  
**Sent:** Wednesday, May 25, 2016 7:36 PM  
**To:** Wilf S Gutzin  
**Subject:** RE: American Express / Amex Bank of Canada

Hi Wilf – perhaps we can find time during the week of June 13 for the next call.

---

**From:** Wilf S Gutzin [mailto:Wilf.S.Gutzin@aexp.com]  
**Sent:** Wednesday, May 25, 2016 9:25 AM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** RE: American Express / Amex Bank of Canada

Toby,  
Thank you again for speaking to me last week. As you know I am also in contact with the representatives that you know from Peoples Trust, Central One and Temple Scott. We wanted to arrange now to get a meeting in the calendar for a follow up on status and to discuss with you the process to review a draft of the regulation subject to the confidentiality protocol that would be required.  
Wilf

Wilf Gutzin I VP & Senior Counsel I Amex Bank of Canada I American Express - General Counsel's Organization

---

**From:** Louie, Toby I PSSG:EX [<mailto:Toby.Louie@gov.bc.ca>]  
**Sent:** Tuesday, May 17, 2016 4:11 PM  
**To:** Wilf S Gutzin  
**Subject:** RE: American Express / Amex Bank of Canada

Hi Wilf. I'll give you a call within the hour (and also available Wed). I've been busy with budget debates for our ministry.

---

**From:** Wilf S Gutzin [<mailto:Wilf.S.Gutzin@aexp.com>]  
**Sent:** Monday, May 16, 2016 1:58 PM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** American Express / Amex Bank of Canada

Toby, I was hoping to touch base with you briefly. Would you have any time later in the day tomorrow or Wednesday?  
Thanks, Wilf

Wilf Gutzin | VP & Senior Counsel | Amex Bank of Canada | American Express - General Counsel's Organization  
Tel: 437.836.6195 | Fax: 905.474.9985 | [wilf.s.gutzin@aexp.com](mailto:wilf.s.gutzin@aexp.com) | 2225 Sheppard Avenue East, Suite 100, Toronto, ON M2J 5C2  
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## **Louie, Toby I PSSG:EX**

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**From:** Wilf S Gutzin <Wilf.S.Gutzin@aexp.com>  
**Sent:** July 8, 2016 10:21 AM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** RE: Follow Up Question

Thank you Toby, I appreciate your response.  
Wilf

---

**From:** Louie, Toby I PSSG:EX <Toby.Louie@gov.bc.ca>  
**Date:** Friday, Jul 08, 2016, 1:05 PM  
**To:** Wilf S Gutzin <Wilf.S.Gutzin@aexp.com>  
**Subject:** RE: Follow Up Question

Wilf – I'm still looking at this possibility. It's difficult to commit before any change is discussed and approved.

---

**From:** Wilf S Gutzin [mailto:Wilf.S.Gutzin@aexp.com]  
**Sent:** Friday, July 8, 2016 5:22 AM  
**To:** Louie, Toby I PSSG:EX  
**Subject:** Follow Up Question

Toby,  
I wanted to follow up on the possibility of a responding letter confirming the government's original intention. Please let me know if we should discuss.  
Thanks,  
Wilf

**Wilf Gutzin I VP & Senior Counsel I Bank of Canada I American Express - General Counsel's Organization**  
**Tel: 437.836.6195**

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## Louie, Toby I PSSG:EX

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**From:** Wilf S Gutzin <Wilf.S.Gutzin@aexp.com>  
**Sent:** July 20, 2016 11:49 AM  
**To:** Ponce, Kristina PSSG:EX  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** RE: Prepaid Purchase Cards Regulation

Thank you Kristina,  
Can I please share this information with Anna, Darren and Don as they may wish to join a call that we can organize on the subject of the letter.

Also, thank you for the update on the regulation.

Wilf

Wilf Gutzin I VP & Senior Counsel I Amex Bank of Canada I American Express - General Counsel's Organization  
Tel: 437.836.6195 I Fax: 905.474.9985 I wilf.s.gutzin@aexp.com I 2225 Sheppard Avenue East, Suite 100, Toronto, ON M2J 5C2  
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**From:** Ponce, Kristina PSSG:EX [mailto:Kristina.Ponce@gov.bc.ca]  
**Sent:** Wednesday, July 20, 2016 2:45 PM  
**To:** Wilf S Gutzin  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** RE: Prepaid Purchase Cards Regulation

Hi Wilf,

As a follow-up to the note below, I wanted to let you know that Toby and I considered your request for a letter that outlines the intent in making this amendment. Unfortunately, we will be unable to provide such a letter. We are happy to discuss if you have any questions.

Thank you,  
Kristina

---

**From:** Ponce, Kristina PSSG:EX  
**Sent:** Wednesday, July 20, 2016 11:41 AM  
**To:** 'Anna Hardy'; 'Darren Kozol'; 'wilf.s.gutzin@aexp.com'; 'dmoors@tsa.ca'  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** Prepaid Purchase Cards Regulation

Hello everyone,

I wanted to let you know, confidentially, that the amendment to the Prepaid Purchase Cards Regulation has been approved. We should be receiving an official deposited copy of the amendment shortly, at which time it will be in force. We will provide that copy to you once we receive it. Please feel free to contact me if you have any questions.

Thank you,

**Kristina Ponce**  
Senior Policy and Legislation Analyst

Corporate Policy and Planning Office  
Ministry of Public Safety and Solicitor General  
250-387-4774  
[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)

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## Louie, Toby I PSSG:EX

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**From:** Anna Hardy <anna.hardy@central1.com>  
**Sent:** July 20, 2016 11:42 AM  
**To:** Ponce, Kristina PSSG:EX; 'Darren Kozol'; 'wilf.s.gutzin@aexp.com'; 'dmoors@tsa.ca'  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** RE: Prepaid Purchase Cards Regulation

Thank you very much, Kristina. Our thanks again for all of your hard work on this file.

---

**From:** Ponce, Kristina PSSG:EX [mailto:Kristina.Ponce@gov.bc.ca]  
**Sent:** Wednesday, July 20, 2016 11:41 AM  
**To:** Anna Hardy; 'Darren Kozol'; 'wilf.s.gutzin@aexp.com'; 'dmoors@tsa.ca'  
**Cc:** Louie, Toby I PSSG:EX  
**Subject:** Prepaid Purchase Cards Regulation

Hello everyone,

I wanted to let you know, confidentially, that the amendment to the Prepaid Purchase Cards Regulation has been approved. We should be receiving an official deposited copy of the amendment shortly, at which time it will be in force. We will provide that copy to you once we receive it. Please feel free to contact me if you have any questions.

Thank you,

**Kristina Ponce**  
Senior Policy and Legislation Analyst  
Corporate Policy and Planning Office  
Ministry of Public Safety and Solicitor General  
250-387-4774  
[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)

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## **Louie, Toby I PSSG:EX**

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**From:** Anna Hardy <anna.hardy@central1.com>  
**Sent:** March 21, 2016 4:23 PM  
**To:** Ponce, Kristina JAG:EX; 'wilf.s.gutzin@aexp.com'; 'DarrenK@peopletrust.com'  
**Cc:** Louie, Toby I JAG:EX  
**Subject:** RE: Prepaid Purchase Cards

Hi Kristina,

Thank you very much for your e-mail. We appreciate the update and look forward to hearing back from you regarding your lawyer's comments, and of course, we look forward to hearing from the Minister, too.

Our continued thanks for your engagement.

**Anna Hardy**  
604.714.6562

---

**From:** Ponce, Kristina JAG:EX [mailto:Kristina.Ponce@gov.bc.ca]  
**Sent:** Monday, March 21, 2016 4:19 PM  
**To:** 'wilf.s.gutzin@aexp.com'; Anna Hardy; 'DarrenK@peopletrust.com'  
**Cc:** Louie, Toby I JAG:EX  
**Subject:** Prepaid Purchase Cards

Hello Wilf, Anna, and Darren:

It was nice speaking with you recently. As a follow-up to our call, Toby has asked me to let you know that you should be receiving a response to your letter to Minister Morris shortly. As we discussed on our call, we've asked our lawyers to review the court's comments in its decision not to certify the class action. However, we did not want you waiting on that before receiving a response to your letter. We look forward to continuing to work with you on this issue – please feel free to contact me or Toby if you have any questions.

Thank you,

**Kristina Ponce**  
Senior Policy and Legislation Analyst  
Corporate Policy and Planning Office  
Ministry of Public Safety and Solicitor General  
250-387-4774  
[Kristina.Ponce@gov.bc.ca](mailto:Kristina.Ponce@gov.bc.ca)

## Louie, Toby I PSSG:EX

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**From:** Anna Hardy <anna.hardy@central1.com>  
**Sent:** March 2, 2016 3:21 PM  
**To:** Louie, Toby I JAG:EX  
**Subject:** Re: Call week of March 14th?

March 17th works well. Can we do 10-11 am PST?

Thanks!

Anna

Sent from my iPhone

On Mar 2, 2016, at 11:21 AM, Louie, Toby I JAG:EX <[Toby.Louie@gov.bc.ca](mailto:Toby.Louie@gov.bc.ca)> wrote:

Hi Anna

Thank you for the heads-up. I'm not available on March 18. I am available in the mornings on other days that week. Would Thursday March 17 work?

Toby

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**From:** Anna Hardy [<mailto:anna.hardy@central1.com>]  
**Sent:** Wednesday, March 2, 2016 10:17 AM  
**To:** Louie, Toby I JAG:EX  
**Subject:** Call week of March 14th?

Hi Toby,

We are expecting a decision on certification in the next day or so.

Would you be available for a call on the 18<sup>th</sup> of March to discuss next steps? If that day doesn't work, let me know what would work for you that week.

Thanks!

**Anna Hardy**  
Regional Director (B.C.)  
Government Relations  
<image001.gif>  
Central 1 Credit Union  
1441 Creekside Drive  
Vancouver, British Columbia  
V6J 4S7  
[anna.hardy@central1.com](mailto:anna.hardy@central1.com)  
T: 604.714.6562  
C: 604.499.8618  
F: 604.714.5861  
[www.central1.com](http://www.central1.com)

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## Overview

Recognition programs play an important role in employee engagement. A sincere thank you or sending an [e-card](#) is often all that is needed for recognizing their efforts. In other cases, a more formal recognition may be appropriate.

## Formal

There are several options for formal recognition.

- You can recognize employees' work over the years with a service milestone pin, which is presented during Public Service Week in June.
- For longer-serving employees who might be retiring, you can help to commemorate their contribution with a Meritorious Service certificate (signed by the Premier, their Minister and their Deputy Minister).
- For Long Service Award recipients in your branch, consider acknowledging them among their colleagues prior to the formal ceremony at Government House.
- You can also nominate individual employees or a team for an [AG/PSSG Inspiration award](#) in categories like Leadership, Innovation, Collaboration, Client Service, Mentorship and Spirit.

## Celebratory events

Events are a powerful recognition tool because they allow a group of employees to celebrate together.

Recognition events could include:

- Celebrating team accomplishments, such as the successful completion of a project or hitting a milestone.
- Recognizing the service of an employee who is retiring or leaving the BC Public Service.
- Celebrating a Premier's Award nomination or ministry award.
- Public Service Week celebrations.

## Approval and financial process

Decisions around cost are ultimately up to your branch's spending authority as each branch is responsible for its own recognition budget. Recognition spending is tracked and reported to the Minister of Finance each year.

When considering what amount to spend, a good rule of thumb is to consider whether your executive would be comfortable defending this recognition expenditure.

## Gift Cards

- The practice of providing gift cards as a reward for attendance is not recommended by the PSA, nor a recommended practice within the Justice and Public Safety Sector. Proceeding against this practice will need ADM approval.

## Approval and financial process

1. Fill out a [Staff Appreciation form](#). Use **STOB 6536** for award purchases and **STOB 6537** for event costs.
  - Corporately, \$100 is the maximum amount recommended for an award, a recognition event, or a combination of both.
  - Awards can exceed this amount but you must receive executive approval prior to making the purchase.
2. Obtain approval for the award, gift and/or appreciation event (i.e. from your expense authority, branch director or executive.
3. Purchase the award/gift/event supplies. Items may be purchased in a variety of ways, including petty ash, corporate credit card, ordering from [Distribution Centre Victoria](#) and Reimbursement for out-of-pocket expenses.
4. Send the completed form, along with your original receipts, to your branch's financial management office.
5. If an employee has received a taxable award, the amount needs to be included on the employee's T4. See tax implications below.

## Tax implications

When recognizing employees, it is important to consider if there are tax consequences as a result of the award or recognition.

Visit the link on [tax implications](#) to learn about taxable and non-taxable awards.

## Segregation of duties:

If an EA is approving a list of recognition awards/rewards, and the EA is a recipient for one of those transactions (such as purchase of gift cards), the EA must find another EA to sign for those transactions' payments. For more information regarding segregation of duties, please see [Bulletin #20-001](#)

If you are still unsure whether the type or cost of the award is appropriate, please check with your ministry/organization recognition contact for further guidance.