

January 13, 2010

Gift Card Consultation
Office of the Attorney General
Consumer, Corporate and Insurance Division
4th Floor Shaw Building
95 Rochford Street, P.O. Box 2000
Charlottetown, PE C1A 7N8

To whom it may concern,

Re: Submission Regarding PEI's Proposed Gift Cards Act & General Regulation

As a stakeholder and contributor to the development of gift card legislation and regulations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and most recently in New Brunswick and Nova Scotia, Retail Council of Canada (RCC) is very pleased to have this opportunity to consult with Prince Edward Island's Consumer, Corporate & Insurance Division, as it enters into legislation development for the regulation of gift cards on PEI.

Retail Council of Canada

History and Mandate

Retail Council of Canada (RCC) has been the Voice of Retail in Canada since 1963. We speak for an industry that touches the daily lives of Canadians in every corner of the country — by providing jobs and career opportunities and by investing in the communities we serve.

RCC is a not-for-profit, industry-funded association representing more than 40,000 store fronts of all retail formats across Canada, including department, specialty, discount, and independent stores, and online merchants.

RCC is a strong advocate for retailing in Canada and works with all levels of government and other stakeholders to support employment growth and career opportunities in retail, to promote and sustain retail investments in communities from coast to coast, and to enhance consumer choice and industry competitiveness. RCC also provides its members with a full range of services and programs including

education and training, benchmarking and best practices, networking, advocacy, and information.

Vision Statement

Retail Council of Canada (RCC) is the leader in advancing and protecting the interests of the retail industry in Canada.

Mission Statement

Retail Council of Canada's (RCC) mission is to be the Voice of Retail in Canada by providing advocacy, research, education and services that enhance opportunities for retail success, and increase awareness of retail's contribution to the communities and customers it serves.

Prince Edward Island Overview

The retail sector is a vital contributor to Prince Edward Island's economy. At September 30, 2009 retail sales on PEI were almost \$1.3 billion for the year – a decline of only 1.5% compared to 2008 (and compared to -4.8% for Canada), despite the severe global economic downturn experienced in 2009.

There are approximately 989 retail establishments in PEI, directly employing more than 9,700 Islanders, making the retail industry PEI's second largest employer. The contributions made by this economic sector are felt in every corner of the province and affect the daily lives of all residents.

Gift Cards and PEI's Proposed Gift Cards Act

Consumer demand has driven the popularity of gift cards and for retailers the needs of consumers will always win-out. RCC and its members recognize that some consumers have concerns about expiration dates on gift cards. That is why RCC has worked with provincial governments to eliminate expiration dates on gift cards *that are purchased by consumers* in a way that is fair and responsible.

Gift cards are one of the fastest growing products in the marketplace today. Most large retailers offer gift cards, and in response to consumer demand and new gift card management technologies, many small and mid-sized retailers are beginning to offer cards as well. Gift cards offer security, convenience and choice to the consumer and these things will continue to drive gift card sales and innovations. RCC's recommendations for the development of gift card legislation focus on maintaining opportunities for innovation and flexibility for retailers, while addressing the needs of consumers.

Expiry Dates

RCC and our members strongly suggest that certain cards be exempted from this part of the legislation and regulations. PEI's regulations should deal only with gift cards purchased by consumers. That is, other transactions that may cause a gift card to be exchanged, including but not limited to:

- cards that were given away as a promotion;
- cards that were given for customer relations/customer service purposes;
- cards that were donated to charities as prizes or to be auctioned;
- cards purchased in bulk at a discount by a company or organization;
- cards given to a customer in lieu of a return without a receipt; and
- any other situation in which a customer did not make payment in full in return for the gift card,

should be allowed to have expiry dates.

PEI's regulations cover most but not all of the above-noted exemptions. We would urge you to consider expanding the draft regulations to cover all of the above.

Gift cards that are for the purchase of specific goods or services such as "experience cards" should be allowed to have expiry dates, as the value of these products and services can and do change over time. We are very pleased to see this reflected in PEI's draft regulations and would strongly urge the Government to maintain this exemption.

Fees

There is a great diversity of practice in the retail marketplace with respect to service fees. While most retailers do not currently levy a service charge on top of the card's face value at the time of purchase, some do levy service fees primarily to recoup some of the costs associated with them.

While RCC agrees that consumers should get full value for their purchase, restricting when and how retailers may charge consumers to replace or customize gift cards may prevent future innovations in gift card use. Consumers should be made fully aware of any fees or restrictions at the time of the purchase so that they will have the ability to decide if the gift card is the right purchase for them. Two years ago, no one would have thought of customizing a gift card with the recipient's picture. Now this is great way to customize a gift card, and retailers should have the ability to charge for this type of service. To deter or prevent this type of innovation through regulation would ultimately result in a loss for the consumer and RCC is very pleased to see a clause allowing for fees for replacing a lost or stolen gift card or to customize a gift card.

Finally, it is RCC's position that Gift Card regulations should not differentiate where or from whom the customer purchases a gift card. RCC is concerned with any measure taken in the regulations that may create an uneven playing field between businesses that sell gift cards to consumers. RCC suggests that PEI avoid this situation by taking an approach similar to that adopted by Nova Scotia, where the rules – in particular, rules related to fees – apply to all gift card issuers equally.

Disclosure of Information

RCC strongly supports the approach taken by PEI in the draft legislation and regulations, whereby the information to be disclosed to the consumer is specified, but the mechanism for the disclosure is left to the determination of the retailer.

Most retailers clearly disclose the terms and conditions of the gift card to the purchaser directly on the gift card. However, due to the abundance of information that is communicated, it is sometimes a challenge to fit all relevant terms and conditions on the card itself. For example, in addition to information regarding permitted expiration dates and service fees, if applicable, many retailers include information regarding where the card can be used and for what purposes, how to access the retailer's customer service personnel, and what the consumer should do if the card is lost or stolen.

Other retailers include bar codes and foreign currency conversions, in the case of global companies. These space considerations are exacerbated by the fact that terms and conditions are communicated in both official languages. In cases where space does not permit the information to be communicated to consumers directly on the card, some retailers disclose the terms and conditions on the accompanying sleeve and/or on the sales receipt.

RCC agrees that information regarding any fees and restrictions on gift cards should be made available to consumers before the card is purchased or used. However, RCC members strongly recommend that the regulations do not specify where and how this is done, nor should they specify such factors as the format and font size of the information. This should be left to the individual retailer in order to recognize unique and different card and certificate designs, formats, and layouts, as well as the wide variety of store designs in the marketplace. The requirement to inform consumers should be considered met if the information is clear, comprehensible, and prominently displayed to the customer.

Implementation

RCC urges PEI to consider a three to six month timeframe for implementation of its Act and regulations. While many large multi-province retailers have already eliminated expiry dates due to legislation in other provinces, rushing implementation would hurt small, independent retailers on PEI who have not been required to adapt their practices in other

provinces. Smaller, local retailers will require more lead time to become aware of the new law and to make the appropriate changes to their gift card/certificate and accounting systems.

RCC would also like to assist the Government of PEI in helping to educate retailers in the province about what the new rules are and when they take effect. Retailers and customers alike would be best served if the Government of PEI gives ample advance warning to RCC and its members in the province about when the new regulations will take effect.

With respect to transition rules, most other provinces' regulations required that all cards sold on or after the implementation date of their regulations must be in compliance. If retailers had existing stock of gift cards with expiry dates on them, they could still be sold to the consumer after the implementation date, as long as there was disclosure to the consumer that the expiration date is null and void. RCC recommends that PEI incorporate the same transition rules as well.

We look forward to working with PEI's Office of the Attorney General – Consumer, Corporate & Insurance Division to ensure that Island retailers are equipped to implement the new regulations without any disruption in service to the consumer or their business. We would also be very pleased to assist with communication to our member retailers regarding new regulations.

Respectfully submitted,



Christine James
Director, Government Relations (Atlantic)

Cc: Diane J. Brisebois, President & CEO, Retail Council of Canada
Ruth Thorkelson, Senior Vice-President, Public Affairs, Retail Council of Canada
RCC Members on Prince Edward Island