

CUSTOMER LOYALTY PROGRAMS: ARE RULES NEEDED?



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Executive Summary

The current relationship between Canadian consumers and their loyalty programs is one of imbalance. There is no doubt there is an exchange occurring, with both sides receiving something of value. However, the difference in value between what is being received by the consumer and the information collected by loyalty program providers is so vast, it is worth investigation and further scrutiny.

Loyalty programs exist as a tactic of retailers to attract new customers, retaining existing ones, and prompt existing customers to increase their spending. The collection of consumer's purchasing data is the ultimate prize for customer loyalty program providers, and it is the catalyst from which all other elements related to loyalty brand marketing flow. The effective collection and analysis of consumers purchasing data has a direct correlation to increased profits for Canadian retailers, as well as greater consumer satisfaction. The amount of information gathered about consumers enrolled in loyalty programs is constantly growing, and one industry observer indicated the amount of customer information collected doubles every 18 months.

One of the most popular vehicles loyalty programs have used in order retain their members, as well as getting them to spend more, is the use of loyalty program-branded credit cards. A loyalty program associated with a credit card is the primary factor that makes a card a consumer's preferred choice, and loyalty program-associated credit cards are a significant revenue generator for Canada's banking institutions.

From the consumer perspective, the goal of participating in a customer loyalty program is to redeem reward currency in order to receive maximum value for the information they choose to share. To ascertain what is being received by the consumer in the value exchange between loyalty programs and their members, the monetary rewards benchmark of 2% used by Union des consommateurs in its 2005 loyalty study was applied to selected loyalty program cards, no-fee loyalty program-associated credit cards, as well as loyalty program-associated credit cards with an annual fee. It was found that a 2% return was only routinely surpassed when a credit card with an annual fee was used by consumers.

In terms of reward redemptions, most Canadian consumers prefer cash-back rewards and note the convenience of automatic redemption versus having to apply to redeem their loyalty points or dollars. Consumers also have an interest in obtaining so-called "soft benefits" for their loyalty, such as special access to airport lounges, expedited hotel check-in, as well as being made aware of specifically targeted promotions in advance of the general public.

Canadians still value their privacy. Canadian consumers want to know what data is being collected about them, and wish to provide their permission before retailers operating loyalty programs commence tracking them either online or by physical location. Moreover, consumers are concerned loyalty program providers are sharing member information with third parties.

The evolution of social media use in Canada has presented further opportunity for loyalty program providers to expand their influence over Canadian consumers. Consumers and their loyalty programs can now interact with each other in a timely fashion that was not possible, from a practical perspective, only a few years ago. Consumers now have new opportunities to access each other and company representatives through participation in social media networks. Loyalty programs can bring customers special discounts and notifications, while consumers engage in increased interaction, sharing product reviews and purchase experiences. Moreover, product and service providers can now actively monitor what customers have to say about their offerings, and engage directly with individual consumers, in an effort to resolve issues introduced on social media platforms.

For the loyalty program provider, social media represents another forum where it can retain the customer, generate more revenue from them, give them a space where members can share their views and encourage them to become brand advocates. Brand advocates are consumers who use social media platforms to share their passion and provide input into the initiatives of the loyalty program of their choice, while influencing other consumers to purchase similar products. These consumers are liable to fully engage in a loyalty program and are more inclined to redeem loyalty currency for rewards, spend more, while encouraging their friends and family members to join them in participating in their loyalty program experience.

The opportunity that social media presents is doubly important since this interaction can now occur while a customer is in a retail location through the use of their wireless device. While social media networks and the introduction of wireless devices open the doors to new types of customer experiences, these developments have not come about in the absence of consumer concerns. Some practices remain questionable to some consumers, and the ongoing challenge for loyalty program providers is to apply a balanced approach so consumers feel the services being offered to them remain “cool and neat” and not “creepy and weird.” From a mobile device application perspective, if consumers are not provided the opportunity to decide for themselves who they want to hear from, how they want to hear from them and when they want to hear from them, they will likely just tune out.

However, despite the presence of loyalty programs in Canada, there is no specific consumer protection regulation of these programs. There are a series of laws or legal principles that can potentially apply to loyalty programs, such as contract law and consumer protection legislation, but there is uncertainty around the applicability of these laws to loyalty programs. While loyalty programs must comply with privacy laws, such as the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the federal Privacy Commissioner has limited ability to bring corporate practices into compliance. While there are currently no laws in Canada that directly regulate loyalty programs as a financial service or a financial product, some discussions suggest loyalty program rewards could be recognized as having monetary-like value. After reviewing the evidence, we hold the view that the federal government should consider defining loyalty currency as a form of non-cash payment, with the intention of having “loyalty currency” enjoy protections similar to other forms of payment under the payments system in Canada.

There are a series of consumer irritants regarding the operation of loyalty programs in Canada, with issues relating to loyalty currency devaluation and expiry being the most significant. Consumers have noted the development of an “open-loyalty economy” of points sharing, pooling and universal redemption to exchange loyalty currency in a similar manner as actual currencies. To loyalty program administrators, however, outstanding loyalty currency represents an accounting liability as well as a missed opportunity. Loyalty program members who experience positive loyalty currency redemptions are more likely to become coveted “brand advocates” loyalty program providers seek. Loyalty program providers often devalue and expire loyalty currency in an effort to control their level of risk. Due to these tactics, the marketplace regarding redemption and expiry of loyalty currency is imbalanced in favor of loyalty program providers. As a result, consumers are faced with the prospect of receiving diminishing returns in exchange for their personal information and shopping preferences. Thus, practices relating to the distribution, expiration or redemption of loyalty currency is an area where consumers should welcome additional scrutiny by federal and provincial policy makers.

Presently, loyalty program providers have the right to change their terms and conditions of their reward program, largely without notice. This places consumers at a great disadvantage, since many have spent years investing in their loyalty programs of choice. In order to protect that investment, and serve as a counter balance to the overwhelming control exerted by loyalty program providers, it may be necessary to incorporate an industry-wide guideline to ensure consumers are given fair notice before any changes to program terms and conditions are undertaken by loyalty program providers. Industry-wide guidelines would also be beneficial to consumers regarding

the transfer of loyalty program currency from one member to another, as well as the bequeathing of loyalty currency.

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1.0 Introduction

From the humble beginnings of issuing Canadian Tire money in 1958, customer loyalty programs have evolved into a daily fact of life for Canadian consumers. Rarely a day goes by where consumers are not asked if they are a member of one of the myriad of customer loyalty programs offered by Canadian retailers. In fact, in 2012, the average Canadian consumer was a member of at least 6 customer loyalty programs, while 92% were a member of at least one program.¹ In short, the operation of customer loyalty programs, structured marketing efforts that reward and encourage loyal buying behavior, is a big business in Canada. The Canadian Imperial Bank of Commerce (CIBC) Aeroplan Visa cards, which is just one credit card program associated with one loyalty program operating in Canada, is responsible for more than 10 percent of CIBC's profits.² From April 2012 to April 2013, CIBC reported \$3.37 Billion in profit, suggesting over \$300 Million in loyalty card profit.³

While popular and pervasive, should Canadians, who collectively hold over 120 million loyalty program memberships, have any reason to be concerned with the operation of customer loyalty programs?⁴ Are there current practices of customer loyalty plans that require study to determine if they are harmful to the overall consumer experience? What does the future hold for consumers as they continue to participate in this economic exchange with their favorite retailers, preferred banks and loyalty card providers?

In 2005, in its study [*Marketing de fidélisation*](#), the Union des consommateurs (UC) examined the value proposition of participating in such programs from the standpoint of the consumer. The study canvassed issues such as privacy and gathering consumer information, as well as dissemination of commercial messages, size of benefits and the potential compromising effects on customers who paid in cash or lacked credit. This investigation reviews some of the issues raised by UC, and provides as well an analysis and response to issues that were raised by consumers during a series of recent focus group sessions concerning the current operation of customer loyalty programs in Canada.

¹ Maritz Canada Inc., *Successful loyalty programs influence spending; increased competition drives programs to offer more than reward points, according to Maritz Research annual loyalty survey*, News Release, February 27, 2012.

² Greenwood, John, "Royal, TD, CIBC Kick out stellar profits," *Financial Post*, August 29, 2013, and CIBC, *Report to Shareholders, Third Quarter 2013*, August 29, 2013, p. 11. A similar estimated can be found at Reuters, *TD Bank seeks to replace CIBC as Aeroplan credit card partner*, June 27, 2013. Last accessed on July 3, 2013, at <http://www.cybermarque.com/print-news/news-id-7378?counthit=no>

³ CIBC, *Report to Shareholders Second Quarter 2013*, May 30, 2013, p. 4, CIBC, *Report to Shareholders, Third Quarter 2013*, August 29, 2013, p. 4.

⁴ Colloquy, *The Billion Member March: the 2011 Colloquy Loyalty Census*, April 2011, p. 11.

This study also addresses the role of customer loyalty programs in the market, and provides an analysis of the goals retailers hope to achieve by offering loyalty programs. It also reveals the loyalty reward redemption preferences of consumers, as well as the strong association between consumers and the use of loyalty program-associated credit cards.

As in the UC study, this investigation reviews the privacy concerns regarding loyalty programs that are held by consumers. In this instance, the evolution of social media channels creates a new set of circumstances from which to evaluate privacy concerns. The use of social media in promoting brands and loyalty programs is growing exponentially. This study investigates why social media applications have become so important to both loyalty program providers and consumers. Closely related to the advent of social media is the growth in prominence of internet-capable wireless devices that is also beginning to have a substantial effect on the operation of loyalty programs in Canada.

This study undertakes to determine how the operation of customer loyalty programs affects markets in Canada and to reveal the powerful value of the data that Canadian retailers collect from their loyalty program members. This review outlines what legal constraints there are on Canadian loyalty program operators, whether they are found under contract law, privacy law, consumer protection legislation or through alternative laws and regulations, such as payment system regulation.

Finally this analysis seeks to respond to the question of whether there are perceived market failures relating to the operation of customer loyalty programs in Canada. Issues to be reviewed in this section include the power of loyalty program providers to change terms and conditions of loyalty programs, as well as challenges relating to the redemption of loyalty reward points or currency. Recent decisions regarding the devaluation and expiry of reward currency are explored in detail. This study, examines whether consumers receive an adequate return in exchange for their personal information and shopping preferences that are collected by loyalty program providers. To the extent they do not, it examines what recourses are available to them and to policymakers in an attempt to protect the interests of consumers.

1.1 Methodology

This review of the Canadian consumer experience with customer loyalty programs was conducted by employing numerous research methods. PIAC distributed questionnaires and interviewed industry and regulatory stakeholders to ascertain a better understanding of the operation of customer loyalty programs. In addition, PIAC identified a number of popular customer loyalty programs operating in Canada, and conducted a thorough review of their terms and conditions, as well as their promotional materials. PIAC also conducted legal research to identify relevant laws in Canada and in other jurisdictions that apply to the operation of loyalty programs, and to identify any legal reforms that would affect the operations of customer loyalty programs in Canada since 2005. Moreover, PIAC conducted primary research to examine the consumer experience with customer loyalty programs through the use of four focus groups conducted by Environics Research Group in Toronto and Ottawa during November 2012. The transcripts of these focus groups in their entirety are appended in Appendix A. A summary of these meetings is provided in Appendix B.

2.0 What is the role of loyalty programs in the market?

A customer loyalty program is a marketing tactic employed by retailers to entice consumers, through rewards, into loyal buying behavior and the provision of their purchasing preferences in order to increase profits. The collection and analysis of this information, by assigning a unique identifier, such as a numerical ID or membership card to each program member, is invaluable to retailers for numerous reasons. Some of these include:

- Keep customers from defecting
- Prompt customers to make additional purchases
- Yield insight into customer behavior and preferences
- Yield insight into the effectiveness of a business's marketing efforts
- Facilitate business communication with customers
- To enable a business to provide special, differentiated service to best customers
- Provide cross-branding recognition, collective advertising and cross-business promotions
- Attract new customers⁵

For consumers, loyalty programs present an opportunity to obtain products and services, either for free or at a discounted rate, as well as take advantage of occasional exclusive offers by those retailers they patronize. However, the question remains, do the operation of customer loyalty programs serve consumer needs or accomplish the merchant's purposes.

Keep customers from defecting

On this score, it is clear that the offering of a customer loyalty program, to a large degree, plays a role in compelling consumers to stay loyal to those retailers where they shop. According to Maritz Canada, a leading authority on customer loyalty marketing, over 60% of more than 6500 Canadian consumers surveyed in 2011 and 2012 felt customer loyalty programs make them more likely to continue doing business with certain companies.⁶ Focus groups held with Canadian consumers yielded similar results. They expressed the opinion that all things being equal, they will shop at a store that allowed them the opportunity to contribute towards a customer loyalty program reward:

⁵PR Loyalty Marketing Solutions, *Reasons for Loyalty Programs*, January 12, 2012. Last accessed February 27, 2013, at <http://prloyaltymarketing.com/reasons-for-loyalty-programs-what-they-can-do/>

⁶Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, 2011, p. 2, and Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 27, 2012, p. 2. Actual figures were 61% of those surveyed in 2011, and 62% in 2012.

“I think the word I’m looking for is conditioning. I’m just conditioned, over the years, to go to Petro Canada. And now it’s like ... even if I lost my points card or they stopped it, there would probably be something in me that subconsciously.”⁷

For those retailers’ not offering customer loyalty programs, these statistics provide a powerful incentive to engage in the practice. For retailers that offer these programs, it serves as a perpetual reminder to constantly review and improve their loyalty program.

Prompt customers to make additional purchases

Focus group analysis revealed that some participants believe their participation in a customer loyalty program causes them to spend more at a retailer than they would otherwise.⁸ Their participation is an incentive to visit a retailer, and upon arrival, consumers routinely purchase products they would typically buy elsewhere or be upsold. The existence of special offers that require customers to purchase more of a product than they typically would in order to obtain a loyalty program reward was found to be a persuasive motivator.⁹ The views expressed in the focus groups are reinforced by the finding of U.K.-based Uber-UK that 93% of consumers say they would be likely to spend more if a company has a great loyalty program.¹⁰ Even as far back as 1999, industry studies indicated that consumer spending is 46% higher with companies that offer loyalty programs.¹¹

Yield insight into customer behavior and preferences

The collection of consumer’s purchasing data is the golden goose of customer loyalty programs for retailers. It is the catalyst from which all other elements related to loyalty brand marketing flow. It can be argued the effective collection and analysis of this information has a direct correlation to increased profits for Canadian retailers, as well as greater consumer satisfaction. For instance, in 2012, 35% of Canadian consumers surveyed admitted they will actually go out of their way to patronize a retailer where they are a member of the retailer’s customer loyalty program.¹² Moreover, almost half will

⁷Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 28.

⁸Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 12 and p. 32. Loyalty Program Focus Group Transcript, November 19, 2012, 8:00 p.m., p. 17-18.

⁹Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 12 and p. 32.

¹⁰*The Wise Marketer*, Consumers spend more for ‘valuable rewards,’ August 11, 2011. Last accessed February 28, 2013, at <http://www.customerinsightgroup.com/loyaltyblog/consumers-spend-more-for-valuable-rewards>. Also found in Maritz Canada Inc., *Maritz White Paper: What Every Business Needs to Know About True Loyalty*, 2012, p. 8. Specific Canadian figures were not available.

¹¹Total Research Corp. and Custom Marketing Corp., *Loyalty Monitor Study*, 1999.

¹²Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 2.

modify when and where they buy items to maximize their loyalty rewards.¹³ The feedback from focus groups generally supported these findings, although a number of participants noted the importance of price as the determining factor of where they shop.¹⁴ The amount of information gathered about consumers enrolled in loyalty programs is constantly growing, and one industry observer indicated the amount of customer information collected doubles every 18 months.¹⁵

One of the elements closely watched by customer loyalty program providers is the reward preferences of their memberships. One customer loyalty program executive noted that program administrators are constantly obtaining feedback from their members as well as exploring and identifying open segments in the market where new reward partners can offer additional rewards-building services to their customers.¹⁶ The manner in which loyalty programs points are redeemed is also measured. This is important to retailers, since any outstanding reward points are considered a potential liability in accounting terms. Focus group participants found that loyalty programs differ considerably in terms of the rewards they offer; however, they expressed a preference for those with the following features:

- automatic or on-the-spot points redemption (rather than having to apply to redeem points);
- a variety of rewards to choose from; and,
- a wide variety of stores where they can accumulate points.¹⁷

The findings of a larger study conducted in 2011 by Maritz Canada appear to support the preference for on-the-spot redemption of loyalty program rewards expressed by focus group participants. In 2011, 6 in 10 Canadians liked to redeem rewards at the cash register, while 42% of members preferred to get cash back for their purchases.¹⁸ However, in a similar study conducted in 2012, 57% of respondents in customer loyalty programs said they banked points to redeem them for “bigger-ticket items.”¹⁹ It is easy to see then, the redemption preferences of Canadian consumers are varied – some prefer instant gratification, others choose to accumulate their reward points for an opportunity to experience a luxury, while still others surely represent a blend of these perspectives.

¹³Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 2. Actual figure is 47%. In 2011, this figure was 42% according to Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, 2011, p. 2.

¹⁴ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 34-35, and Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 27-28.

¹⁵Robinson, Scott, Maritz Canada Inc., Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

¹⁶Personal Interview Marc Goodman, *Suncor*, February 20, 2013.

¹⁷Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 21, 37 and 48, and Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 23.

¹⁸Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, 2011, p. 3.

¹⁹Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 4.

Focus group participants acknowledged that their purchasing behaviour is being potentially tracked and used for market research purposes, to determine how best to target products.²⁰ The participants, for the most part, trust the companies to use this information in good faith.²¹ Two focus group participants described the data collection process as follows:

“Your name and what you buy and demographic trends, whatever you buy at any store and they swipe it, there are people just sitting analyzing your shopping habits and all that stuff.”²²

“I guess they would do the same thing as the Gmail with Facebook nowadays. They’ll probably be able to check certain patterns and they’ll be able to target you for other stuff that you would be interested in. I think that’s a possibility.”²³

Yield insight into the effectiveness of a business’s marketing efforts

For a retailer, an important product of providing a customer loyalty program is the feedback they receive from their members on their current and previous marketing tactics. Customer purchasing analysis can be irreplaceable in the evaluation of specific promotions – determining which consumers buy which items and at what price point. Did they respond to targeted marketing, or a general promotion? What is the most effective way to generate their next purchase? These are just a few of the questions an analysis of purchasing behaviour can uncover.

As an indication of the effectiveness of a retailer’s loyalty program marketing, focus group participants noted that one the perceived benefits of loyalty program participation was advanced notice of upcoming promotions.²⁴

²⁰Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 42-46, Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 35-37 and Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 50.

²¹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 59, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 35.

²² Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 35.

²³ Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 35.

²⁴Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 31-32, and Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 39-41.

Facilitate business communication with customers

A customer loyalty program industry stakeholder recently posed the argument that past battles for consumer engagement were fought on the strength of discounts, rewards and offers, while future battles will rely more heavily on the strength of communication between retailer and consumer.²⁵ In fact, the observer notes that “when everything works, consumers tell us they look forward to and anticipate receiving communications with a brand.”²⁶ This claim is buttressed by the fact that 89% of loyalty program members surveyed want to receive communications from the programs they are enrolled in, while only 14% expressed the view they were being over-saturated with messaging.

Focus group participants appear to share this sentiment, since they noted an increase in the volume of promotions and advertisements they received after joining a loyalty program. In general terms, they concluded these advertisements were useful.²⁷ Both the focus groups and a 2012 survey revealed that improvements could be made in the efforts of customer loyalty programs to communicate with their members since only 42% felt loyalty programs did a good job of communicating with them.²⁸

According to Maritz Canada Inc., e-mail remains the communication channel of preference for loyalty program members, and it can be argued that a social media presence is becoming an increasingly important driver for company sales. According to a recent joint research project between LoyaltyOne, Northwestern University and The University of Western Ontario, AIR MILES Collectors who participated in social media events and promotions increased their purchases from AIR MILES program partners by 15-30% over non-participants between 2009 and 2011.²⁹

While a social media presence for existing customer loyalty programs is becoming increasingly important, focus group participants generally noted that the use of online loyalty programs remains a bit of a novelty at this time.³⁰

²⁵ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 5.

²⁶ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 5.

²⁷ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 60-61.

²⁸ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 5.

²⁹ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 5, and LoyaltyOne, Medill IMC Spiegel Digital and Database Research Initiative at Northwestern University and The University of Western Ontario's Ivey School of Business, *2012 LoyaltyOne Social Media Transaction Impact Study*, October 25, 2012.

³⁰ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 90-93.

To enable a business to provide special, differentiated service to best customers

“I’ll be interested, if you’ll be interesting.”³¹

-Karl Bonar, Sr. iMarketing
Manager, Coca Cola

Accenture, a global management consulting company, produced a report in 2011 confirming that companies can increase customer retention, reduce support cost, and grow their customer base by providing a differentiated service experience that incorporates consumer control and choice.³² They contend that successful companies will move away from one-size fits all support models opting instead for treatments that align more closely to customer value.³³

The operation of successful loyalty programs is an essential tactic in the deployment of this strategy, since over 6 in 10 customer loyalty programs participants state their participation in the program makes them more likely to continue doing business with the company.³⁴ Armed with increasing amounts of consumer purchase data, companies have developed methods to provide special, differentiated service to their loyalty program members. These methods include offers of personalized discounts and offers, usually distributed by email. At a February 2013 Loyalty conference hosted by the Canadian Marketing Association, it was revealed that 58% of participants surveyed welcomed messages containing personalized discounts based on past purchases, while 49% welcomes similar messages containing specialized offers.³⁵ Meanwhile, Accenture found that 82% of all consumers appreciate a company that allows them to customize the products and services they receive based on their personal preferences and situation.³⁶ Focus group analysis revealed that some loyalty programs provide special, differentiated service to best customers through the use of the access-restricted airport lounge after a certain level of points are accumulated over a year, or access to sales

³¹ Bonar, Karl, *Digital Loyalty – Past, Present and Future*, Canadian Marketing Association Conference Presentation, February 14, 2013.

³² Accenture, *Building a Differentiated Service Experience Strategy*, 2011, Page 1. Accessed March 17, 2013 at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Building-Differentiated-Service-Experience-Strategy.pdf>

³³ Accenture, *Building a Differentiated Service Experience Strategy*, 2011, Page 1. Accessed March 17, 2013 at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Building-Differentiated-Service-Experience-Strategy.pdf>

³⁴ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 2.

³⁵ Robinson, Scott, Maritz Canada Inc., Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

³⁶ Accenture, *Building a Differentiated Service Experience Strategy*, 2011, Page 10. Accessed March 17, 2013 at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Building-Differentiated-Service-Experience-Strategy.pdf>

before or separate from the general public, or by simply distributing thank you cards.³⁷ As an example, Shoppers Drug Mart, as part of its Optimum rewards program, now has a Very Important Baby program for new and expectant mothers. Identified members receive targeted newsletters with information and advice in areas such as health and nutrition.³⁸

On the other hand, the Accenture study mentioned above revealed that almost two-thirds of consumers surveyed said they have taken their business somewhere else in 2010-2011 at least once due to poor customer service.³⁹ Customer service ranked higher than price, product or a company's reputation. Focus group analysis appears to confirm that any marketing provided through a customer loyalty program offered by retailers is insufficient if the store does not deliver to expectations with its products or service:

"I still go into a department store and want to be treated loyally. The loyalty card is secondary, but I want to be treated with good customer service when I go into the store. Yes, the card, but the card, I'm prepared to chuck it in the garbage if they treat me wrongly."⁴⁰

Provide cross-branding recognition, collective advertising and cross-business promotions

A number of customer loyalty programs operating in Canada have evolved into entities providing cross-brand solutions for retailers. Some occasions involve a little-known company taking an opportunity to capitalize on the brand recognition of other higher profile companies through affiliation with a common loyalty program.⁴¹ Other prime examples are partnerships in which grocery stores across the country have teamed with gasoline retailers to offer consumers fuel discounts. These types of partnerships are a logical extension for two brands that share a similar core audience.⁴²

³⁷Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 38-40, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 31-32, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 28-29.

³⁸ Androich, Alicia, and Kristin Laird, *Secrets of Canada's Top loyalty Programs*, April 7, 2011, p. 2. Accessed April 3, 2013 at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

³⁹Accenture, *Building a Differentiated Service Experience Strategy*, 2011, Page 2. Accessed March 17, 2013 at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Building-Differentiated-Service-Experience-Strategy.pdf>

⁴⁰Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 30.

⁴¹PR Loyalty Marketing Solutions, *Reasons for Loyalty Programs*, January 12, 2012. Last accessed March 21, 2013, at <http://prloyaltymarketing.com/reasons-for-loyalty-programs-what-they-can-do/>

⁴²Vivian, Nick, *What Crossover Rewards means for the future of loyalty programs*, February 23, 2013. Last Accessed March 21, 2013 at <http://www.tnooz.com/2013/02/22/news/what-crossover-rewards-means-for-the-future-of-loyalty-programs/#V7R0efbomrjykJ3M.99>

Evidence obtained during focus groups note that a number of participants expressed a preference for loyalty programs offering a variety of rewards to choose from, with the AIR MILES program being most often associated with this attribute.⁴³ A customer loyalty program of this nature is often referred to as a coalition loyalty program. In Canada, the UK, Germany and elsewhere, coalition loyalty programs are very popular, since multiple companies reward customers for spending with businesses within the coalition.⁴⁴ Participating consumers carry one loyalty card to earn points for their grocery, travel, retail and credit card transactions, making earning and redemption easier and faster on everyday purchases.⁴⁵

Another set of popular cross branding and collective advertising tactics employed by customer loyalty programs in Canada are the joint ventures between credit card issuers (i.e. financial institutions), payment vehicle (i.e. Visa, MasterCard, AMEX) and loyalty programs. Debit cards also exist in a similar manner; however, they are not nearly as popular in Canada in comparison to other jurisdictions.⁴⁶ Each major financial institution in Canada offers a number of these co-branded credit card products, covering a variety of popular customer loyalty programs. In fact, in the travel-related segment alone, there are over 70 travel reward credit cards available to Canadians.⁴⁷

As an indicator of the popularity of the credit card-loyalty program association, industry commentators note that a reward program associated with a credit card is the primary factor that makes a card their preferred choice, even more than wide acceptance and interest rates.⁴⁸ Further, even when speaking of established credit card accounts, 31% said they would switch credit cards if it wasn't for their loyalty program.⁴⁹ As a result, a clear picture emerges that Canadian consumers hold their loyalty program-affiliated credit cards in high regard.

⁴³Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 15-16, and Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 22.

⁴⁴Vivian, Nick, *What Crossover Rewards means for the future of loyalty programs*, February 23, 2013. Last Accessed March 21, 2013 at <http://www.tnooz.com/2013/02/22/news/what-crossover-rewards-means-for-the-future-of-loyalty-programs/#V7R0efbomrjykJ3M.99>

⁴⁵ Vivian, Nick, *What Crossover Rewards means for the future of loyalty programs*, February 23, 2013. Last Accessed March 21, 2013 at <http://www.tnooz.com/2013/02/22/news/what-crossover-rewards-means-for-the-future-of-loyalty-programs/#V7R0efbomrjykJ3M.99>

⁴⁶ For a possible explanation why debit card-loyalty program associations are not as popular in Canada, see Marr, Gary, "Debit Cards lack the Lure of Loyalty," *Financial Post*, April 13, 2011. Last accessed March 25, 2013, at <http://www.financialpost.com/personal-finance/Debit+cards+lack+lure+loyalty/4609919/story.html>

⁴⁷ Rewards Canada, *Canada's Top Travel Rewards Credit Cards for 2012*, June 26, 2012. Last accessed on March 26, 2013, at <http://www.rewardscanada.ca/topcc2012/>

⁴⁸ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 3.

⁴⁹ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 3.

Attract new customers

This seems like an obvious reason to create a customer loyalty program. However, given the evidence provided earlier in this section, that:

- over 60% of Canadian consumers surveyed in 2011 and 2012 felt customer loyalty programs make them more likely to continue doing business with certain companies;
- that they tend to spend more than they would otherwise; and,
- that they will actually go out of their way to patronize a retailer due to membership in a customer loyalty program.

Maritz Canada summarized, “the really good programs not only increase our spend, but deepen the relationships we have with these companies and brands.”⁵⁰ Armed with this evidence, it becomes easy to conclude that attracting new customers is a key goal of any customer loyalty program administrator. As a common rule of thumb, before the advent of social media, it used to be that a customer told eight people of a good customer experience and 22 people of a bad one.⁵¹ In addition, focus groups participants noted that on occasions where they felt loyalty programs were offering value, they were likely to recommend the program to friends or family members.⁵² Unlike never before, consumers are connecting with friends, reading reviews and comparison shopping. This recent shift in empowerment from the company to the consumer results in the old adage “word of mouth is your best advertising” having never been truer than it is today.⁵³

Alternatively, nearly 70% of Canadian loyalty program members have lost interest in participating in at least one of the loyalty programs they belong to.⁵⁴ The Hudson’s Bay Company’s HBC Rewards program offers a cautionary tale in this regard. At its peak, the HBC Rewards program had about 9 million members; however, when the company announced an overhaul to its program in early 2013, membership had fallen to 4.6 million participants.⁵⁵

When it comes to Canadian consumers aged 19 to 29, loyalty marketers know that once they have a consumer as a member, that member is 78% more likely to choose one

⁵⁰ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, 2011, p. 4.

⁵¹ Accenture, *Building a Differentiated Service Experience Strategy*, 2011, Page 3. Accessed March 27, 2013 at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Building-Differentiated-Service-Experience-Strategy.pdf>

⁵² Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 23, Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 19 and Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 22.

⁵³ Maritz Canada Inc., *Maritz White Paper: What Every Business Needs to Know About True Loyalty*, 2012, p. 5.

⁵⁴ Androich, Alicia, and Kristin Laird, *Secrets of Canada’s Top loyalty Programs*, April 7, 2011, p. 2. Accessed April 3, 2013 at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

⁵⁵ Shaw, Hollie, ‘Hudson’s Bay revamps loyalty card program’, *Financial Post*, January 31, 2013.

brand over another based on the loyalty program they are enrolled in.⁵⁶ Moreover, there is evidence this segment of the population will tell more friends about their positive reward experiences, feel more loyal to a brand after earning a reward, and be more inclined to continue doing business with a brand after earning a reward.⁵⁷

3.0 What is being received by the consumer?

As noted earlier, loyalty programs present an opportunity for consumers to obtain products and services, either for free or at a discounted rate, as well as take advantage of occasional exclusive offers by those retailers they patronize. Incentives offered range from cash-back rewards to travel points to upgrades and discounts on flights, hotel rooms and rentals. This section addresses such questions as, are consumers generally satisfied with what is being offered as rewards for participating in customer loyalty programs? What are their preferences? How soon after joining a customer loyalty programs do consumers expect to be rewarded? Are there potential pitfalls to consumers for participating in customer loyalty programs?

In 2005, the Union des consommateurs (UC) analyzed 15 loyalty programs operating in Canada using the assumption that the monetary value of rewards should be at least 2% for customer loyalty program to be truly “rewarding.”⁵⁸ Under these conditions, a consumer would have to spend \$500 in order to obtain \$10 in rewards. The results revealed the majority of programs offered rewards that were well below the 2% minimum monetary value threshold.⁵⁹ In addition, the analysis found that the monetary value ratio did not increase proportionally to the increase in the value of a reward, and the “reward prices” of a prize, such as digital camera, could be higher than the regular sale prices of the same items.⁶⁰

For the purposes of comparison, we have taken a selected sample of the same programs selected by UC to determine if the base version of those programs selected meets the 2% rewards threshold cited in 2005. The results are posted in Figure 3-1.

⁵⁶ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 8.

⁵⁷ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 8.

⁵⁸ Union des consommateurs, Marketing de fidélisation: Qui récolte la meilleure récompense?, July,2005, p.29, from K. Johnson. 1999. "Making Loyalty programs more rewarding." *Direct Marketing*. 61.11. PP. 24-27.

⁵⁹ Union des consommateurs, Marketing de fidélisation: Qui récolte la meilleure récompense?, July,2005, p.33-41.

⁶⁰ Union des consommateurs, Marketing de fidélisation: Qui récolte la meilleure récompense?, July,2005, p.42.

Figure 3-1 Analysis of Selected Canadian Customer Loyalty Programs

Program	Cost/ Annual Fee	Accumulation of Points	Redemption Rate	Does it Pass the 2% Benefit Threshold?
HBC Rewards ⁶¹	\$0	Tier 1: 1 point for every \$1 spent for the first \$400. Tier 2: 1.5 points for every dollar you spend once you've spent over \$400 before taxes Tier 3: 2 points for every dollar you spend once you've spent over \$1,200	2,000 points = \$10	No
President's Choice Points ⁶²	\$0	5 points for every \$1 spent	20,000 points = \$20	No
Petro Canada Petro Points ⁶³	\$0	Various, from 20 points per \$1 spent to 5 points per litre of fuel purchased	40,000 points = \$25 gift card	No
Shoppers Drug Mart Optimum ⁶⁴	\$0	10 points for every \$1 spent	8,000 = \$10	No
AIR MILES	\$0	Various – Depends on the partner From 1 Miles for every \$5 spent to 1 Miles for every \$50 spent	95 miles = \$10	Depends (At 1 Mile earned for \$5 spent – yes.)
Esso Extra ⁶⁵	\$0	3 points for every eligible dollar you spend on Supreme grade gas 2 points for every eligible dollar you spend on Extra grade gas 1 point for every eligible dollar you spend on Regular grade gas.	1,800 points = \$10 free gas	No
Canadian Tire 'Money' Advantage program ⁶⁶	\$0	1 point for every \$1 spent	1000 points = \$10	No

⁶¹ Hudson's Bay Company, *About Hudson's Bay Rewards*. Last accessed April 8, 2013, at http://www.hbc.com/HBCREWARDS/program/default.asp?NAV=ABOUTREWARDS&SUBNAV=&NAVSEL=ABODEF1&TF=ABOUTREWARDS&PG=about&PAGE_NAME=about_Label&PAGE_LABEL=about_Label&langid=EN&catid=&imgthumb=False&MSCSProfile=61E4CECF7275066FD87B9817DA5865CBD929316CE1AF2D5C23F4FE8DE707C4550A50D5521549FF02A5093E1F1D206D27CF32BBE7599CB29238DEB72E5CCE754E379938EC1C5196676E170FCAA56305A2D5A0655A7E4D999D505FBBDF6FF3A9C2D3F3367628E08E3EC218A10442FD4D59F91039F4C46DE020674879379D5A5ABB2EAE63B47E918F03

⁶² President's Choice Financial, *President's Choice Points: Frequently Asked Questions*, last accessed April 8, 2013 at <http://www.pcfincial.ca/english/faqs/pc-points>

⁶³ Petro Canada, *Browse Petro Points Rewards*, last accessed July 18, 2013 at http://retail.petro-canada.ca/en/petropoints/163.aspx?range=20001_60000 and Petro Canada, *Petro Points terms and Conditions*, last accessed July 18, 2013 at <http://retail.petro-canada.ca/en/independent/636.aspx>

⁶⁴ Shoppers Drug Mart, *Shoppers Optimum Terms and Conditions*, last accessed July 18, 2013 at http://www1.shoppersdrugmart.ca/en/Optimum/terms_and_conditions.aspx

⁶⁵ Imperial Oil, *Esso Extra Frequently Asked Questions*, last accessed July 18, 2013 at <https://www.essoextra.com/pages/faq.aspx>

⁶⁶ Canadian Tire Corporation, *Collect: Canadian Tire Money Advantage*, last accessed July 18, 2013 at <http://www.moneyadvantage.com/AST/NavigationAssortments/Loyalty/Navigation/LoyaltyTopNavigation/BottomLinks/Collect.jsp>

A quick look at these programs reveals that none of them comes close to reaching a 2% reward return, unless you're strategic enough to be an AIR MILES collector who frequents those select retailers where you can collect one air mile for every \$5 spent.

While the programs listed in Figure 3-1 fail to provide a 2% reward return, it is curious to know, given Canadian consumers aforementioned affinity for using loyalty program affiliated credit cards, if these programs are comparatively more effective in providing rewards to consumers. Since a recent CIBC loyalty reward survey found 68% of Canadians have a credit card earning loyalty points, the perception that using these cards presents a value to consumers.⁶⁷ As further evidence of the impact of rewards programs, Canadians told Maritz Canada in 2011 that “rewards/points offered” is the second-most influential factor in the decision of which credit card to use, trailing only availability.⁶⁸ In December 2012, Veritas Investment Research and companies conducted an analysis of earning potential of a series of loyalty programs, including loyalty program affiliated credit cards, for the *Globe and Mail*. Figure 3-2 presents the results of that examination pertaining to loyalty program affiliated credit cards.

Figure 3-2 Analysis of Selected Canadian Customer Loyalty Program Affiliated Credit Cards with no Annual Fee⁶⁹

Program	Cost/Annual Fee	Redemption Rate
HBC Rewards MasterCard	\$0	1.25%
Canadian Tire Options MasterCard	\$0	1.20-1.36%
PC MasterCard Black	\$0.00	2.00%
PC MasterCard Silver	\$0.00	1.00%
Sears MasterCard	\$0.00	2.00%
Shoppers Optimum MasterCard	\$0.00	1.88-2.68%
Club Sobeyes MasterCard	\$0.00	1.38-1.6%
Wal-Mart Rewards MasterCard	\$0.00	1.25%

⁶⁷ 'Variety the spice of loyalty credit cards,' *Calgary Herald*, April 10, 2013. Last accessed April 17, 2013, at <http://www2.canada.com/calgaryherald/news/story.html?id=b5621dfd-b166-40be-ac77-651c4fd42cde>

⁶⁸ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, 2011, p. 2.

⁶⁹ Strauss, Marina, “What can you earn with the companies' reward programs?,” *Globe and Mail*, December 21, 2012. Last accessed April 12, 2013, at <http://www.theglobeandmail.com/globe-investor/what-can-you-earn-with-these-companies-reward-programs/article6649989/>

Figure 3-3 Analysis of Selected Canadian Customer Loyalty Program Affiliated Credit Cards with Annual Fees⁷⁰

Credit Card	Reward Type	Annual Fee	Typical Return (2010)	Typical Return (2013)
Capital One Aspire World MasterCard	Travel Points	\$120.00	1.92%	1.94%
RBC Avion Visa Infinite	Travel Points	\$120.00	1.66%	1.62%
CIBC Aerogold Visa Infinite	Airline Miles	\$120.00	2.60%	2.60%
American Express AeroplanPlus Gold	Airline Miles	\$120.00	2.74%	2.74%
MBNA Alaska Airlines MasterCard	Airline Miles	\$75.00	2.50%	2.50%
MBNA Rewards World Elite MasterCard	Travel Points	\$89.00	2.44%	1.64%
American Express AeroplanPlus Platinum	Airline Miles	\$499.00	1.50%	1.50%
BMO World Elite MasterCard	Travel Points	\$150.00	1.22%	1.40%
RBC WestJet World MasterCard	Travel Points	\$79.00	1.18%	1.10%
BMO Air Miles Gold/World MasterCard	Points	\$99.00	0.94%	1.20%
Scotiabank Scotiagold Passport Visa	Travel Points	\$110.00	0.56%	N/A
CIBC Aventura Visa Infinite	Travel Points	\$120.00	0.62%	0.62%
American Express Air Miles Platinum	Points	\$50.00 (2010) \$65.00 (2013)	1.13%	1.06%

In Figure 3-2 there are those cards that reach the 2% threshold, and in certain circumstances, the Shoppers Optimum MasterCard manages to exceed it. However, if the examples analyzed by Veritas Investment Research are any indication, then using a loyalty program affiliated credit card also does not generally present the consumer with an opportunity to enjoy more than a 2% return on their spending, unless they are prepared to pay an annual fee. Even in the face of limited returns, the fact remains that a reward program associated with a credit card is the primary factor that makes a card a consumers preferred choice, even more than wide acceptance and interest rates.⁷¹

There are a couple of additional items to keep in mind when discussing Canadians' use of loyalty program affiliated credit cards. For instance, Figure 3-3 reveals that a large number of these cards apply an annual fee to consumers that should be taken into account when determining their overall benefit. Therefore, if a consumer is paying \$100

⁷⁰ Stephen Weyman, "Best Credit Cards in Canada," August 6, 2010. Last accessed July 14, 2013, at <http://www.howtosavemoney.ca/Finances/CreditCards/BestCreditCardsInCanada#reward-return>. Typical return was based on annual spending of \$25,000, a reward flight costing \$700.00, and does not include one-time sign up bonuses. The figures under the column labeled "Typical Return (2013)" were compiled using the same method as the 2010 figures.

⁷¹ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 3.

a year to get one per cent cash back through participation in a loyalty program, for example, they will need to spend \$10,000 to get the annual fee back.⁷² In dollar figures, under the assumptions used to produce the figures in Figure 3-3, a 2% return on a loyalty program branded credit card represents \$500 per year, based on annual spending of \$25,000.

Although consumers may be paying the annual fee for a service the credit card provides that is unrelated to the loyalty program associated with it, such as car rental travel insurance or trip cancellation coverage, clearly a number of Canadians feel tethered to their loyalty affiliated credit cards. In the Union des consommateurs study, it was found that many merchants will push consumers to use their credit cards associated with a retailer (e.g. “Sears credit card”) by providing incentives such as double the reward points.⁷³ One of the concerns identified with these practices is the notion that generally consumers who use their credit cards to accumulate points will not pay off the whole balance when they receive their statements.⁷⁴ A study released in January, 2013 found that half of Canadians with credit card balances say they often or always carry a balance.⁷⁵ The interest applied to a monthly unpaid balance can easily wipe out any benefits provided to consumers by a loyalty program, which, from reviewing the data above, usually works out to around one to two per cent of the amount charged.⁷⁶

Regardless of whether they use their credit cards to participate in customer loyalty programs, the question remains, what do Canadians prefer to receive, in the form of rewards, from their participation in loyalty programs? In a survey conducted in February, 2013, 43% of Canadians prefer cashback rewards, while 28% prefer everyday rewards, such as gas, entertainment or gift cards, while 25% prefer air travel rewards.⁷⁷ A similar study released in January, 2013, revealed an even greater preference for cash back on gas and grocery purchases, with 61.5% of respondents preferring this type of reward, compared to 22% preferring frequent flyer or travel perks, while specialty rewards, such as retailer discounts and freebies, were the top choice of 14.3% of respondents.⁷⁸

⁷² Hembrey, John, Credit card reward programs carry risks, CBC News, April 2, 2013. Last accessed April 17, 2013 at <http://www.cbc.ca/news/business/story/2013/03/27/f-credit-card-reward-programs-benefits.html>

⁷³ Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 24.

⁷⁴ Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 25.

⁷⁵ Freeman, Sunny, “Credit Card Debt in Canada: 1 in 20 Fear They Will Never Pay Off Bills.” *Huffington Post*, January 14, 2013. Last accessed October 15, 2013, at http://www.huffingtonpost.ca/2013/01/14/credit-card-debt-canada-interest-rate_n_2468816.html

⁷⁶ Hembrey, John, Credit card reward programs carry risks, CBC News, April 2, 2013. Last accessed April 17, 2013 at <http://www.cbc.ca/news/business/story/2013/03/27/f-credit-card-reward-programs-benefits.html>

⁷⁷ “Variety the spice of loyalty credit cards,” *Calgary Herald*, April 10, 2013. Last accessed April 17, 2013, at <http://www2.canada.com/calgaryherald/news/story.html?id=b5621dfd-b166-40be-ac77-651c4fd42cde>

⁷⁸ Graham, Penelope, *It's Payback Time: Canadians Want Low Rates and High Rewards*, January 16, 2013. Last accessed April 18, 2013 at <http://www.walletpop.ca/blog/2013/01/16/it-s-payback-time-canadians-want-low-rates-and-high-rewards/>

Focus group participants also noted the convenience of automatic redemption versus having to apply to redeem points.⁷⁹ Shopper's Drug Mart and Petro Canada were retailers singled out by focus group participants for their ease of redemption.⁸⁰ Moreover, it was suggested that generally, some loyalty programs are better than others in terms of the value they offer. Focus group members noted an appreciation for those programs where they receive gift certificates by mail as a reward, such as Addition Elle.⁸¹ Moreover, it appeared that even if the value of rewards were small, if they were easily attainable, they were more welcome.⁸² Some participants also noted they appreciate loyalty programs where you didn't require a card at the point of purchase.⁸³

In addition to possibilities for the redemption of points, customer loyalty program members participating in focus groups also indicated their experience of being eligible for services such as special access to airport lounges, as well as being made aware of specifically targeted promotions, sometimes in advance of the general public.⁸⁴ One loyalty industry executive has noted that he would trade in all of his points for special treatment, or these so-called "soft benefits," such as lounge access, expedited hotel check-in or VIP tickets.⁸⁵

Younger consumers, aged 19 to 29, expressed a desire to be rewarded faster for their participation in customer reward programs when compared to other consumers. In fact, 68% of consumers 19 to 29 expect to earn a reward within the first 3 months of participation, versus 53% of other consumers.⁸⁶ In addition, it was found that Canadian consumers aged 19 to 29 expressed a greater willingness to provide personal information in exchange for loyalty program membership than their older colleagues.⁸⁷ However, in an age where consumers expect retailers to use information collected

⁷⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 6-7, 23, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 28.

⁸⁰ Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 23 and Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 37.

⁸¹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 44.

⁸² Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 44-48, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 29.

⁸³ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 62-63, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 19.

⁸⁴ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 38-41, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 31, Loyalty Program Focus Group Transcript, November 19, 2012, 8:00., p. 21-23, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 28-29.

⁸⁵ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 93.

⁸⁶ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 16-17.

⁸⁷ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 15.

about them in a responsible manner, we next examine what else consumers had to say about the protection of their personal information.

3.1 Privacy Concerns and the Consumer Perspective

In 2005, Union des consommateurs noted that previous survey data commissioned by PIAC suggested 82% of respondents said that companies should obtain their permission before using their information for marketing purposes, that 69% of respondents found current “withdrawal of consent” business practices totally unacceptable and they preferred that companies explicitly request customer consent when they wanted to use customer personal information for marketing purposes.⁸⁸ Since that time, an argument can be made that Canadians still value their privacy despite rhetoric that privacy is less regarded in the social media age. In a 2012 study, Aimia found that Canadians hold the following views concerning their privacy and the use of their information by loyalty program providers:

Figure 3-4 Views of Canadians on the use of Personal Data by Loyalty Program Providers⁸⁹

It is important for me to...	Respondents aged 19-29 (Millenials)	Others
Know what data you’re collecting	78%	89%
Be able to create a portable “privacy profile”	71%	81%
Opt in to online tracking	72%	83%
Opt in to location tracking	67%	88%
Be rewarded for sharing personal data	47%	37%

Figure 3-4 sends a strong message that Canadian consumers want to know what data is being collected about them, as well as to provide their permission before retailers operating loyalty programs commence tracking them either online or by physical location. A majority of Canadians, according to an April 2013 study released by the Privacy Commissioner of Canada, have difficulty understanding how new technologies

⁸⁸ Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 15-16, from Les Associés de Recherche Ekos Inc. 2001. Utilisation professionnelle des renseignements personnels des consommateurs : ce qu’en pense le public. Préparé pour : Le Centre pour la défense de l’intérêt public. Août 2001. Disponible sur demande à : <http://www.ekos.ca>. P. 42.

⁸⁹ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 15.

affect their privacy.⁹⁰ The number of Canadians lacking confidence in their ability to protect their privacy in the face of new technology has increased steadily since the year 2000.⁹¹ As a result, it is no surprise 55% reported being very concerned about posting information about their location, and seven in ten Canadians feel they have less protection of their personal information in their daily lives than they did 10 years ago.⁹² This sentiment is seemingly summed up in a quote from Lee Tien of the Electronic Frontier Foundation when he noted, prior to the Internet, “you were private by default and public by effort. Nowadays, you are public by default and private by effort.”⁹³

When summarizing the data collected for a 2012 study entitled, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia noted that, “providing an environment of trust is a crucial step for marketers hoping to build a platform for Millennials to share personal information.”⁹⁴ Figure 3-4 reveals that Canadians surveyed aged 19-29, or Millennials, are less concerned with opting in to location and online tracking, and more concerned with obtaining reward incentives in exchange for sharing their personal information. In addition, Aimia concluded that Millennials expect brands to secure their personal data and to use it in an ethical manner.⁹⁵ This theme of trust regarding consumer information was also brought to light by Maritz Canada during the release of their 2012 study, noting, “Brands are encouraged to build better relationships with consumers but they must be very transparent about how they collect and store consumer data as well as very specific about the resulting value that data capture offers to consumers.”⁹⁶

Other representatives of the loyalty industry have concluded customer loyalty programs are destined to face legislative or regulatory changes on how they collect and analyze

⁹⁰ Privacy Commissioner of Canada, *Canadians increasingly anxious about privacy in the face of new technology, poll suggests*, News Release, April 4, 2013. Last accessed April 18, 2013 at <http://www.newswire.ca/en/story/1140765/canadians-increasingly-anxious-about-privacy-in-the-face-of-new-technology-poll-suggests>

⁹¹ Privacy Commissioner of Canada, *Canadians increasingly anxious about privacy in the face of new technology, poll suggests*, News Release, April 4, 2013. Last accessed April 18, 2013 at <http://www.newswire.ca/en/story/1140765/canadians-increasingly-anxious-about-privacy-in-the-face-of-new-technology-poll-suggests>

⁹² Privacy Commissioner of Canada, *Canadians increasingly anxious about privacy in the face of new technology, poll suggests*, News Release, April 4, 2013. Last accessed April 18, 2013 at <http://www.newswire.ca/en/story/1140765/canadians-increasingly-anxious-about-privacy-in-the-face-of-new-technology-poll-suggests>

⁹³ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 39. From Joel Stein, “Data Mining: How Companies Now Know Everything About You,” *Time*, March 10, 2011.

⁹⁴ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 8.

⁹⁵ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 8.

⁹⁶ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Press Release, February 27, 2012, p. 2.

data.⁹⁷ The CEO of LoyaltyOne noted in 2012 that he also sees a “grand reckoning” coming regarding the collection and use of personal data:

“At this moment we are on course for a grand reckoning: Either the industry will become more accountable or legislation will hold it to account. Measured marketing carries amazing promise for both organizations and consumers alike. If we collect and use customer data responsibly, we not only improve shareholder value, but we can provide unimaginable benefits to our customers. There is a tremendous opportunity for all.”⁹⁸

When asked, focus group participants indicated some concern regarding the use of their information that is collected in the operation of customer loyalty programs.⁹⁹ However, this did not inhibit them from participating in these programs, and participants noted that upon sign up, usually just their name and address were collected.¹⁰⁰ Moreover, participants expressed satisfaction with having the ability to “opt-out” of future solicitations, and the consensus was that retailers included a privacy policy with the terms and conditions of membership.¹⁰¹ There was an assumption among participants that a privacy policy was included because it is legally required, and few invested much effort reading or trying to understand it.¹⁰²

One area relating to privacy where concerns have been expressed is the practice of loyalty program providers sharing member information with third parties. Focus group participants generally trust those retailers collecting information from them; however, it is the potential for individuals and corporations to pay for this information that is of greater concern. For example:

“They might send it to somebody else. I see some random email comes up to my account, probably Lava Life. I’m not interested. I have a wife and she’s sitting at home. What’s going on there? Are you dating

⁹⁷ Dunlap, Carlos, *Under the Radar: Ten Trends loyalty Marketers Might Not See coming in 2013*, Colloquy, December 2012, p. 3.

⁹⁸ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 52

⁹⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 51-54 , and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 32-36.

¹⁰⁰ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 49, 51-54 , Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 36-38, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 32-36.

¹⁰¹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 49, 51-54 , Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 36-38, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 32-36.

¹⁰² Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 54 , Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 39, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 33-34.

somebody? I thought there's no way I'm going to date. It's probably just a random email coming forward."¹⁰³

(Focus Group, November 15, 2012, Toronto)

"But, there is a danger that some corporations they do sell the database that they have the names and the contacts to another institution."¹⁰⁴

(Focus Group, November 19, 2012, Ottawa)

Concerns such as these have also been expressed in research undertaken by the customer loyalty marketing industry. In 2011, LoyaltyOne, who administers the AIR MILES program in Canada, determined the following:

- 81% of Canadian and American survey respondents fear companies commonly share their personal information without the consumer's permission;
- 85% are often concerned about how much of their personal information is being held by others;
- 76% are worried their behaviour is being tracked while they're online; and,
- 33% have been notified their personal information had been compromised.¹⁰⁵

Focus group participants recall providing their name and address when signing-up for a loyalty program; however, they only have a vague recollection of other information that was solicited from them.¹⁰⁶ Some recollect providing an e-mail address, phone number, or their age, and fewer remember whether they had provided information about product preferences.¹⁰⁷ Most participants have not thought a great deal about privacy issues related directly to customer loyalty program participation.¹⁰⁸ While identify theft was the most identified concern during these discussions, participants do not associate this risk

¹⁰³ Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 42.

¹⁰⁴ Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 34.

¹⁰⁵ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 41. From Bryan Pearson, *Challenges Marketers Face in a Privacy-Worried World: A Report on U.S. and Canadian Consumer Attitudes about Responsible Data Collection and Use*, LoyaltyOne, October, 2011.

¹⁰⁶ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 54-55, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 36-38, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 31-33.

¹⁰⁷ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 54-55, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 36-38, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 31-33.

¹⁰⁸ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 55, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 41-42.

with their loyalty program participation any more than to other sources of fraud, such as credit card use.¹⁰⁹

As an indication of the level of concern held by consumers, focus group participants were asked if they ever tried to access the information a company has stored about them as a result of their membership in their loyalty program. In addition, participants were asked if they should have access to the personal information loyalty programs have collected from them. While no respondents asked to see their “profile” or the personal information that a loyalty program has collected from them or about them, a few did access their loyalty card purchase history.¹¹⁰ Focus group participants were aware companies use their purchase data to identify patterns in preferences, but are not particularly concerned that the data is not readily available to them.¹¹¹

3.2 Effects of Social Media

Any examination of the current operation of customer loyalty programs in Canada would not be complete without a discussion of the association between these programs and the use of social media applications. What began as simple mass electronic messages has evolved into an array of tactics designed not only to get consumers to continue their participation in loyalty programs by spending more, but become brand advocates for Canadian retailers. This discussion outlines a few of the methods currently employed by loyalty program providers as well as delivering a preview into future tactics customer loyalty programs intend to offer Canadian consumers.

Cycle of Interaction between consumers and loyalty programs

PIAC refers to the interaction between consumers, customer loyalty programs and social media outlets as a cycle, as opposed to a straight-forward line or process, due to the ability of consumer to engage and disengage in the cycle at any stage. Under a traditional purchasing model, a consumer might see an advertisement, such as a

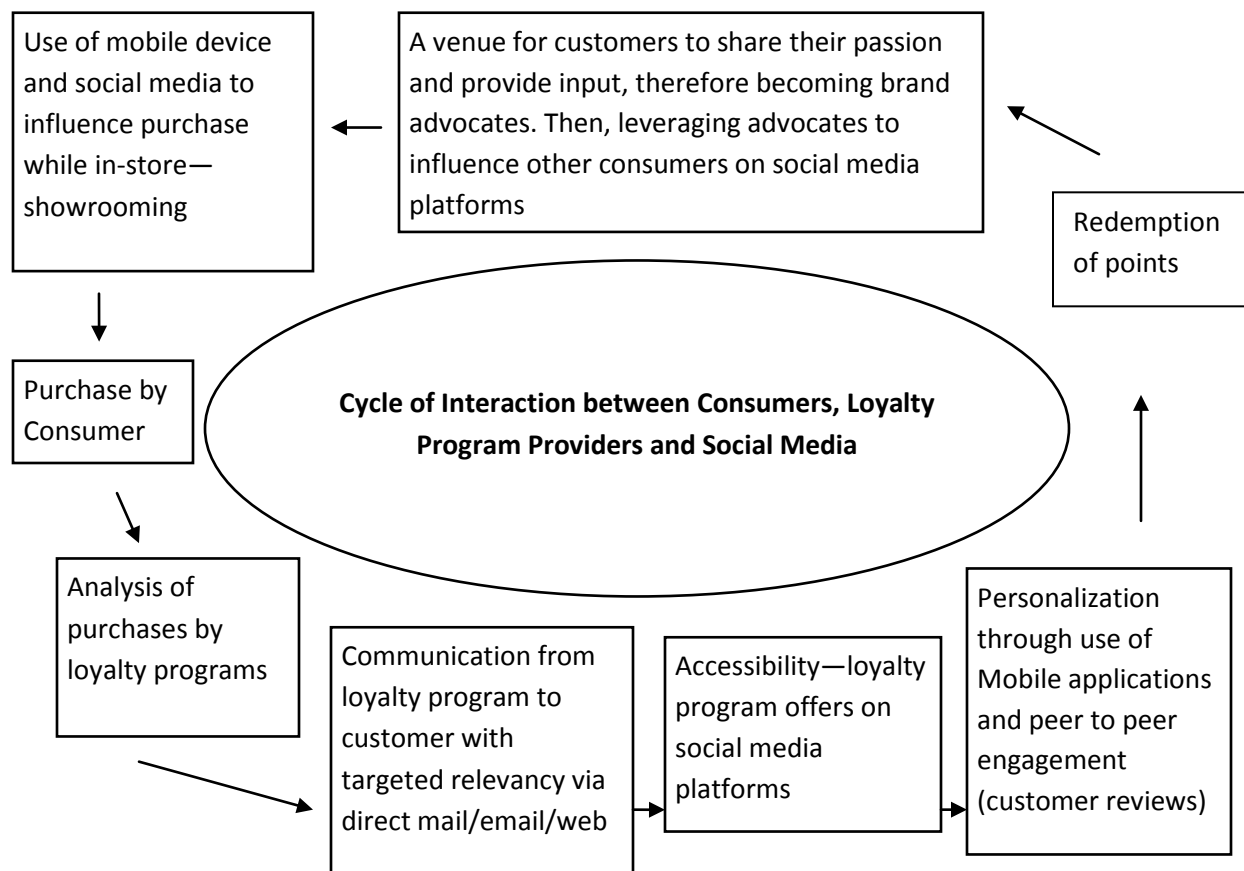
¹⁰⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 56-57, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 39, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 31-33.

¹¹⁰ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 68-71, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 50-52, Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 42-45, and Loyalty Program Focus Group Transcript, November 19, 2012, 8:00 p.m., p. 32-33.

¹¹¹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 68-71, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 50-52, Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 42-45, and Loyalty Program Focus Group Transcript, November 19, 2012, 8:00 p.m., p. 32-33.

traditional flyer, identify a need, and purchase a product. Now, through the participation of consumers in loyalty programs, as well as the employment of social media tactics by loyalty program providers, it can be argued the purchasing model has evolved into a complex “Cycle of Interaction,” as explained by Figure 3-5.

Figure 3-5 - Cycle of Interaction between Consumers, Loyalty Program Providers and Social Media¹¹²



¹¹² This diagram has been adapted from Emmie Fukuchi, AIR MILES Reward Program, Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

Stages of the Cycle of Interaction

Purchase Analysis

It can be argued that this engagement through the use of social media platforms marks an evolution in the complexity a customer's "cycle of interaction" with a customer loyalty program. Maritz Canada notes the best customer loyalty programs carefully manage each member's varying needs throughout a loyalty program's lifecycle through an influential process of data capture, followed by deliberate offers.¹¹³ However, this marks only two elements of this "cycle of interaction."

The process of data capture by a loyalty program operator is simply an analysis of purchases by members in order to yield insight into their behavior and preferences. This is the critical step in the successful operation of any loyalty program. Not undertaking an analysis or performing an ineffective analysis may lead to the risk of loyalty program operators losing members.

Communication from Loyalty Program to Customer

It was noted earlier that one of the roles of customer loyalty programs was to facilitate business communication with customers. It was found that when a loyalty program's marketing efforts are effective, many consumers may look forward to receiving messaging from a brand, as evidenced by almost 90% of loyalty program members surveyed expressing a desire to receive communications from their program operators. While the common communication vehicles employed for this purpose remain e-mail and direct mail, the advent of social media applications has presented the opportunity for more comprehensive communication between loyalty program providers and consumers. This comes in the form of engagement or an exchange of communication between loyalty program providers and consumers, rather than having the providers continuously distributing messaging with limited opportunity for customer feedback.

¹¹³ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Press Release, February 27, 2012, p. 4.

Accessibility

Most loyalty programs operating in Canada have a presence in various social media outlets. Since a sizeable portion of their memberships are regularly on social media sites at all hours of the day, customer loyalty program providers have realized that they had a whole new avenue to reach their customers. For instance, 86% of AIR MILES collectors in Canada use social media and 95% of those people have an account on Facebook.¹¹⁴ This timeliness of connecting with consumers is a key feature for customer loyalty program providers. People connecting through sites like FourSquare, Twitter, and Facebook can now feel like they are forming a deeper bond with owners and managers of businesses.¹¹⁵ In turn, many companies have interactive collaborations with social networks in order to bring customers special discounts and notifications of new opportunities at any given moment.¹¹⁶

Aeroplan, for instance, uses their Facebook page as a platform to remind its followers of the various promotions it carries out with its program partners. Meanwhile, Petro-Points recently used the same outlet to conduct a promotional contest encouraging their members to register for a chance to “Become a Petro-Points Millionaire.”¹¹⁷ Moreover, according to recent joint research project between LoyaltyOne, Northwestern University and The University of Western Ontario, AIR MILES Collectors who participated in social media events and promotions increased their purchases from AIR MILES program partners by 15-30% over non-participants between 2009 and 2011.¹¹⁸

Although this increased access to consumers represents an opportunity for loyalty program providers, there is some level of risk involved in these initiatives as well. A number of focus group participants indicated their awareness that loyalty programs they participate in had a social media presence. However, some expressed reservations about posting their activities relating to customer loyalty programs on social media

¹¹⁴ Emmie Fukuchi, AIR MILES Reward Program, Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

¹¹⁵ Customer Loyalty Institute, *How Social Media is Changing Customer Loyalty Programs*, Last accessed May 21, 2013 at <http://www.customerloyalty.org/how-social-media-is-changing-customer-loyalty-programs/>

¹¹⁶ Customer Loyalty Institute, *How Social Media is Changing Customer Loyalty Programs*, Last accessed May 21, 2013 at <http://www.customerloyalty.org/how-social-media-is-changing-customer-loyalty-programs/>

¹¹⁷ Petro Points, *Become a Petro-Point Millionaire*, Facebook promotional website, March 25, 2013. Last accessed May 21, 2013 at

https://www.facebook.com/petropoints?v=app_113896755462421&app_data=gaReferrerOverride%3D

¹¹⁸ Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 5, and LoyaltyOne, Medill IMC Spiegel Digital and Database Research Initiative at Northwestern University and The University of Western Ontario's Ivey School of Business, *2012 LoyaltyOne Social Media Transaction Impact Study*, October 25, 2012.

websites, even with the incentive of bonus points or miles that may be awarded by the loyalty programs.¹¹⁹

At a February, 2013 loyalty programs conference, Maritz Canada noted that concern about privacy is consistent across demographics, yet what is “cool” or “creepy” to loyalty program members varies.¹²⁰ For example, at least two-thirds of Canadian loyalty program members over 50 years of age categorized the following activities as “creepy and weird:”

- Allowing programs to review your friends’ status updates/photos to determine your eligibility for benefits
- Offer benefits to those who provide the program with access to personal information about you (such as personal income, household composition, etc.)
- Allowing programs you “Like” or “Follow” to review your profile, to determine your eligibility for benefits
- Determine your location using your smartphone and offer you deals if you are nearby.¹²¹

Meanwhile, the same study found at least 49% of those aged 16-34 open to reward programs engaging with them in the following ways:

- Personalized discounts on your favourite items, based on your purchasing habits
- Personalized offers you want, based on preferences that you can manage and update
- Special benefits to those who “Like” or “Follow” a program on Facebook or Twitter¹²²

As a result, Maritz concluded that transparency and member-defined permissions are key to balancing personalization with privacy.¹²³ This conclusion was supported by a recent study of Millennial (Canadians aged 19 to 29) loyalty program members. While a substantial number of those surveyed, about 40%, expressed concern about Facebook’s ever-evolving privacy settings, only 18% were concerned about loyalty program operators abusing their personal information, while nearly half were more likely

¹¹⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 80-90, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 62-71, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 57-63.

¹²⁰ Robinson, Scott, Maritz Canada, *The Maritz Loyalty Report 2013*. Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013, Page 10.

¹²¹ Robinson, Scott, Maritz Canada, *The Maritz Loyalty Report 2013*. Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013, Page 10.

¹²² Robinson, Scott, Maritz Canada, *The Maritz Loyalty Report 2013*. Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013, Page 9.

¹²³ Robinson, Scott, Maritz Canada, *The Maritz Loyalty Report 2013*. Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013, Page 10.

to share personal information with brands that offer reward incentives.¹²⁴ In addition, over three-quarters of Millennials agree with their older peers that opt-in permission is a prerequisite for any brand that collects personal data or tracks their behaviour.¹²⁵ As a result, according to the Maritz report, Canadian loyalty programs members indicate broad support for new tools to help them manage their personal information online and expect their interactions with loyalty programs to be transparent and permission-based.¹²⁶

Personalization through use of Mobile applications and peer to peer engagement

Social media platforms allow for more interaction between consumers of a particular product or service. Social media platforms have also opened the door for loyalty program providers, as well as product and service providers, to monitor what customers have to say about their offerings. In addition, providers have taken this opportunity to actively engage their customers to show that they are listening, to clear up miscommunications, or to add clarification.¹²⁷

A good example of this increased interaction between consumers of a particular product or service is the proliferation of customer reviews posted on a variety of social media platforms. For instance, U.S.-based footwear producer Skechers, routinely posts photos of two or more of its products on its Facebook page and asks consumer for their opinions. Moreover, Skechers, which features 60,000 total product reviews on its website, introduced a scheme in 2012 where members of its Skechers Elite rewards program receive points for submitting reviews or answering other consumers' questions about Skechers products.¹²⁸ The points are added to those earned when making a purchase that can be put toward discount coupons or a free pair of shoes.¹²⁹

However, a word of caution is needed here regarding user reviews. While a Harvard Business School working paper on the effect of customer reviews in the restaurant

¹²⁴ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 14.

¹²⁵ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 14.

¹²⁶ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 14.

¹²⁷ Customer Loyalty Institute, *How Social Media is Changing Customer Loyalty Programs*, Last accessed May 21, 2013 at <http://www.customerloyalty.org/how-social-media-is-changing-customer-loyalty-programs/>

¹²⁸ Peterson, Tim, "Skechers to Incentivize Product Reviews Through Rewards Program," *Adweek*, March 21, 2012. Last accessed May 30, 2013 at <http://www.adweek.com/news/advertising-branding/skechers-incentivize-product-reviews-through-rewards-program-139116>

¹²⁹ Peterson, Tim, "Skechers to Incentivize Product Reviews Through Rewards Program," *Adweek*, March 21, 2012. Last accessed May 30, 2013 at <http://www.adweek.com/news/advertising-branding/skechers-incentivize-product-reviews-through-rewards-program-139116>

industry revealed that a one-star increase in Yelp rating leads to a 5-9% increase in revenue, there is a concerning trend regarding the authenticity of customer reviews posted in social media outlets.¹³⁰ Gartner, Inc., an information technology research and advisory company based in the United States, noted in September, 2012, that consumers' increased reliance on social media ratings and reviews will see enterprise spending on paid social media ratings and reviews increase, making up 10 to 15 percent of all reviews by 2014.¹³¹ Survey research in the U.S. reveals that 1 in 5 lack trust in online reviews, with "is on a website I don't trust" and poor grammar or spelling listed as the top reasons.¹³² Gartner believes that although consumer trust in social media is currently low, consumer perception of tightened government regulation and increased media exposure of fake social media ratings and reviews will ultimately increase consumer trust in new and existing social media ratings and reviews.¹³³

The second concept, that loyalty program providers, as well as product and service providers can now actively monitor what customers have to say about their offerings, represents a step in the evolution of business-consumer relations. Social media allows anyone and everyone to express and share an opinion or an idea somewhere along the business's path to market.¹³⁴ Each participating customer becomes part of the marketing department, as other customers read their comments or reviews.¹³⁵

This new ability also allows product and service providers to engage directly with individual consumers, in an effort to resolve issues introduced on social media platforms. For example, the SCENE program, a rewards partnership between Cineplex and Scotiabank, found that people in their social media forums wanted to earn and redeem points at partner restaurants, obtain DVDs and Cineplex gift cards.¹³⁶ As a

¹³⁰ Luca, Michael, *Reviews, Reputation, and Revenue: The Case of Yelp.com*, Working Paper, Harvard Business School, September 16, 2011, page 1. Presented by Kerry Munro, *Sustaining Loyalty in a Complex Digital Economy, Canada Post Corporation*, at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

¹³¹ Gartner Inc., *Gartner Says By 2014, 10-15 Percent of Social Media Reviews to Be Fake, Paid for By Companies*, Press Release, September 17, 2012. Presented by Kerry Munro, *Sustaining Loyalty in a Complex Digital Economy, Canada Post Corporation*, at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

¹³² Garcia, Krista, "Online User Reviews: Building Trust and Boosting Sales," *E-Marketer*, February, 2013, p. 4. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

¹³³ Gartner Inc., *Gartner Says By 2014, 10-15 Percent of Social Media Reviews to Be Fake, Paid for By Companies*, Press Release, September 17, 2012.

¹³⁴ Evans, Dale, *Social Media Marketing: The Next Generation of Business Engagement*, John Wiley & Sons, 2010. Last accessed on May 30, 2013, at http://en.wikipedia.org/wiki/Social_media_marketing#Engagement

¹³⁵ Evans, Dale, *Social Media Marketing: The Next Generation of Business Engagement*, John Wiley & Sons, 2010. Last accessed on May 30, 2013, at http://en.wikipedia.org/wiki/Social_media_marketing#Engagement

¹³⁶ Androich, Alicia and Kristen Laird, *Secret's of Canada's Top Loyalty Programs*, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

result, they introduced changes to their program over time directly based on feedback they saw on Facebook.¹³⁷ Moreover, when Milestones, a Scene restaurant partner, launched in Alberta and British Columbia, SCENE Facebook fans were the first to know about it—even before an e-mail was sent to the general membership base.¹³⁸

While negative reviews will happen, it is important to note that seeing a brand respond to a review in an attempt to resolve problems has a positive impact on their image among other consumers. Bazaarvoice and Wakefield Research found that seeing a brand response to a review makes 41% of consumers think the brand “really cares about consumers, ” while 35% also think the brand “has great customer service,” and 22% think it’s “a trustworthy brand.”¹³⁹ On average, consumers stated they were twice as likely to purchase a product when seeing a negative review that included a brand's response versus seeing the negative review by itself.¹⁴⁰

From a policy perspective, the ability to engage directly with individual consumers, along with a willingness on the part of loyalty program providers to address consumer concerns in real time, could be viewed as an alternative approach to industry guidelines or regulation. This process of engagement, it can be argued, could become a form of self-policing when it comes to the activities of loyalty program providers. This evolution benefits consumers by having their concerns addressed promptly, while allowing program providers the opportunity to remain free from targeted regulatory burdens.

Redemption of Points

From a loyalty industry perspective, loyalty program performance indicates that customer redemption correlates directly with bottom-line benefits, including higher customer retention rates and higher customer spend.¹⁴¹ The more active and engaged members are in a loyalty marketing program, the greater the sales lift, retention and

¹³⁷ Androich, Alicia and Kristen Laird, Secret’s of Canada’s Top Loyalty Programs, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

¹³⁸ Androich, Alicia and Kristen Laird, Secret’s of Canada’s Top Loyalty Programs, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

¹³⁹ DeMarco, Tara, Spin gold from poor reviews: Responding to feedback wins new customers, *Bazaarvoice: Blog*, June 5, 2013. Last accessed June 6, 2013, at <http://blog.bazaarvoice.com/2013/06/05/spin-gold-from-poor-reviews-responding-to-feedback-wins-new-customers/>

¹⁴⁰ Bazaarvoice, *Bazaarvoice Unveils New Social Business Capabilities that Promote Authentic User Content to Enable World-Class Digital Shopping*, Press Release, March 5, 2013.

¹⁴¹ Aimia and LoyaltyOne, *Loyalty Program Overview*, background document prepared for consultation meeting, May 24, 2013, pg. 5.

brand engagement those members deliver back.¹⁴² Moreover, the opportunity to publicize when a customer redeems their loyalty points for a reward, via a social media application such as Twitter, encourages other followers to engage in the programs in order to obtain their own rewards.¹⁴³ Further, research has shown that loyalty program members who have redeemed for rewards are more likely to be brand advocates than members who have not yet redeemed.¹⁴⁴ To a loyalty program provider, redemption shouldn't just be viewed as a cost — it's a positive investment in high-priority customers that help brands to retain them and grow the relationship.¹⁴⁵

From a consumer perspective, redemption represents the reward for their loyalty and participation in their programs of choice. We would also contend it is a critical point in the cycle of interaction between loyalty program providers and consumers. If the redemption process is a positive one for the consumer, chances are the customer will continue to participate in the program, and possibly become a brand advocate. However, if the redemption process becomes a challenge, the loyalty program provider runs the risk of alienating the loyal consumer after months or years of patronage to their program – not an ideal outcome for either party.

Becoming Brand Advocates & Influencing Future Customers

If participation in a loyalty program is a positive memorable customer experience, social media platforms offer a venue for consumers to share their passion and provide input into the initiatives of the program of their choice. Under these conditions, it is reasonable to contend that at this point customers have made the transition into becoming brand advocates.

For brands, providing rewards for more than just purchases – such as interactions online – is an important tactic, since many companies drive revenue through advertising.¹⁴⁶ Encouraging users to come back to the site benefits both the business

¹⁴² Aimia and LoyaltyOne, *Loyalty Program Overview*, background document prepared for consultation meeting, May 24, 2013, pg. 5.

¹⁴³ Goran, Mike, '4 Tips for Using Social Media to Promote Your Loyalty Rewards Program,' Mediatrix Blog Post, June 19, 2012. Last accessed on June 18, 2013 at <http://www.drivingretention.com/4-tips-social-media-promote-loyalty-rewards-program/>

¹⁴⁴ Aimia and LoyaltyOne, *Loyalty Program Overview*, background document prepared for consultation meeting, May 24, 2013, pg. 5.

¹⁴⁵ Personal Interview Marc Goodman, *Suncor*, February 20, 2013, and Aimia and LoyaltyOne, *Loyalty Program Overview*, background document prepared for consultation meeting, May 24, 2013, p. 5.

¹⁴⁶ Clay, Kelly, "Will 2013 be the Year of Loyalty Programs", *Forbes*, December 15, 2012. Last accessed on June 5, 2013 at <http://www.forbes.com/sites/kellyclay/2012/12/15/will-2013-be-the-year-of-loyalty-programs/>

beyond a tangible purchase, as well as the customers with a tangible reward.¹⁴⁷ This tactic creates customer loyalty, providing a long-term financial benefit to the business by creating repeat customers.¹⁴⁸

As a result, a vital tactic for loyalty program providers to employ is to provide social media avenues where this interaction can take place. As one loyalty program executive recently commented, in reference to the existence of web pages dedicated to customer reviews, “the conversation is happening whether you’re with us or not.”¹⁴⁹ By providing an interactive space to rave about their offerings on Facebook, Twitter, LinkedIn and elsewhere, as well as by including social sharing widgets in content creation forms, loyalty program providers are effectively amplifying advocates.¹⁵⁰ These social media networks are accessible by such devices as the iPhone, Android, and the Blackberry, which give companies a 24 hour window for advertising to the countless masses.¹⁵¹ Moreover, by including links in the content and offers that site visitors can share with their friends and colleagues, this can generate general referral traffic for program providers.¹⁵² For example, Best Buy Reward Zone members receive exclusive offers for in-store promotions they can share with family members. Another example, with an interesting twist, is offered by the SCENE program. Members are encouraged to set up what is referred to as a “SCENEtourage,” a group of 3-10 friends or family members that you see movies with often, to access extra rewards.¹⁵³

Why is providing this space for interaction so important? According to Nielsen, 70% of consumers trust online reviews, while 67% of consumers don’t buy after reading only one to three negative reviews, according to Lightspeed Research.¹⁵⁴ An October 2012 survey by Ipsos OTX and Ipsos Global Advisor supports Nielsen’s findings, stating 64%

¹⁴⁷ Clay, Kelly, “Will 2013 be the Year of Loyalty Programs”, *Forbes*, December 15, 2012. Last accessed on June 5, 2013 at <http://www.forbes.com/sites/kellyclay/2012/12/15/will-2013-be-the-year-of-loyalty-programs/>

¹⁴⁸ Clay, Kelly, “Will 2013 be the Year of Loyalty Programs”, *Forbes*, December 15, 2012. Last accessed on June 5, 2013 at <http://www.forbes.com/sites/kellyclay/2012/12/15/will-2013-be-the-year-of-loyalty-programs/>

¹⁴⁹ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 24.

¹⁵⁰ Fuggetta, Rob, “Making the Most of Word-of-Mouth Advertising,” *Wired*, May 30, 2013. Last accessed June 6, 2013, at <http://insights.wired.com/profiles/blogs/making-the-most-of-word-of-mouth-marketing#axzz2UnJn6dwY>

¹⁵¹ Customer Loyalty Institute, *How Social Media is Changing Customer Loyalty Programs*, Last accessed May 21, 2013 at <http://www.customerloyalty.org/how-social-media-is-changing-customer-loyalty-programs/>

¹⁵² Fuggetta, Rob, “Making the Most of Word-of-Mouth Advertising,” *Wired*, May 30, 2013. Last accessed June 6, 2013, at <http://insights.wired.com/profiles/blogs/making-the-most-of-word-of-mouth-marketing#axzz2UnJn6dwY>

¹⁵³ SCENE Program, “Introducing...your own scenetourage,” website. Last accessed June 12, 2013, at <https://www.scene.ca/scenetourage/>

¹⁵⁴ Fuggetta, Rob, “Making the Most of Word-of-Mouth Advertising,” *Wired*, May 30, 2013. Last accessed June 6, 2013, at <http://insights.wired.com/profiles/blogs/making-the-most-of-word-of-mouth-marketing#axzz2UnJn6dwY>. Nielsen figure is the 2012 *Global Trust in Advertising report*, which surveyed more than 28,000 Internet respondents in 56 countries. The figure, attributed to Lightspeed Research, 67%, is from a study in the United Kingdom that was released in April, 2011.

of Canadian Internet users considered ratings and reviews influential when making buying decisions.¹⁵⁵ Bazaarvoice, whose clients include Procter & Gamble and Wal-Mart, noted during the third quarter of 2012, site visitors who interacted with user-generated content were 81% more likely to buy—and 27% more likely to return to the site again—than visitors who did not.¹⁵⁶ As Henri Isenberg, the COO of ReviewInc, a software provider that helps businesses with reviews online, concluded, a lack of reputation is just as bad as a poor one.¹⁵⁷ “That’s what social media has done. It’s moved us to a realm where you expect to find someone’s reputation online. You have to have reviews.”¹⁵⁸

Use of mobile device and social media to influence purchase while in-store— Showrooming

It is at this point in the consumer cycle of interaction where change is continually in the wind. While Canadians of all ages are comparison shopping online, and monitoring, if not participating in the product review process, it can be argued it is younger consumers who are driving a trend that allows them to conduct these activities using their mobile device. Increasingly, these activities are now occurring at retail locations. This has led to the emergence of a practice known as retail “showrooming.”

Retail “showrooming” is the practice of consumers using traditional brick-and mortar retail stores to evaluate products in person then using their mobile devices to find the product at a lower price online. While over 40% of Canadian consumers surveyed now use their mobile device to compare prices while in-store, Canadians aged 19 to 29 (Millenials) are twice as likely to own a smartphone, making them much more likely to engage in this practice.¹⁵⁹ In fact, 52% of Millenial smartphone owners read product reviews on their mobile devices in-store, while one-third check Twitter and Facebook for

¹⁵⁵ Garcia, Krista, “Online User Reviews: Building Trust and Boosting Sales,” *E-Marketer*, February, 2013, p. 3. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

¹⁵⁶ Garcia, Krista, “Online User Reviews: Building Trust and Boosting Sales,” *E-Marketer*, February, 2013, p. 2. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

¹⁵⁷ Garcia, Krista, “Online User Reviews: Building Trust and Boosting Sales,” *E-Marketer*, February, 2013, p. 4. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

¹⁵⁸ Garcia, Krista, “Online User Reviews: Building Trust and Boosting Sales,” *E-Marketer*, February, 2013, p. 4. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

¹⁵⁹ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 10.

purchase recommendations.¹⁶⁰ In the United States, it was recently found that 35% of consumers that compare price on a mobile device in-store decide to purchase at that store, while 19% purchase the product online. As a result, Bazaarvoice is piloting the 'Mobile Associate App' to help brick-and-mortar store associates convert visitors into in-store customers.¹⁶¹ Therefore, not only are consumers having conversations about the products they buy or are considering buying, but they're increasingly bringing those conversations with them, right into the store.

There are a few reasons why loyalty industry marketers are interested in the preferences of Canadians aged 19 to 29:

- 78% are more likely to choose brands that reward them;¹⁶²
- They are more likely to share their experiences publicly in exchange for future rewards;¹⁶³ and,
- They are more likely to want increased functionality from their wireless device.¹⁶⁴

As we have seen with the evolution of social media channels, the methods a company relies on to gather and use customer information can enhance the customer experience and build equity over time.¹⁶⁵ Some loyalty brands and social networking channels accepted early on the notion that collecting customer information is a public trust, and something to be held in high regard. Others, to the misfortune of consumers, have experienced challenges along the way towards this realization. However, recall the original premise of this examination – that the goal of customer loyalty programs is to entice consumers, through rewards, into loyal buying behavior and the provision of their purchasing preferences in order to increase profits. If this holds true, maintaining a high level of trust between loyalty program providers and their members is essential. Without it, the cycle of interaction described above does not function properly. For example, communications from loyalty programs are not as effective, loyalty providers are shut out of the peer to peer engagement process, and they lose the opportunity to increase sales or create those brand advocates their competitors may be gaining. The concept of showrooming provides us with the modern take on reading a flyer or window shopping.

¹⁶⁰ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 10. Forty-one percent of Canadians smartphone owners surveyed aged 30 and over read product reviews on their mobile devices in-store. Fifteen percent checked Twitter and Facebook for purchase recommendations

¹⁶¹ Bazaarvoice, *Bazaarvoice Unveils New Social Business Capabilities that Promote Authentic User Content to Enable World*, Press Release, March 5, 2013. Last accessed on June 17, 2013 at <http://investors.bazaarvoice.com/releasedetail.cfm?ReleaseID=745240>

¹⁶² Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 1.

¹⁶³ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 9.

¹⁶⁴ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 13.

¹⁶⁵ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 205.

However, showrooming may also serve as a foreshadowing of how the relationship between consumers, their wireless devices, and corporate brands, along with customer loyalty programs, may develop going forward.

3.3 Use of Smart Phones and their interaction with Loyalty Programs

As noted in the previous section, consumers are engaging in conversations about the products they buy while they're in the store, through the use of their wireless device. Whether it is price shopping, reading product reviews, or seeking opinions of others, the wireless device has changed the way people shop. As an indication of how prevalent this trend is becoming, Canada's smartphone penetration rate increased to 62% from 45% of all wireless subscribers between December 2011 and December 2012.¹⁶⁶ From 2010 to 2011, Canadian Mobile Ad Placement revenue grew from \$46.6 Million to \$62 Million, and is forecast to exceed \$700 Million in 2015.¹⁶⁷

We have also taken notice that social media networks open the doors to new types of customer experiences-and companies-sometimes through their customer loyalty programs, have interactive collaborations with social networks in order to bring customers special discounts and notifications of new opportunities at any given moment.¹⁶⁸ However, these developments have not come about in the absence of consumer concerns. This section discusses a number of marketing tactics now available through the use of wireless devices and a few concerns expressed by consumers as these tactics continue to expand.

According to Aimia's research, a substantial portion of Canadians are using their wireless devices to download and use mobile applications from brands, regardless of their age. Where age does become a factor is when examining how these mobile applications are being used by consumers. Table 3-6 provides a few examples:

¹⁶⁶ Trichur, Rita, 'Canadians would be willing to pay more for cellular services, study says,' *Globe and Mail*, June 2, 2013. Last accessed on June 18, 2013 at <http://www.theglobeandmail.com/report-on-business/canadians-would-be-willing-to-pay-more-for-cellular-services-study-says/article12304459/>

¹⁶⁷ E-Marketer, *Mobile Ad Spending Still Lags in Canada*, May 21, 2013. Last accessed June 19, 2013 at <http://www.emarketer.com/Article/Mobile-Ad-Spending-Still-Lags-Canada/1009905>

¹⁶⁸ Customer Loyalty Institute, *How Social Media is Changing Customer Loyalty Programs*, Last accessed May 21, 2013 at <http://www.customerloyalty.org/how-social-media-is-changing-customer-loyalty-programs/>

Figure 3-6 The Use of Mobile Applications by Consumers¹⁶⁹

Activity	Canadians Aged 19-29 (%)	Others (%)
Use branded mobile applications	48%	44%
Respond to daily deals	35%	17%
Make in-app purchases	37%	24%
Respond to location-based offers	18%	9%
Use phone as a rewards card*	48%	18%
Download coupons or reward certificates	68%	58%
Redeem points for rewards through the app	60%	59%
Receive exclusive offers	51%	61%

As the table reveals, age does not appear to be a factor when it comes to using a reward program mobile application on a wireless device to download coupons, redeem rewards or receive offers from. However, it is interesting that younger consumers seem more open to responding to daily deals, making in-app purchases or responding to location-based offers through their wireless devices. Moreover, Canadians millennials expressed a much greater interest in using their phone as a rewards card. Perhaps the device merely serves as a convenience and eliminates an extra piece of plastic from their wallets. This was a sentiment heard often in focus group discussion for this examination.¹⁷⁰

As an example of a loyalty program’s mobile application, the AIR MILES application, launched in late 2010, is designed to help consumers get the most out of their everyday shopping. The application attempts to carry the programs over 20,000 sponsor locations where users can search the sponsors available near them by category, retailer or location.¹⁷¹ Users can also check in to a store and see both targeted and mass offers

¹⁶⁹ Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 13.

* indicates customers that indicated a ‘high interest’ or ‘some interest’ in using their wireless device in this manner.

¹⁷⁰ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 62, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 4, 14, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 19.

¹⁷¹ Androich, Alicia and Kristen Laird, Secret’s of Canada’s Top Loyalty Programs, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>. The number of sponsor locations is based on Emmie Fukuchi, AIR MILES Reward Program, Presentation at *Brand Friends Forever*, Canadian Marketing Association Conference, Toronto, February 14, 2013.

available within a tight geographic radius.¹⁷² After 6 months of operation, it was found the AIR MILES mobile application traffic volume reached the equivalent of 15% of their web traffic.¹⁷³

Since that time, AIR MILES has employed a number of tactics to increase the volume of mobile application traffic. For example, SMS text messaging and barcode campaigns were employed to drive AIR MILES members to their mobile application.¹⁷⁴ In addition, a recent AIR MILES campaign promoted a 'Check-In Challenge' – a competition against

other members to see who would “check in,” or visit partner retail locations, the most often in a month.¹⁷⁵

Check-ins increased by 20 times to over two million during the challenge and the number of members actively engaging with the app increased by 50 percent.¹⁷⁶ As a result, LoyaltyOne concludes connecting effectively through a mobile campaign can not only provide increased engagement among best customers, but also can re-engage previous ones, who typically are more difficult to influence.¹⁷⁷

Designated Market Area (DMA)

The most basic mobile marketing geolocation application is based on where a prospect lives or works. This is called designated market area, or DMA. Marketers can determine, for instance, how many moms live within 3 km of a particular dry cleaner; then that dry cleaner can send special offers to those people.

Source www.urbanshuffle.com

¹⁷² Androich, Alicia and Kristen Laird, Secret's of Canada's Top Loyalty Programs, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

¹⁷³ Androich, Alicia and Kristen Laird, Secret's of Canada's Top Loyalty Programs, April 7, 2011. Last accessed on May 30, 2013, at <http://www.marketingmag.ca/uncategorized/secrets-of-canadas-top-loyalty-programs-2-25684>

¹⁷⁴ Keogh, Simon, 'Converting Mobile Loyalty in Program Loyalty,' LoyaltyOne Website Article, December 12, 2012. Last accessed on June 18, 2013, at <http://loyalty.com/knowledge/articles/converting-mobile-loyalty-program-loyalty>

¹⁷⁵ Keogh, Simon, 'Converting Mobile Loyalty in Program Loyalty,' LoyaltyOne Website Article, December 12, 2012. Last accessed on June 18, 2013, at <http://loyalty.com/knowledge/articles/converting-mobile-loyalty-program-loyalty>

¹⁷⁶ Keogh, Simon, 'Converting Mobile Loyalty in Program Loyalty,' LoyaltyOne Website Article, December 12, 2012. Last accessed on June 18, 2013, at <http://loyalty.com/knowledge/articles/converting-mobile-loyalty-program-loyalty>

¹⁷⁷ Keogh, Simon, 'Converting Mobile Loyalty in Program Loyalty,' LoyaltyOne Website Article, December 12, 2012. Last accessed on June 18, 2013, at <http://loyalty.com/knowledge/articles/converting-mobile-loyalty-program-loyalty>

While AIR MILES has been encouraging their members to “check-in” to their partner retail outlets, other loyalty programs have been attempting alternative wireless device marketing tactics. In the table above, one of the activities surveyed was the desire of wireless device using loyalty program members to respond to location-based offers. Location-based advertising integrates mobile advertising with location based services in order to pinpoint a consumer's location and provide location-specific advertisements on their wireless devices. A recent Canadian example was HarperCollins Canada's use of location-based advertising when promoting John Catucci's cookbook, *You Gotta Eat Here*, with tailor-made messaging for specific markets and local restaurants mentioned in the book.¹⁷⁸

What is geotargeting?

Through GPS location functionality in most smartphones, your phone knows exactly where you are at all times. Mobile marketers send you relevant offers based on where you are, or where you're going to be.

Source: www.urban.shuffle.com

The administrators of coalition loyalty programs, such as Aeroplan and AIR MILES commonly use mapping to encourage members to frequent partner retail locations. Retailer-specific plans also use mapping as part of their wireless applications in order to direct customer traffic to their nearby locations. The location-based advertising as a tactic is instigated once members are within a certain distance of a retail location of interest. In a recent example from the United States, Waze, a crowd-sourced navigation app for driving, is testing an advertising campaign with Taco Bell where the fast food chain sends special offers to people using the app when they're in the general vicinity of a Taco Bell.¹⁷⁹

The proponents of location-based advertising contend these services are great at building brand loyalty, since some retailers offer free incentives to frequent users, as well as bringing people in to a location through the use of push deals via a banner on a wireless application if you have 'checked-in' around their location.¹⁸⁰ Those opposed to location-based advertising cite concerns over privacy and the lack of utility for advertisers. For instance, one wireless advertising technology stakeholder noted in

¹⁷⁸ Twiss, Jordan, 'HarperCollins serves up geo-targeted campaign,' *Media in Canada*, November 22, 2012. Last accessed on June 19, 2013, at <http://mediaincanada.com/2012/11/22/harpercollins-serves-up-geo-targeted-campaign/#ixzz2Wg5QO1NO>

¹⁷⁹ Reardon, Marguerite, "[Location information to make mobile ads more valuable](#)". *Article*, April 15, 2013. CNET. Last accessed on June 19, 2013, at http://news.cnet.com/8301-1035_3-57579746-94/location-information-to-make-mobile-ads-more-valuable/

¹⁸⁰ Novac, Anthony, 'Location Based Services: The Pros, the Cons and Where to Go from Here,' *Speed Inc.*, Blog post, July 15, 2010. Last accessed on June 19, 2013, at <http://www.spreadinc.com/blog/location-based-services-the-pros-the-cons-and-where-to-go-from-here>

2010 that when you check in to a location, “there is no call to action, no directions to get to this location and definitely no ‘download a coupon’ option for this location tool.”¹⁸¹

Since that time, there has been some movement on the wireless location-based advertising front regarding loyalty programs; however, on the whole, it is too early to tell exactly what effect this advertising tactic will have on Canadian consumers. Grocery giant Loblaw, for example, launched a new digital loyalty program in May 2013 targeting customers with individually tailored promotions and recipes in an effort to drive sales and reduce reliance on flyers.¹⁸² The Loblaw's program, called PC Plus, targets customers based on their purchase histories, offering discounts on items they buy often and deeper discounts on products they might be interested in, but need some incentive to try.¹⁸³ Tony Chapman, CEO of Toronto-based marketing company Capital C, notes that “Companies are just starting to play in the personalized or geo-targeted promotion space, and because mobile offers such integrated solutions, it's only a matter of time before we're rewarded with points or promotions for simply stepping into a store.”¹⁸⁴

Geo-fencing

Geo-fencing involves the marketer using applications based off Google Earth and other similar programs to set up a “virtual barrier” around a particular geographic area. When a prospect crosses that barrier – say, a seven-block radius around a specific restaurant – an automated text alert is sent to offer the prospect a lunchtime special.

Source www.urbanshuffle.com

The ongoing challenge for loyalty program providers is to create a forum for an information exchange that generates value for both themselves and the consumer. Customers have to be provided the opportunity to decide for themselves who they want to hear from, how they want to hear from them and when they want to hear from them. If loyalty program members are not given this flexibility, then providers run the risk of their

¹⁸¹ Novac, Anthony, ‘Location Based Services: The Pros, the Cons and Where to Go from Here,’ *Spread Inc.*, Blog post, July 15, 2010. Last accessed on June 19, 2013, at <http://www.spreadinc.com/blog/location-based-services-the-pros-the-cons-and-where-to-go-from-here>

¹⁸² Kopun, Francine, ‘Loblaw launches smart-phone based loyalty program,’ *Toronto Star*, May 6, 2013. Last accessed on June 19, 2013, at http://www.thestar.com/business/personal_finance/spending_saving/2013/05/06/loblaw_launches_smartphone_based_loyalty_program.html

¹⁸³ Kopun, Francine, ‘Loblaw launches smart-phone based loyalty program,’ *Toronto Star*, May 6, 2013. Last accessed on June 19, 2013, at http://www.thestar.com/business/personal_finance/spending_saving/2013/05/06/loblaw_launches_smartphone_based_loyalty_program.html

¹⁸⁴ Haynes, Megan, ‘Retail Trends: What’s Hot, What’s Not,’ *Strategy Online*, May 15, 2013, Last accessed on June 19, 2013, at <http://strategyonline.ca/2013/05/15/retail-trends-whats-hot-whats-not/>

members simply uninstalling their mobile application on their wireless device, and the opportunity will be denied.

4.0 What are the observed and potential effects of loyalty programs upon competition in the market?

In a recent appearance before the Senate Standing Committee on Transport and Communications during a study of the Canadian airline industry, the former Executive Director of PIAC, Michael Janigan, noted:

“ the increasing use of accumulated (customer loyalty program) points to tie consumers to particular buying practices has a large potential impact on the range of choice that might be available to consumers and the ability of new entrants to penetrate existing markets with better prices and products. As well, the unilateral right to change aspects of such (loyalty) programs, gives rise to the suspicion that customer’s loyalty has been given in exchange for hollow promises...If their choice has been induced by a perception of a value that is not there, the program is both subversive of healthy competition based on efficient delivery and a bad bargain for consumers.”¹⁸⁵

As evidence of the difficulty of new entrants to penetrate existing markets under these conditions, Mr. Janigan used the example of Aeroplan’s presence in the market being a contributing factor to Canadian Airlines failure to penetrate the Eastern Canadian market during the 1990s.¹⁸⁶ Mr. Janigan concluded, that for those customer reward programs offering airline travel as incentives at least, that basic rules be implemented disclosing the number of reward seats available on travel involving loyalty points, providing minimum notice periods for changes, and measures ensuring any changes do not diminish the value of existing points.¹⁸⁷ This section wishes to address some issues raised by Mr. Janigan, while leaving others to a later section discussing perceived market failures related to loyalty program operation. In addition, it will refer to a few case studies to highlight the value of loyalty program analysis to individual retailers operating in Canada.

Mr. Janigan’s initial comment in the quotation above, that customer loyalty programs, and specifically, frequent flyer programs, may serve as a barrier to entry into a market and thus limit competition, is an argument that has been debated by economists for some time. Many have determined that, under certain circumstances, frequent flyer

¹⁸⁵ Janigan, Michael, Evidence provided to the Senate Standing Committee on Transport and Communications, *Study of the Airline Industry in Canada*, May 2, 2012.

¹⁸⁶ Janigan, Michael, Evidence provided to the Senate Standing Committee on Transport and Communications, *Study of the Airline Industry in Canada*, May 2, 2012.

¹⁸⁷ Janigan, Michael, Evidence provided to the Senate Standing Committee on Transport and Communications, *Study of the Airline Industry in Canada*, May 2, 2012.

programs could be an effective barrier to entry.¹⁸⁸ However, one can argue that for airlines, offering a customer loyalty program is no longer a competitive advantage, but a market necessity, or viewed as a commodity.¹⁸⁹ We can only speculate at this point whether this argument can be expanded to apply to loyalty programs operating in all segments of the Canadian retail landscape. Since Canadian retailers of all shapes and sizes offer even a rudimentary loyalty program, it is a subject worthy of further economic analysis.

In June 2013, the United States Federal Trade Commission (FTC) Commissioner Joshua Wright discussed his position on the operation of retail loyalty programs while expressing his concerns about anti-competitive behavior with loyalty discounts between wholesalers and suppliers. He noted that, at the retail level, loyalty programs can reduce cost to both suppliers and customers, and in turn may benefit both, and they generally have not raised significant antitrust concerns.¹⁹⁰ At the wholesale level, the primary competitive concerns with loyalty discounts are similar to those that arise with exclusive dealing, according to Wright. In short, the concern is that a monopolist might utilize such discounts as a strategy to protect its market position by excluding rivals, raising rivals' costs, and ultimately harming consumers.¹⁹¹

¹⁸⁸ Camiel, Ramon and Adina Claiaci, "Are Loyalty-rewarding pricing schemes anti-competitive?," *International Journal of Industrial Organization*, 2007, p. 659. Also from Banerjee, A., Summers, L., "On frequent flyer programs and other loyalty-inducing arrangements," 1987, *H.E.I.R. DP*. Vol. 1337, Cairns, R., Galbraith, J., "Artificial compatibility, barriers to entry and frequent flyer programs," 1990, *Canadian Journal of Economics* 23 (4), 807-816, and Caminal, R., Matutes, C., "Endogenous switching costs in a duopoly model," 1990, *International Journal of Industrial Organization* (8), 353-373.

¹⁸⁹ Salik, Boaz, and Scott Henry, "**The Future of Credit Card Rewards Programs**," FischerJordan, 2009. Last accessed on June 20, 2013 at http://www.fischerjordan.com/index.php?page=creditcard_reward_prog

¹⁹⁰ Wright, Joshua, "Simple but Wrong or Complex but More Accurate? The Case for an Exclusive Dealing-Based Approach to Evaluating Loyalty Discounts," *Remarks of Joshua D. Wright, Commissioner, Federal Trade Commission at the Bates White 10th Annual Antitrust Conference*, Washington, DC, June 3, 2013. Also from David Bell & Rajiv Lal, *The Impact of Frequent Shopper Programs in Grocery Retailing*, *Quantitative Marketing and Economics* (1) 179 (2003); Kobayashi, *supra* note 1. This view was also presented at a personal interview of John Bragg, Aimia, Aaron Dauphinee, Aimia, Dr. Ken Wong and Mitchell Merowitz, LoyaltyOne, May 24, 2013.

¹⁹¹ Wright, Joshua, "Simple but Wrong or Complex but More Accurate? The Case for an Exclusive Dealing-Based Approach to Evaluating Loyalty Discounts," *Remarks of Joshua D. Wright, Commissioner, Federal Trade Commission at the Bates White 10th Annual Antitrust Conference*, Washington, DC, June 3, 2013. In his remarks, Mr. Wright cites *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254 (3d Cir. 2012) as an example of this strategy in action. According to the court, Eaton had been the only supplier of heavy-duty truck transmissions from the 1950s until 1989, when Meritor entered the market. In 1999, Meritor held about 17 percent share of the market and had plans to expand through a joint venture with a large German company ZF Freidrichshafen that had not entered the North American market. ZF Meritor's lawsuit claims its competitive efforts were undermined by Eaton's exclusive contracting practices. Eaton entered into what the court termed "long-term agreements" with each of the four direct purchasers of heavy-duty truck transmissions that conditioned rebates from Eaton on whether the buyers purchased a specified percentage of their requirements from Eaton. The four agreements varied in their terms, but several included up-front payments from Eaton and set the market-share requirement from 70 percent to above 90 percent. Between 1999 and 2005, ZF Meritor's market-share dropped from 19 percent to 4 percent.

The question remains, how does the operation of customer loyalty programs, offered by retailers to consumers, affect markets in Canada? During the analysis of the role of loyalty programs, it was determined that customer loyalty programs attempt to keep customers from defecting (retention), prompt customers to make additional purchases (increase spending) and attract new customers. It is through a combination of these actions where loyalty programs have their true effect on the market.

For instance, in regard to the concept of retention, a consumer has a finite number of suppliers of any given product or service. If the focus groups and surveys cited in this paper are correct, a majority of Canadian consumers will shop at a store that allows them the opportunity to contribute towards a customer loyalty program reward, at the expense of others. Those inside the loyalty industry, however, will tell you more than one kind of loyalty exists that leads to customer retention – behavioral loyalty and emotional loyalty.

Bryan Pearson, the CEO of LoyaltyOne, describes behavioral loyalty as a “very strong indication of convenience, price advantage, or even lack of viable competition, but it falls short as a measure of customer engagement. Behavioral loyalty is fragile and fleeting.”¹⁹² Consumers that fall into this category will shop at close to the consumer average in spending, although their proverbial bags are packed if they can find a competitor that offers a better price, service or location.¹⁹³ On the other hand, those consumers that express feelings of emotional loyalty to a product or service are those more likely to become “brand advocates,” as described in the section of this examination concerning the relationship between consumers, loyalty programs and social media. These consumers are liable to fully engage in a loyalty program and are more inclined to redeem loyalty currency for rewards, spend more, while encouraging their friends and family members to join them in participating in their loyalty program experience. Brand advocates are precisely the customers that loyalty programs wish to create because they generate all three of the actions mentioned above that make loyalty programs successful – they retain themselves as customers, they increase their spending, and they attract new customers from competitors.

When discussing the role of loyalty programs, we noted they yield insight into customer behavior, referring to the collection of consumer preference data as the golden goose for retailers. In addition, it was noted loyalty programs could gauge the effectiveness of

¹⁹² Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 66.

¹⁹³ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 65.

a business's marketing efforts by determining what triggered the loyalty program member to buy, and what may prompt the next purchase. It can be argued that the influence of customer-generated data from loyalty programs has grown from non-existent to a determining factor in multi-million dollar business decisions in a very short period of time.

In an example that took place in the 1990s, Shell Canada determined they had too many gas stations operating in Canada. As a result, Shell planned to reduce its network by 20%, while renovating a number of their remaining outlets.¹⁹⁴ The challenges Shell faced as a result of this decision included:

- To identify which stations to close;
- To identify which stations to renovate;
- How to transfer customers of closing and renovated stations in an effort to retain them; and,
- How to recapture their customers once the renovated stations were reopened.¹⁹⁵

Using data obtained by their loyalty partnership with AIR MILES, they discovered that members of the program accounted for more than half of each location's total revenue, and of those customers, 50% generated 86% of those sales.¹⁹⁶ Using this as their target market, Shell was advised by AIR MILES which sites consumers would turn to once their regular Shell locations were closed.¹⁹⁷ The partners then employed a series of direct-mail and in-store marketing tactics to retain customers, including:

- Direct-mailing and in-store marketing alerting customers of a location's upcoming renovation;
- Guides to nearest (and most likely) alternative site;
- During renovations, AIR MILES offered double miles for purchases made at the alternative site; and,
- After renovations, direct-mailings offering double and triple reward miles, as well as site reopening announcements to encourage consumers to return to the revamped location.¹⁹⁸

¹⁹⁴ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 53.

¹⁹⁵ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 54.

¹⁹⁶ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 54.

¹⁹⁷ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 54.

¹⁹⁸ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 55.

What were the results? Shell was able to retain about 75% of its customers during the renovations, and in response to offers, customers actually increased their spending by 7%.¹⁹⁹ To put this in perspective, a substantial number of Shell's customers drove further and spent more while their most convenient location was closed.

Another example of information provided by a loyalty program altered the business model of a retailer involved a grocery store chain asking its loyalty program partner why it was not selling more meat products in one of its urban locations. Loyalty program analysis revealed that the location was predominantly frequented by college students, young singles and low income couples.²⁰⁰ Along with this information, it was suggested by representatives of the loyalty program that the location offer more single-serve and lower-priced cuts of meat.²⁰¹ The grocer implemented this advice and sales of beef rose 12% as a result.²⁰² These are just two examples of issues that data offered by the consumers participating in a loyalty program can address in the current market.

It may remain debatable whether the operation of loyalty programs act as a barrier to entry into a market, or simply have evolved into a market necessity; what cannot be overstated is the power of the data collected about consumers. As seen from the example used here from the retail gasoline industry, loyalty customer trend analysis is a powerful tool that can be implemented throughout an organization to the benefit of retailers. Given the power this collection of data holds, the following question is worth asking - are consumers receiving a fair return for the provision of their purchasing behavior?

¹⁹⁹ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 55.

²⁰⁰ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 69.

²⁰¹ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 69.

²⁰² Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 69.

5.0 A review of Union des consommateurs 2005 study

In 2005, the Union des consommateurs (UC) examined the operation of customer loyalty programs, and their value to, as well as their potential effects on consumers. The study canvassed issues such as privacy and gathering consumer information, as well as dissemination of commercial messages, and the size of benefits. This section is intended to provide an overview of this investigation and identify areas of commonality with what PIAC has found during its examination of customer loyalty programs operating in Canada.

In its report, UC contended there are two key marketing advantages of loyalty programs:

- The merchant gathers data to determine the identity of the customer and register information on their buying behaviour; and
- The program encourages consumers to multiply and sustain their purchases in order to obtain the rewards.²⁰³

UC also noted two types of loyalty rewards schemes in operation in Canada at the time of their examination:

- Proportional: The better clients are rewarded proportionally more.
- By level: Encourages more consumption so as to reach the “next level” of points which offers more advantages.²⁰⁴

While it is apparent these marketing advantages remain, in section 2 of this report, PIAC expands on these arguments, and supplements them with a series of suggestions when explaining of the role of loyalty programs in the marketplace. UC further asserts that the fidelity rewards associated with loyalty program participation are more or less dependent upon the long-term efforts of a customer who wishes to obtain a benefit in the future.²⁰⁵ UC supports this argument by suggesting that human behavior research shows individuals possess a strong motivation to put in the effort that will result in a future benefit, and this motivation effectively “locks” consumers into a program.²⁰⁶

The provision of personal information by consumers and its use by customer loyalty programs were issues of significant concern to UC in its study. UC identified one of the

²⁰³Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 10.

²⁰⁴Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 11.

²⁰⁵Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 10.

²⁰⁶Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 10-11.

risks of loyalty programs is the sharing and use of customer information that could result in other forms of unintended solicitation.²⁰⁷ UC pointed out complaints filed with the Privacy Commissioner of Canada, as well as the proposal to create a national “Do Not Call” list by the federal government to curb unwanted solicitation.²⁰⁸ Similar concerns regarding the practice of loyalty program providers sharing member information with third parties were also reflected during focus group discussions for this investigation.²⁰⁹

Moreover, the report noted that, in order to circumvent existing rules under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and Quebec’s *Loi sur la protection des renseignements personnels dans le secteur privé*, companies had built into their consent forms a type of “negative consent” to create a presumption of consent until the consumer actively withdrew consent.²¹⁰ These laws obligated a retailer operating a loyalty program to obtain consent before using, communicating, or selling to third parties, sponsors, partners, and external companies the personal data of its members, even if it is merely to create a profile of its consumers.²¹¹

The UC report also briefly outlined how loyalty program operators and retailers use the information obtained from their members. The report noted consumers who possess loyalty cards with a merchant typically spend twice as much money in these stores, and the customer turnover rate is 15% lower than those merchants that do not have loyalty programs.²¹² Moreover, UC stated loyalty programs don’t simply result in discounts and other financial incentives, but allow for the personalization of marketing efforts, down to the very display of products to help consumers better identify them.²¹³ The report concluded that there are two principal uses of the information in loyalty program databases:

- They allow merchants to better understand, generally, the consumption habits of their clientele; and

²⁰⁷Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 13.

²⁰⁸Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 14-15.

²⁰⁹ ²⁰⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 55, 59, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 41-42, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 34-36.

²¹⁰Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 15.

²¹¹Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 15.

²¹²Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 17, from Vachon, Brigitte. (*Samson Bélair / Deloitte et Touche*). 2004. *Quels sont les enjeux des détaillants canadiens?*. Dans le journal *Les Affaires*. 25 octobre 2004. En ligne.

http://www.lesaffaires.com/fr/aujourd'hui/detail.asp?id=187926&id_section=476&Recherche=1.

Consulted March 15, 2005.

²¹³ Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 17-18.

- They allow a more in-depth knowledge of a merchant's *top clients* and the creation of more personalized marketing and promotions by telephone, mail or email.²¹⁴

PIAC's investigation also identified these uses and discusses them in detail in another section of this report. The objective of these uses, according to UC, is inciting a consumer to purchase as much as possible and to make all their purchases at the same location.²¹⁵ This led to the conclusion that loyalty customers typically pay higher prices for their products, and may be more susceptible to greater debt.²¹⁶ This argument was supported through consultations with a series of organizations, such as the Association coopérative d'économie familiale (ACEF), Credit Counselling Services (CCS), and Services budgétaires populaires (SBP). Eighteen of the 25 respondents were certain consumers would make impulsive or superfluous purchases in order to accumulate more points on their loyalty cards.²¹⁷ Almost unanimously, those consulted believed that consumers would go to specific stores which offered the opportunity to collect more points on their loyalty cards.²¹⁸ In other words, the financial consultants thought that loyalty programs strongly influenced consumers in their choice of "location of consumption."

During PIAC's investigation, focus groups held with Canadian consumers produced similar views –that all things being equal, they will shop at a store that allowed them the opportunity to contribute towards a customer loyalty program reward. Moreover, focus group participants noted they would be likely to spend more if a company has a great loyalty program.²¹⁹ For coalition loyalty programs, they have what they refer to as the multiplier effect – the more coalition partners the consumer patronizes, the more money he or she will spend at the company that first brought the consumer into the program.²²⁰

UC also felt it was significant to mention that many merchants will push consumers to use their credit cards associated with a retailer (e.g. "Sears credit card") by providing incentives such as double the reward points.²²¹ Fifteen of 25 respondents replied that generally consumers who use their credit cards to accumulate points will not pay off the

²¹⁴Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 18.

²¹⁵Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 18.

²¹⁶Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 18.

²¹⁷Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 23.

²¹⁸Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 24.

²¹⁹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 12, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 28-29, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 13.

²²⁰ Pearson, Bryan, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 89.

²²¹Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 24.

whole balance when they receive their statements.²²² The financial implications could be serious, since a gain in rewards of 1% or 2% is not really a gain but a loss, given the current credit card interest rates.²²³ The financial consultation survey results discerned a direct effect between loyalty programs and the purchasing habits of consumers.²²⁴ However, the report concluded a connection between debt and consumer desire to accumulate loyalty points or to benefit from loyalty programs was more difficult to establish.²²⁵

An analysis of 15 loyalty programs operating in Canada was undertaken using the assumption that the monetary value of rewards should be at least 2% for customer loyalty program to be truly “rewarding.”²²⁶ Under these conditions, a consumer would have to spend \$500 in order to obtain \$10 in rewards. The results revealed the majority of programs offered rewards that were well below the 2% minimum monetary value threshold.²²⁷ In addition, the analysis found that the monetary value ratio did not increase proportionally to the increase in the value of a reward, and the “reward prices” of a prize, such as digital camera, could be higher than the regular sale prices of the same items.²²⁸

As a result of its extensive look at the operation of customer loyalty programs operating in Canada, UC made the following recommendations:

- Loyalty program contracts should be clear and readable.
- “Negative consent” should be prohibited. (opt-out)
- Program administrators should inform consumers of the risks of joining a loyalty program before obtaining their consent.
- Program administrators should explain the potential consequences of the sharing of member information.
- All banks should be enrolled with the Privacy Commissioner. The Commissioner should be able to freely investigate the file administrators.

²²²Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 25.

²²³Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 23.

²²⁴Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 27.

²²⁵Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 27.

²²⁶Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p.29, from K. Johnson. 1999. "Making Loyalty programs more rewarding." *Direct Marketing*. 61.11. PP. 24-27.

²²⁷Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p.33-41.

²²⁸Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p.42.

- Governments at all levels should closely follow the development of chip technology. Personal data should not be used for other goals than for loyalty programs.
- Consumers should be vigilant and wary of proposed rewards in loyalty programs. Consumers should not enroll in loyalty programs which offer a reward value of less than 2%.
- The market value of products should be indicated in merchant catalogues.
- Loyalty program points should also show the real value of the points by percentage. The value of the rewards should correspond to the percentage announced.
- Federal and provincial governments should require merchants to give consumers different payment options, including the option to pay in cash.²²⁹

There are a number of facets of the 2005 study that we contend hold true in 2013, as a result of this investigation. There remains a series of marketing advantages for those administering loyalty programs, such as learning the consumption habits of their memberships, as well as creating more personalized marketing and promotions. Moreover, consumers remain concerned about security of their private information. We continue to agree with UC that consumer protection measures must be maintained so loyalty program contracts are clear and readable. Loyalty program administrators should inform consumers of the risks of joining a loyalty program before obtaining their consent and administrators should explain to consumers the potential consequences of sharing member information.

This study was never intended to propose one loyalty program or product associated with a loyalty program over another. However, it was interesting to note that when the 2% monetary reward standard UC applied in 2005 was tested in this study on selected loyalty programs, the majority of programs offered rewards that were well below the 2% value threshold. When the same standard was applied to credit cards associated with various loyalty programs, the results improved slightly, but even with an annual fee, many of these credit card vehicles fell short of the 2% reward value proposed by UC.

²²⁹ Union des consommateurs, *Marketing de fidélisation: Qui récolte la meilleure récompense?*, July, 2005, p. 55-56.

6.0 How are loyalty programs regulated?

Despite the popularity of loyalty programs with Canadian consumers, there is no specific consumer protection legislative regulation of these programs. There are a myriad of laws or legal principles that can potentially apply to loyalty programs in certain circumstances, but there can be uncertainty around the applicability of these laws to loyalty programs.²³⁰ Thus, any problems consumers may encounter in loyalty programs could be exacerbated for consumers where the law is unclear, such as difficulties in accessing desired rewards due to unavailability, or unilateral changes in original terms or reward valuation.

Given that most loyalty programs involve terms and conditions between the program and the consumer, contract law could provide remedies for consumers. However, contract law has obvious limitations given that loyalty program terms and conditions are standard-form contracts that offer on a "take it or leave it" basis with no room for negotiation and contract law is rooted in the principle of freedom to contract where both parties have equal bargaining power. Therefore, courts are unlikely to void standard form clauses allowing unilateral changes by the loyalty program on the basis of contract law principles alone.

Provinces have enacted consumer protection legislation to address inequities that arise in consumer contracts with merchants. Thus, provincial consumer protection legislation may apply to loyalty programs. However, consumer protection legislation often limits its application to consumer contracts in which the consumer is providing payment in exchange for a good or service. Therefore, it could be argued that consumer protection legislation does not apply to loyalty program contracts because consumers do not

²³⁰ For example, in the case against Pharmaprix launched by Option consommateurs in 2010, Option consommateurs argued that Pharmaprix did not have the right to unilaterally reduce the value of points in the Pharmaprix Optimum Rewards Program, and that the change was made without prior notice and in unilateral, illegal, abusive and retroactive manner. The Quebec Superior Court authorized the class action in March 2012, but there are still many issues that need to be determined by the court in order for the class action to prevail. As discussed by Heenan Blaikie's "Canadian Marketing, Advertising and Regulatory Law Update", Issue 11 (2012) at p. 5, one key issue is whether the contract between Pharmaprix and consumers of the Optimum Rewards Programs constitutes a "consumer contract" within Quebec's *Consumer Protection Act*. If the arrangement is not a contract within the *Consumer Protection Act*, then more limited protection may be available as per article 1384 of the Civil Code of Quebec. The court must also determine whether the provision in the Rewards Program's Terms and Conditions which allows the Program to restrict, suspend, and alter any aspect of the Program without notice is unreasonable, and whether the Program's use of this Term and Condition to change the point system constitutes an abuse of right or a breach in its duty of good faith. Pharmaprix has taken the position that the Program points have no pecuniary value because they cannot be exchanged for money, therefore its contract with consumers is not subject to the *Consumer Protection Act*. Similar issues will need to be determined by the court in the class action against Groupe Aeroplan in *Neale c. Groupe Aeroplan Inc.*, which was authorized by the Quebec Superior Court in March 2012. Neale claims that Aeroplan is civilly liable for unilaterally and without proper warning modifying the Aeroplan Terms that governs Aeroplan membership.

directly provide payment to the loyalty program in exchange for the reward points. The scarcity of case law on the subject also suggests that consumer protection legislation does not clearly apply to consumer agreements for loyalty programs.

Since 2005, many provincial consumer protection laws have been reformed to restrict expiration dates and fees on gift certificates, which includes gift cards. Generally, and with narrow exceptions, the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland and Labrador amended their consumer protection legislation so that gift cards cannot have expiry dates or dormancy fees, and require specific disclosure of terms and conditions that affect the use of the gift certificate.²³¹

The gift card consumer protection reforms banning expiry dates and specific disclosure do not extend to loyalty programs. In fact, some provinces are careful to specify that consumer protection legislation does not apply because consumers earn the value accumulated on loyalty cards rather than buying them directly.²³² This suggests that because consumers do not purchase their loyalty rewards, there is no "consumer agreement" to which provincial consumer protection legislation would apply. Provinces have taken mixed approaches to whether the gift card expiry reforms apply to gift cards that have been acquired through loyalty program redemptions. Most provinces allow gift cards that have been issued through loyalty program redemptions to stipulate expiry dates. These provinces express this exception by exempting gift cards that are issued for "promotional purposes", and some laws further stipulate that the person has provided "nothing of value in exchange for the card" or "purchased the card for an amount less than its full monetary value."²³³ A few provinces, however, do not exempt from regulation gift cards that are received through loyalty program redemptions.²³⁴

²³¹ British Columbia, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and *Prepaid Purchase Cards Regulation* (effective November 1, 2008); Alberta, *Gift Card Regulation 146/2008* under *Fair Trading Act*, R.S.A. 2000, Ch. F-2 (in effect November 1, 2008); Saskatchewan, *Consumer Protection Act*, Ch. C-30.1, amended 2008, c.4 at Part IV.6 "Prepaid Purchase Cards" (effective November 10, 2008); Manitoba, *The Consumer Protection Act*, C.C.S.M. c. C200 and *Prepaid Purchase Cards Regulation*, 98/2007 (in effect November 1, 2007); Ontario, *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 and *Ontario Regulation 17/05* at ss. 25.1 to 25.5 (in effect October 1, 2007); Quebec, Bill 60, *Act Modifying the Consumer Protection Act* (effective June 30, 2010); Nova Scotia, *Gift Card Regulations*, N.S. Reg. 325/2009 under *Consumer Protection Act*, R.S.N.S. 1989, c. 92 (effective February 1, 2010); Prince Edward Island, *Gift Cards Act*, Ch. G-4.1 (effective September 1, 2010); New Brunswick, *Gift Cards Act*, R.S.N.B. c. 165 (effective September 1, 2011); Newfoundland and Labrador, *Gift Card Regulation* under the *Consumer Protection and Business Protection Act, Newfoundland and Labrador Regulation 14/11* (effective April 1, 2011).

²³² See for example, Ontario, "Gift Cards: Frequently Asked Questions", see question "Are loyalty cards used to collect points considered a gift card?", online: http://www.sse.gov.on.ca/mcs/en/Pages/Gift_Card_FAQ.aspx. See also Alberta, "Consumer Tips: Gift Cards", see question "What kinds of cards are not covered by the Gift Card Regulation?", online: http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Gift_cards.pdf.

²³³ For example, in British Columbia, exemptions are given to gift cards that are "issued or sold for a marketing, advertising or promotional purpose" or "issued and sold to a person who provides nothing of value in exchange for

Loyalty programs must also comply with aspects of the *Competition Act* and provincial consumer protection laws that prohibit deceptive marketing practices and unfair practices such as false, misleading and deceptive representations.²³⁵ Generally, an unfair or deceptive practice takes the form of a claim or representation that would likely mislead the average consumer.

Loyalty programs must also comply with privacy laws that regulate how organizations in the private sector collect, use and disclose personal information in the course of commercial activities. The federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* applies to loyalty programs.²³⁶ Where a privacy practice does not appear to comply with *PIPEDA*, an individual can bring a complaint to the Privacy Commissioner, who must investigate the complaint and publish a finding on the complaint's merits. If the complaint is well-founded, the Privacy Commissioner can make recommendations to bring the company's practices into compliance, but these recommendations are not binding and are only enforceable by the Federal Court in a hearing *de novo*.²³⁷

The Privacy Commissioner of Canada investigated Air Miles' practices for disclosure of personal information without consent for secondary marketing in 2001. PIAC brought a complaint alleging that Air Miles' failed to bring to its customers' attention its practices of using and sharing customer data with affiliates for secondary marketing purposes, failed to provide clear information about potential secondary uses and sharing of customer data, and failed to provide customers with the opportunity to opt out of secondary uses and disclosures. The Privacy Commissioner of Canada found PIAC's complaint well-founded and recommended a clear opt-out process and revisions in communications

the card". As a further example, in Manitoba, expiry dates are permitted for a prepaid purchase card "for which the holder of the card provides nothing of value when the card is issued".

²³⁴ For example, Quebec is one of a few provinces that does not provide an exemption from the ban on expiry dates when nothing of value is exchanged for the card at the time of issue.

²³⁵ *Competition Act*, R.S.C., 1985, c. C-34 at s. 74.01. See for example Ontario's *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 at Part III "Unfair Practices".

²³⁶ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5. Examples of previous Privacy Commissioner findings on loyalty programs under *PIPEDA* include: Settled Case Summary #21, "Loyalty program inadvertently markets to child members", online: http://www.priv.gc.ca/cf-dc/ser/2006/s21_060724_e.asp, Case Summary #2003-241, "Bank complies with consent principles - disclosure of personal information to third parties such as loyalty programs", online: http://www.priv.gc.ca/cf-dc/2003/cf-dc_031204_04_e.asp, and Case Summary #2004-277, "Loyalty program mass mailout results in disclosure of contest entrants email addresses", online: http://www.priv.gc.ca/cf-dc/2004/cf-dc_040902_02_e.asp.

²³⁷ A hearing *de novo* means the hearing is a fresh application to the Federal Court by the complainant under *PIPEDA*. The complainant bears the burden of demonstrating violations of *PIPEDA*, and the court does not review the Privacy Commissioner's report or recommendations. Notably, the Federal Court can award damages, however the Federal Court has only awarded damages in cases under *PIPEDA* sparingly.

materials to improve disclosures to consumers about the types of personal information collected, used and disclosed for marketing purposes.²³⁸

Alberta, British Columbia and Quebec have substantially similar laws governing how organizations in the private sector can collect, use and disclose personal information in the course of commercial activities.²³⁹ One notable difference in the provincial regimes is that the provincial Privacy Commissioners have the power to order companies to comply with the law and the laws contain penalties for non-compliance. Critics of *PIPEDA* have lamented the lack of order-making powers for the federal Privacy Commissioner, and the Privacy Commissioner of Canada recently issued a position paper arguing for modernization of *PIPEDA* to include stronger enforcement powers to better protect Canadians.²⁴⁰ In contrast, the Alberta Information and Privacy Commissioner issued a decision after the Air Miles Reward Program data breach in 2011 that saw 50 million email addresses compromised by Air Miles' service provider, Epsilon. The Alberta Information and Privacy Commissioner ordered Air Miles to notify individuals to whom there was a real risk of significant harm due to the data breach, and noted that Air Miles had already notified affected individuals immediately and took steps to mitigate harm.²⁴¹ The federal Privacy Commissioner does not have similar order-making powers to compel organizations to report data breaches to the Privacy Commissioner and to notify affected individuals.

Are loyalty programs captured under regulations for financial services and financial products?

While there are no laws in Canada that directly regulate loyalty programs as a financial service or a financial product, there are a few interesting discussions that suggest that loyalty program rewards could be recognized as having monetary value.

²³⁸ Office of the Privacy Commissioner of Canada, Case Summary #2002-78, "Alleged disclosure of personal information without consent for secondary marketing by a company", online: http://www.priv.gc.ca/cf-dc/2002/cf-dc_021016_6_e.asp. The Privacy Commissioner recommended that the application forms for the program include a check box for those who wish to withdraw consent to marketing, or a toll-free number be provided for the same purpose. For full details of the Privacy Commissioner's findings, see their letter to PIAC constituting the findings with regard to PIAC's complaint against Air Miles (Loyalty Management Group Canada, Inc.), online: http://www.piac.ca/privacy/loyalty_management_group_canada_inc/.

²³⁹ Alberta, *Personal Information Protection Act*, P-6.5; British Columbia, *Personal Information Protection Act*, S.B.C. 2003, ch. 63; Quebec, *An Act Respecting the Protection of Personal Information in the Private Sector*, ch. C-39.1.

²⁴⁰ See Office of the Privacy Commissioner of Canada, "The Case for Reforming the *Personal Information Protection and Electronic Documents Act*" (May 2013), online: http://www.priv.gc.ca/parl/2013/pipeda_r_201305_e.asp.

²⁴¹ Alberta, Office of the Information and Privacy Commissioner, "AIR MILES Reward Program" P2011-ND-012, Case File #P1822 (May 11, 2011), online: <http://www.oipc.ab.ca/Downloads/documentloader.ashx?id=2813>.

For example, the Canada Revenue Agency (CRA) provides guidance on taxable benefits and allowances. The CRA has taken the view that where the employer does not control points accumulated under loyalty programs, the employee is responsible for determining and including in reported income the fair market value of any benefits received or enjoyed.²⁴² In 2009, the CRA stated that it no longer requires loyalty points to be included in an employee's income as long as the points are not converted to cash, the plan or arrangement is not indicative of an alternate form of remuneration, or the plan or arrangement is not for tax avoidance purposes.

Many provinces have laws that require unclaimed property above a prescribed minimum amount to be remitted to the provincial consolidated revenue fund. This has ramifications in requiring issuers of property to keep track of the value of unclaimed property and after prescribed periods of time, requires issuers of property to transfer this value to the province. For example, Alberta recognized that the reforms eliminating expiry dates on gift cards might create unintended unclaimed property law compliance concerns and thus amended regulations under the *Unclaimed Personal Property and Vested Property Act* to expressly exclude gift cards from application of the unclaimed property laws. Alberta also excludes by regulation specific products such as loyalty programs. Ontario's *Unclaimed Intangible Property Act* was passed in 1989 but had not been declared in force, thus it was repealed in 2011 by the *Legislation Act, 2006*. In 2012, Ontario announced its intention to establish a new unclaimed property regime and launched a consultation. One aspect of its consultation discussed whether and if so how its proposed regime would apply to loyalty programs.²⁴³

One author in the United States has speculated that states may turn their attention to unused loyalty reward program values.²⁴⁴ Scott Smith claims that states have become increasingly aggressive and routinely schedule holders for unclaimed property audit examinations, especially given difficult fiscal situations. According to Smith, states may consider uncashed loyalty rewards as intangible property and may require loyalty rewards to be reportable unclaimed property, which may also raise valuation issues.

²⁴² Canada Revenue Agency, Income Tax Technical News No. 40 (issued June 11, 2009). The Canada Revenue Agency provides some examples of where the employee must declare the taxable income and where employers must report the value of the benefit of loyalty program points on the employee's T4 slip.

²⁴³ "Update on Ontario's Proposed Unclaimed Intangible Property Program", Davis LLP Banking & Financial Services Bulletin, (27 June 2013), online: <http://www.davis.ca/en/publication/ontario-proposed-unclaimed-intangible-property-program/>. See also Ontario Ministry of the Attorney General, "Proposed Unclaimed Property Program - Consultation", online: http://www.attorneygeneral.jus.gov.on.ca/english/about/uipp_consultation.asp and "Unclaimed Property Program, June 2013 Meetings, Summary of Comments" http://www.attorneygeneral.jus.gov.on.ca/english/about/uipp_summary_of_contents-EN.pdf at p. 2 citing concerns about determining the value of a card used in a loyalty program where there may not be a 1:1 ratio between cash paid for the card and the value of the card.

²⁴⁴ Scott D. Smith, "Loyalty Reward Programs Raise a Host of Questions under State Unclaimed Property Laws", Baker Donelson Bearman Caldwell & Berkowitz, PC, (1 July 2011), online: <http://www.bakerdonelson.com/loyalty-reward-programs-raise-a-host-of-questions-under-state-unclaimed-property-laws-06-30-2011/>.

Notably, Australia has previously considered whether loyalty programs can fall under the definition of a financial service or product. The Australian Securities and Investment Commission (ASIC) has issued a class order which states that a loyalty program is “a facility through which, or through the acquisition of which, a person makes non-cash payments”.²⁴⁵ ASIC had defined the required characteristics of loyalty programs in the following manner in a policy paper:

- a) [its] sole main purpose is to promote spending on goods and/or services of the issuer or third parties participating in this scheme;
- b) clients are allocated a measure of value (credits) as a result of acquiring or using goods and/or services of the issuer or third parties participating in the scheme, whether or not a monetary value is expressly attributed to the credits;
- c) the credits can be used to make a payment or part payment for goods or services or to obtain some other benefit; and
- d) the scheme is not part of another financial product.²⁴⁶

The result of the Class Order is that loyalty programs that meet the above definition are not a “financial product” for the purposes of the *Corporations Act 2001*, and that the financial services licensing, conduct and disclosure requirements will not apply to a loyalty scheme. However, the definition of loyalty programs acknowledges the use of the loyalty programs as a form of “non-cash payment”. One author has raised the question as to whether loyalty programs are still regulated under other parts of the *Corporations Act* and the *Australian Securities and Investments Commission Act*, such as under managed investment schemes which have registration and compliance requirements.²⁴⁷

The question of whether loyalty programs could be subject to laws regarding money transmission and the issuance of payment instruments has been raised by an American law firm in a white paper discussing legal issues for loyalty programs.²⁴⁸ Where loyalty programs allow consumers to accumulate value that could be spent with third party

²⁴⁵ Australian Securities and Investments Commission, Class Order, CO 05/737, November 2005, online: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co05-737-20110927.pdf/\\$file/co05-737-20110927.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/co05-737-20110927.pdf/$file/co05-737-20110927.pdf).

²⁴⁶ Australian Securities and Investments Commission, “Non-Cash Payment Facilities” (Policy Statement PS 185, 15 November 2008).

²⁴⁷ Carmen Labbozzetta, “A Principled Approach to Reward Loyalty: An Argument for Code of Conduct Principles to Remedy the Contractual Unfairness and Legislative Confusion in Loyalty Programs” *Macquarie Journal of Business Law*, Vol. 4 (2007), pp. 123-128 at p. 130.

²⁴⁸ Perkins Cole, “Loyalty Programs: Legal Issues”, online: http://www.perkinscoie.com/files/upload/EFS_10_12_Perkins%20Coie%20-%20Loyalty%20Program%20Whitepaper.pdf.

merchants, such as through an "open loop" prepaid card, loyalty programs could be subject to such laws. It states as an example Texas' Financial Code requirement that a business obtain a license, post a bond, satisfy minimum net worth criteria and comply with other obligations where a business issues "payment instruments".

As a result of this review, it becomes clear there is a lack of coherent policy in Canadian jurisdictions to address consumer protection concerns relating to the operation of loyalty programs. For example, although loyalty programs must comply with privacy laws that regulate how private sector organizations collect, use and disclose personal information in the course of commercial activities, the federal Privacy Commissioner currently has limited ability to compel loyalty program administrators into compliance. As noted here, other jurisdictions face similar challenges in seeking a balance between consumer rights and loyalty program administration. Until a balance is struck, and the rules of the road are clear from a policy perspective, the uncertainty around the applicability of various Canadian laws to loyalty programs will continue to exacerbate problems consumers may encounter, such as unilateral changes in original terms and conditions or reward valuation.

7.0 Are there perceived market failures related to loyalty program operation?

At the outset of this investigation, we noted a customer loyalty program is a marketing tactic employed by retailers to entice consumers into loyal buying behavior and the provision of their purchasing preferences in order to increase profits. We cited a series of reasons why retailers covet loyalty programs, and reviewed the various methods employed to influence consumers to become loyal customers as well as brand advocates. While concerns have been raised throughout this study on issues relating to privacy, at this point it is prudent to ask if there are perceived market failures related to the operation of loyalty programs. That is, are there tactics being employed by loyalty programs that are concerning enough to require a statutory remedy, regulation, or other intervention such as an industry code of conduct?

In a previous section, a quote by the former Executive Director of PIAC, Michael Janigan, was used to highlight a few of the potential challenges being faced by consumers when interacting with customer loyalty programs in Canada. Mr. Janigan concluded, that for those customer reward programs offering airline travel as incentives at least, basic rules be implemented disclosing the number of reward seats available on travel involving loyalty points, providing minimum notice periods for changes, and measures ensuring any changes do not diminish the value of existing points. Moreover, he noted the accumulation of (loyalty program) points redeemable for airfares or other products has become a driver for purchase decisions, while contending that these points are characterized by merchants as inherently valueless for the purposes of monetization.²⁴⁹

While it may be true that merchants do not hold much value in loyalty currency, those points, miles or dollars collected by members of loyalty programs, one could make the argument that Canadian consumers hold their loyalty point balances as near-currency. What consumer hasn't gone through the redemptions section of their favorite loyalty program's catalogue or website, casually daydreaming about what they can redeem for their earned loyalty points or dollars? Moreover, an argument can be made that the loyalty currency presently residing in the hands of consumers are very valuable to loyalty program providers, so much so that providers have taken numerous measures in an effort to control their level of risk, much like a central bank might do for an actual currency. In addition, it was revealed in the previous section that in other jurisdictions,

²⁴⁹ Janigan, Michael, Evidence provided to the Senate Standing Committee on Transport and Communications, *Study of the Airline Industry in Canada*, May 2, 2012.

such as Australia, regulatory bodies consider the use of loyalty currency as a form of payment.

In fact, evidence provided by loyalty industry stakeholders is not supportive of the opinion that loyalty points are valueless. Every organization participating in a loyalty program, whether as a member of a coalition loyalty program, or a stand-alone initiative, has a collection of unused loyalty currency. A number of customer loyalty program executives noted that from an accounting perspective they consider any outstanding program points being held by consumers as an outstanding liability that must be accounted for.²⁵⁰

In December 2012, Carlos Dunlap, Editorial Director of Colloquy, a Loyalty One research group, provided the following perspective:

“Without much differentiation between programs, consumers are demanding that their programs offer an increasingly cash-like redemption process. Marketers are responding by offering more variety in redemption options, and simplifying those with cash or near-cash rewards.”²⁵¹

Mr. Dunlap further notes the development of an “open-loyalty economy” of points sharing, pooling and universal redemption, enabling people to exchange currency with trusted friends and businesses, leading towards a future in which loyalty rewards points are increasingly viewed like currency.²⁵² Surely, Mr. Dunlap had in mind websites such as Points.com and PointsHound when making this suggestion. Points.com lets people exchange points from different schemes and redeem them for rewards such as vouchers, while PointsHound allows consumers to book exclusive hotel deals while specifying which loyalty scheme to use.²⁵³ These activities are consistent with the view of the Australian Securities and Investment Commission that loyalty programs are a form of “non-cash payment.”

Under the backdrop described by Mr. Dunlap and others, it can also be argued, using the airline industry again as an example, that incumbent, or older airlines, have their own challenges when it comes to the redemption of loyalty rewards for flights. When

²⁵⁰Personal Interview Marc Goodman, *Suncor*, February 20, 2013, and Personal Interview with Aimia, February, 26, 2013.

²⁵¹Dunlap, Carlos, *Under the Radar: Ten Trends loyalty Marketers Might Not See coming in 2013*, Colloquy, December 2012, p. 2.

²⁵² Dunlap, Carlos, *Under the Radar: Ten Trends loyalty Marketers Might Not See coming in 2013*, Colloquy, December 2012, p. 2.

²⁵³ Barnett, Michael, “Learning to love the ‘mobile wallet’,” *Marketing Week*, June 27, 2013. Last accessed on June 27, 2013 at <http://www.marketingweek.co.uk/trends/learning-to-love-the-mobile-wallet/4007073.article>

compared with newer competitors in the market, older frequent flier programs have more members and a higher inventory of accrued miles. As a result, there are a lot of miles chasing each reward seat when consumers dealing with an established frequent flier program. Newer competitors can take advantage of this phenomenon, since they don't have that baggage chasing them.

When this argument is expanded to the entire Canadian loyalty industry, a similar argument can be made. Every organization participating in a loyalty program, whether as a member of a coalition loyalty program, or a stand-alone initiative, has a collection of unused loyalty currency (miles/points/dollars) that must be accounted for. It is common knowledge that some of the recent tactics employed by loyalty program providers, such as changing reward levels and attributing loyalty currency in a different manner, have frustrated consumers. In most cases, one could argue, that loyalty programs, especially those programs with longer histories, have made these changes in response to a need to control or reduce the amount of their members unused loyalty currency.²⁵⁴

Below are just a few examples of recent initiatives undertaken by loyalty program providers that appear to respond to the need to control or reduce the amount of their members unused loyalty currency.

- In July 2010, Shoppers Drug Mart announced a new conversion rate for its points. To get \$1 in merchandise, customers would need 800 instead of 700 Shoppers Optimum points.
- In January, 2011, Hilton Hotels changed the cost of a free night at their best hotels to 50,000 from 40,000 Hilton HHonors loyalty points, devaluing customer accounts by 20 percent.²⁵⁵
- In early 2013, Wyndham Rewards, which encompasses Days Inn and Howard Johnson, changed the number of loyalty points needed to redeem for a free room by as much as 66 percent for certain properties in some seasons.
- In July 2011, Aeroplan changed its mileage redemption levels resulting in a business class long-haul flight within Canada and Continental USA requiring fifty thousand miles instead of forty thousand miles, while an economy class flight to Australia requires eighty thousand miles compared to seventy-five thousand miles.

²⁵⁴ Personal Interview, John Bragg, Aimia, Aaron Dauphinee, Aimia, Dr. Ken Wong and Mitchell Merowitz, LoyaltyOne, May 24, 2013.

²⁵⁵ Nelson, Jacqueline, "Loyalty programs: Disloyalty rewards," *Canadian Business*, April 7, 2011. Last accessed on June 20, 2013, at <http://www.canadianbusiness.com/business-strategy/loyalty-programs-disloyalty-rewards/>

- In May, 2013, Marriott (which includes Fairfield, Courtyard, Ritz Carlton and TownPlace suites) raised its point requirement for a room redemption by about 30 percent for 1,300 of its hotels.²⁵⁶
- On December 28, 2011, AIR MILES announced that effective December 31, 2011, all AIR MILES reward miles posted from that day forward will have a date stamp of five years, and all reward miles collected before that date would expire December 31, 2016.²⁵⁷

For one gas station offering a loyalty program, the methods employed were a little more complex. In August 2009, Petro-Canada altered their points collection rules on fuel purchases so points would be awarded on the number of litres sold, and not on dollars spent. As a result of this change, buyers of regular gas went from earning 10 points per dollar to 5 points per litre. At that time, based on gasoline prices, this represented an approximately 50% decrease in points earning power. The Canadian average gas price in June 2013, was \$1.30 per litre, compared to about \$1 per litre in September 2009.²⁵⁸ As a result, it is easy to argue the earning power for petro points members has steadily declined due to this change in points awarding policy.

Arguably, another example of a loyalty currency with declining earning power is AIR MILES reward miles. According to MoneySense, producer of Canada's leading personal finance magazine and leading personal finance website, the earning power of reward miles has been in a steady decline since 2007. As illustrated by Figure 7-1, from 2007 to 2012, the amount of spending to obtain \$20 in rewards merchandise grew by about \$1000.

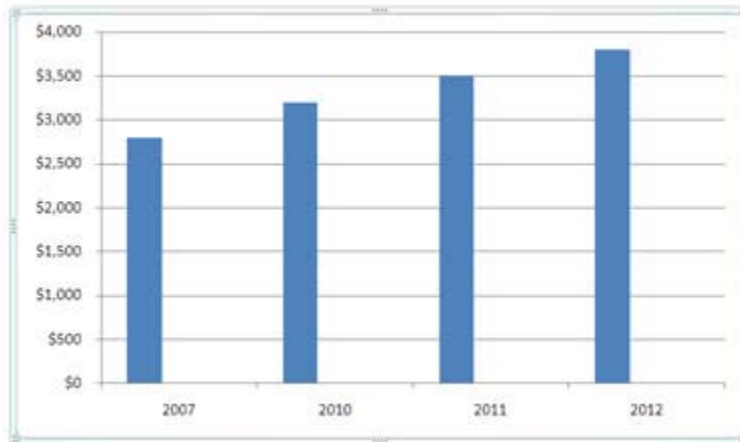
²⁵⁶ Frommer, Pauline, "Travel Rewards: Hotels tighten up on points programs," Toronto Star, March 19, 2013. Last accessed On June 20, 2013, at

http://www.thestar.com/life/travel/2013/03/19/travel_rewards_hotels_tighten_up_on_points_programs.html

²⁵⁷ AIR MILES, 'AIR MILES First to Launch Instant Redemption Across Retailers,' Media Release, December 28, 2011. Last accessed On June 26, 2013, at <http://www.newswire.ca/en/story/900457/air-miles-first-to-launch-instant-redemption-across-retailers>

²⁵⁸ Natural Resources Canada, "Average Retail Prices for Regular Gasoline in Canada," June 25, 2013. Last accessed June 27, 2013, at http://www2.nrcan.gc.ca/eneene/sources/pripri/prices_byyear_e.cfm, and Statistics Canada, "The Daily," September 17, 2009. Last accessed June 27, 2013, at <http://www.statcan.gc.ca/daily-quotidien/090917/dq090917a-eng.htm>.

Figure 7-1 Spending Amount required to obtain \$20 in Rewards Merchandise from AIR MILES²⁵⁹



While loyalty programs providers want to get the outstanding liability of growing amounts of loyalty currency off their books, it is not their sole reasoning for encouraging their members to redeem their collection of points or miles. As noted earlier, loyalty industry research has shown that program members who redeem are more likely to become those coveted “brand advocates” loyalty program providers seek, versus members who have not yet redeemed.²⁶⁰ Loyalty providers can do this through a positive redemption experience or by presenting an opportunity for their members to have an experience that is outside of the ordinary and has a lasting effect – such as surprising relatives with a trip.

However, if loyalty program members continue to hold on to their points instead of redeeming them, the issues of loyalty currency devaluation and expiry can come into play. The tactics implemented by loyalty providers to devalue and have points expire has not gone unnoticed by Canadian consumers.

While most grumble and accept the fact loyalty providers seem free to change the terms and conditions of their program membership at any time, not everyone has chosen to accept this fate.²⁶¹ In 2010, Option Consommateurs initiated a class action lawsuit against Shoppers Drug Mart, which operates in Quebec as Pharmaprix. Option Consommateurs alleged that the company broke Quebec's consumer protection laws

²⁵⁹ *MoneySense*, “Spend your rewards points now,” June 2012. Last accessed on June 20, 2013, at <http://www.moneysense.ca/2012/05/30/spend-your-rewards-points-now/>

²⁶⁰ Aimia and LoyaltyOne, *Loyalty Program Overview*, background document prepared for consultation meeting, May 24, 2013, pg. 5.

²⁶¹ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 15-15, 72-74, Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 52-56, Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 46-50, and Loyalty Program Focus Group Transcript, November 19, 2012, 8:00 p.m., p. 34-35.

when it changed the conditions of the chain's Optimum loyalty program, increasing the number of points necessary for savings, and impacting the 1.4 million Quebec residents who use the cards.²⁶² In March 2012, a Quebec Superior Court judge agreed to hear the case.

A class action lawsuit was also launched in Quebec against Aeroplan, in August 2009, challenging the practice of cancelling points accumulated in its loyalty program. The motion was filed formally on behalf of Noella Neale of Port Coquitlam, B.C., whose 150,000 points were annulled by Aeroplan because she hadn't made a contribution or redemption in her account for one year.²⁶³ Under the Aeroplan Terms and Conditions since 2007, if there is no activity in a member's Aeroplan account within a 12-month period, Aeroplan Miles will expire. In addition, all accumulated Aeroplan Miles will also expire if they are not used within seven years of acquisition. On March 6, 2012, the Quebec *Superior Court* authorized the class action against Aeroplan. Ms. Neale, on behalf of Aeroplan members, is asking for the reinstatement of her expired Aeroplan Miles, the reimbursement of money spent to reinstate the Aeroplan Miles, \$50 in compensatory damages, an undetermined amount of exemplary damages and a declaration that both changes in the Aeroplan Terms, which led to the current legal proceedings, are void.²⁶⁴

On June 27, 2013, Aeroplan announced the cancellation of the seven-year mileage redemption policy, citing member feedback as the inspiration for this policy change.²⁶⁵ Now that Aeroplan has rescinded their controversial expiration policy, it will be interesting to see if AIR MILES follows suit and amends the policy announced in December 2011, that its reward miles remain valid for 5 years. Moreover, if Petro-Canada enforces the right to close any Petro-Points Member account that has been inactive for twelve consecutive months, it can deem all accumulated Petro-Points for that member as forfeit.²⁶⁶

²⁶² CTV News, "Shoppers Drug Mart/Pharmaprix faces class action suit over Optimum cards," March 24, 2012. Last accessed on June 20, 2013, at <http://montreal.ctvnews.ca/shoppers-drug-mart-pharmaprix-faces-class-action-suit-over-optimum-cards-1.781555#ixzz2XRCjUYBJ>

²⁶³ Sorenson, Chris, 'Class action urged over Aeroplan's points policy,' *Toronto Star*, July 4, 2009. Last accessed on June 26, 2013, at

http://www.thestar.com/business/2009/07/04/class_action_urged_over_aeroplans_points_policy.html

²⁶⁴ Heenan Blaikie, LLP., "Class action against aeroplan over expiring points – authorized to proceed," Lexology, September 28, 2012. Last accessed on June 26, 2013, at <http://www.lexology.com/library/detail.aspx?g=0de0942f-2af7-4b05-bc9a-c4c799bbb897>

²⁶⁵ Aimia, "Aeroplan Transforms Program to Deliver Outstanding Loyalty Experience," Media Release, June 27, 2013.

²⁶⁶ Petro Canada, Petro Points Terms and Conditions, last accessed on July 11, 2013 at <http://retail.petro-canada.ca/en/independent/636.aspx>

Tactics to ensure loyalty currency devaluation and expiry have proven to be enough of an irritant to some consumers that they are willing to go to court. Since, for example, Canadian bank analysts estimate CIBC's Aerogold Visa Card is responsible for more than 10 percent of CIBC's profits, it's clear the operation of loyalty programs has evolved into significant economic contributor in Canada.²⁶⁷ As a result, any alteration to the practices relating to the distribution or redemption of loyalty currency, we contend, now warrants additional scrutiny by federal or provincial policy makers. We are encouraged by the Government of Ontario's decision to discuss how loyalty programs would apply to a future unclaimed property regime, and look forward to other policy makers turning their attention to these tactics where they feel such an examination is warranted.

Loyalty Program Credit Cards

While Canadian merchants may publicly maintain there is not much value in loyalty currency (miles/points/dollars), they hold a different view regarding loyalty program branded credit cards, and many will claim they represent a significant cost to them. At the present time, rules imposed by the credit card companies prevent retailers from refusing to accept "premium" credit cards that offer reward miles, points and other benefits for consumers, but require higher processing fees to be paid by the merchants to the credit card firms.

In December 2010, the federal Competition Bureau, with the support of the Canadian Federation of Independent Business (CFIB) and the Retail Council of Canada, filed a complaint with the Competition Tribunal to challenge rules established by Visa and MasterCard prohibiting merchants from encouraging consumers to consider lower cost payment options like cash or debit, and prohibiting merchants from applying a surcharge to a purchase on a high cost card.²⁶⁸ Further, once a merchant agrees to accept one of Visa or MasterCard's credit cards, that merchant must accept all credit cards offered by that company, including cards that impose significant costs on merchants, such as premium cards.²⁶⁹ Canadian retailers estimate they pay \$5-\$6 billion a year in such charges to credit card companies.²⁷⁰

²⁶⁷ Reuters, *TD Bank seeks to replace CIBC as Aeroplan credit card partner*, June 27, 2013. Last accessed on July 3, 2013, at <http://www.cybermarque.com/print-news/news-id-7378?counthit=no>

²⁶⁸ Competition Bureau Canada, *Competition Bureau Challenges Visa and MasterCard's Anti-competitive Rules*, News Release, December 15, 2010.

²⁶⁹ Competition Bureau Canada, *Competition Bureau Challenges Visa and MasterCard's Anti-competitive Rules*, News Release, December 15, 2010.

²⁷⁰ CBC News, *Credit card fees are unfair, tribunal hears*, May 8, 2012. Last accessed June 28, 2013, at <http://www.cbc.ca/news/business/story/2012/05/08/credit-card-competition.html>

So what does it cost to process a transaction using a credit card, versus other forms of payment? A Bank of Canada study undertaken in 2006 revealed the estimated cost of processing a median cash transaction of \$36.50 transaction, and the results were as follows:

Debit card: 19 cents

Cash: 25 cents

Credit Card: 82 cents²⁷¹

While 82 cents does not appear on its face to be a significant cost, it does represent over 2 percent of the purchase price of a \$36.50 transaction. Moreover, if a consumer uses a so-called 'premium' credit card to pay their \$36.50, it is most likely branded with a loyalty program logo, and increases the probability the cost to the merchant to process the payment will be higher. Marc Felgar, founder and CEO of GreedyRates.ca, a service to assist Canadians when assessing credit card offerings, noted in July 2013, "The increasingly rich rewards programs offered by Canadian banks, while in large part funded by one of the world's highest interchange fee schedules, is also having an impact on penalty rates and hidden fees, as banks try to maintain profitability."²⁷² A more direct assertion was made by Preet Bannerjee, a television host and personal finance commentator, on July 23, 2013:

"Cash and debit customers are essentially subsidizing the rewards programs for credit card users and that's why it's inherently unfair."²⁷³

This interplay between loyalty programs, credit cards issuers, merchants and consumers is not just happening in Canada. In Australia, the banks being paid the interchange fee (the two to three per cent of any purchase) use revenue from the fee to fund the cost of running loyalty programs. In the mid to late 1990s, most Australian loyalty programs that began in earnest had free membership, and the number of account owners went from 1 in every 3 Australians in the mid-1990s to 2 in every 3

²⁷¹ Arango, Carlos and Varya Taylor, "Merchants' Costs of Accepting Means of Payment: Is Cash the Least Costly?," *Bank of Canada Review*, Winter 2008-2009, page 20.

²⁷² GreedyRates.ca, "GreedyRates.ca Releases Q2 2013 Credit Card Landscape Report," News Release, July 17, 2013. Last accessed on July 17, 2013 at <http://www.marketwire.com/press-release/greedyratesca-releases-q2-2013-canadian-credit-card-landscape-report-1811921.htm>

²⁷³ CBC News, "The Bottom Line: Credit Cards," *The National*, July 23, 2013. Last accessed on July 25, 2013 at <http://www.cbc.ca/player/News/TV+Shows/The+National/ID/2397915617/?sort=MostRecent> and http://www.youtube.com/watch?feature=player_embedded&v=M04IHJLWNzU

around a decade later.²⁷⁴ The argument can be made that indirectly all consumers pay for loyalty schemes, including those not a member of them, because the scheme is paid for by slightly elevated retail prices.²⁷⁵

The result - an increase in loyalty branded credit cards use was adding to the cost of the Australian retail payment system; however, more worrisome was the debt distress this increased credit card use was causing among Australian consumers.²⁷⁶ The surge in credit card use, when combined with the notion most consumers end up paying interest on credit card transactions, meant a strong revenue stream for Australian banks. It was at this point the Reserve Bank of Australia stepped in and regulated interchange fee rates at 0.55 per cent per transaction in March 2012.²⁷⁷ Banks have responded by charging customers annual fees for some loyalty program credit cards which has led to Australian credit card account ownership per capita stagnating.²⁷⁸

On July 23, 2013, the Competition Tribunal responded to the question of whether surcharging by merchants will be allowed in Canada. While the Tribunal dismissed the case brought before it, in their determination “the proper solution to the concerns raised by the Commissioner (of Competition) is a regulatory framework. In that regard, it noted that the experience in other jurisdictions showed that concerns would be raised by consumers regarding surcharging and that rather sooner than later, intervention would have to take place by way of regulation.”²⁷⁹

When surcharging became legal in Australia, many retailers took advantage by applying excessive charges between 4-17% for credit card transactions.²⁸⁰ The most common

²⁷⁴ Webber, Tony, “Credit Card use smashed by regulation,” *The Sydney Morning Herald*, March 15, 2012. Last accessed on July 4, 2013 at <http://www.smh.com.au/business/credit-card-use-smashed-by-regulation-20120315-1v7rq.html>

²⁷⁵ Webber, Tony, “Credit Card use smashed by regulation,” *The Sydney Morning Herald*, March 15, 2012. Last accessed on July 4, 2013 at <http://www.smh.com.au/business/credit-card-use-smashed-by-regulation-20120315-1v7rq.html>

²⁷⁶ Webber, Tony, “Credit Card use smashed by regulation,” *The Sydney Morning Herald*, March 15, 2012. Last accessed on July 4, 2013 at <http://www.smh.com.au/business/credit-card-use-smashed-by-regulation-20120315-1v7rq.html>

²⁷⁷ Webber, Tony, “Credit Card use smashed by regulation,” *The Sydney Morning Herald*, March 15, 2012. Last accessed on July 4, 2013 at <http://www.smh.com.au/business/credit-card-use-smashed-by-regulation-20120315-1v7rq.html>

²⁷⁸ Webber, Tony, “Credit Card use smashed by regulation,” *The Sydney Morning Herald*, March 15, 2012. Last accessed on July 4, 2013 at <http://www.smh.com.au/business/credit-card-use-smashed-by-regulation-20120315-1v7rq.html>

²⁷⁹ Competition Tribunal, *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated et al.*, Decision Summary, Case CT-2010-010, July 23, 2013.

²⁸⁰ Jager, Chris, “Australians Are Still Being routed by Credit Card Surcharge Fees,” *Life*, May 29, 2013. Last accessed July 5, 2013, at <http://www.lifehacker.com.au/2013/05/australians-are-still-being-rorted-by-credit-card-surcharge-fees/>

alleged offenders include taxi and airline services, who are accused of flagrantly disregarding surcharging rules. According to a recent survey, around half of Australians polled said they had been required to pay a surcharge in early 2013 and were not offered an alternative, surcharge-free payment method by the merchant.²⁸¹ This was occurring even though the Reserve Bank of Australia introduced new regulations at the beginning of 2013 to restrict businesses from charging excessive surcharges for credit card payments.²⁸²

As noted previously, Canadian consumers have an affinity for using credit cards associated with a loyalty program, and a reward program associated with a credit card is the primary factor that makes a card their preferred choice. Union des consommateurs also noted this affinity in their 2005 examination, and expressed concern regarding the ability of consumers to keep from falling further behind on the monthly bills. In addition, we see the collection of loyalty currency is a contributing factor in credit card use and consumer debt in Australia. In comparison, Statistics Canada recently reported the average Canadian household owed a record \$164.97 in market debt for every \$100 of disposable, after-tax income they earned. As a result, it could be argued that Canadian consumers use of loyalty program affiliated credit cards may be a contributor to their elevating level of household debt.

As we have seen here, the association between credit cards and loyalty programs in Canada has an effect on the current policy discourse regarding surcharging and the application of interchange fees. It can be argued that Visa and MasterCard use consumers' affinity for loyalty program branded credit cards to take advantage of Canadian merchants. While we do not support providing merchants the ability to surcharge consumers, the fact Visa and MasterCard can hold the government "hostage" by noting "Canadians love their loyalty points from credit cards," results in the government having a more restricted scope of action due to concerns over the value exchange.

²⁸¹ Jager, Chris, "Australians Are Still Being routed by Credit Card Surcharge Fees," *Life*, May 29, 2013. Last accessed July 5, 2013, at <http://www.lifehacker.com.au/2013/05/australians-are-still-being-rorted-by-credit-card-surcharge-fees/>

²⁸² Jager, Chris, "Australians Are Still Being routed by Credit Card Surcharge Fees," *Life*, May 29, 2013. Last accessed July 5, 2013, at <http://www.lifehacker.com.au/2013/05/australians-are-still-being-rorted-by-credit-card-surcharge-fees/>

Loyalty Currency

Thus far in this section, it has been contended that consumers appear to be getting progressively less value from the rewards of their loyalty program while providers become increasingly concerned with the growing liability posed by their outstanding loyalty currency. Loyalty program providers have been masterful in popularizing their affiliation with credit cards, so much so that consumers appear to value the loyalty program affiliation more than interest rates offered when choosing a credit card. On the whole, it can be argued consumers are now paying more to get less, even though on many occasions, they have been collecting loyalty currency over a number of years. The non-regulation of loyalty currency has allowed repeated instances of devaluation, even though the loyalty industry itself, along with consumers, are viewing loyalty points increasingly like actual currency. This gradual gravitation towards treating loyalty currency like actual currency raises a number of interesting concerns. Specifically, in the absence of any regulation of loyalty currency:

- Is there a need to protect consumers against loyalty currency devaluation-Should loyalty program providers continue to retain the ability to unilaterally devalue loyalty currency
- Is there a need to protect consumers against loyalty currency expiry
- Should activities pertaining to the management of loyalty currency be monitored by government agencies equipped with enforcement powers

Is there a need to protect consumers against loyalty currency devaluation-Should loyalty program providers continue to retain the ability to unilaterally devalue loyalty currency

Earlier in this section, we outline a series of examples where loyalty program providers have recently devalued their loyalty currency in a substantial manner. Moreover, it was found that in at least one instance, a loyalty currency devaluation exercise has become the subject of legal action in the province of Quebec. It is understandable that on occasion, a loyalty program provider would increase redemption levels slightly to account for inflation, and various other expenses. However, inflation and other sources of cost increase would also affect the price the consumer paid for the original good or service that the loyalty member purchased in order to obtain their loyalty program currency. As a result, it is debatable whether every loyalty currency devaluation announced by loyalty program providers could be viewed as justifiable. In the face of seemingly random and unjustifiable loyalty currency devaluations, we contend the time

has arrived for consideration to be given to creating a structure to monitor and comment on the provision and operation of loyalty programs.

Is there a need to protect consumers against loyalty currency expiry

While many loyalty program members have worked hard to collect their loyalty currency over an extended period of time, loyalty program providers would likely contend that members signed an agreement upon joining a given program that enables them to change the terms and conditions of their program at any time. That being said, there have been other instances where changes have been made to existing terms and conditions in other industries, due to outside intervention. An example of such an exercise is the introduction by the Canadian Radio-television and Telecommunications Commission of the mandatory Wireless Code of Conduct for the Canadian wireless device industry. In that instance, for the benefit of all consumers, existing terms and conditions are scheduled to be amended when the wireless code goes in effect in December 2013.

We believe the issue of expiry is controversial for both consumers and loyalty providers. While the cause of consumer frustration is obvious, unused or expired loyalty currency is cause for concern for loyalty program providers as well. As noted previously, redeeming loyalty currency is the highlight of the process for the consumer – the reward for all that collecting of loyalty currency. However, once a provider introduces the possibility of loyalty currency expiring or being devalued, they also invite a greater chance of their members losing interest or simply walking away from their program, due to unredeemed or expired loyalty currency. While unredeemed loyalty currency represents a one-time profit for companies offering loyalty programs from a financial perspective, it is generated at a risk of losing some of their most loyal customers. Moreover, we believe it would be a useful to have a mechanism in place for those members who are frustrated with a given loyalty program to have their entire purchasing data removed if they request it. The question remains if it is reasonable for loyalty program providers to retain the right to unilaterally impose a loyalty currency expiry policy. It is a question to be reviewed by policy makers to determine if this kind of activity on the part of loyalty program providers requires external oversight going forward.

Should activities pertaining to the management of loyalty currency be monitored by government agencies equipped with enforcement powers

We have noted consumers treat their loyalty currency as actual currency, and loyalty program providers take actions treating the loyalty currency they offer as actual currency. Moreover, courts have begun considering cases regarding the value of loyalty currency, and loyalty currency is now actively traded using services designed to exchange one loyalty currency for another, similar to actual currency. As a result of these developments, the time may have arrived where the government can consider loyalty currency as a parallel to the existing currency system. Since aspects dealing with currency are regulated, the argument posed here is whether the ability to unilaterally devalue loyalty currency may infringe upon the responsibilities usually given to a central bank. If this case can be made, perhaps it is time for loyalty currency, and the activities pertaining to it, to be monitored by a government agency in order to provide consumers some of the same protections they enjoy when dealing with currency. If one considers loyalty currency as a form of payment, then users of this currency should expect the same level of protection that is afforded to consumers when using other methods covered under the payment system.²⁸³

Big Spending + Small Reward = Disaffected Consumer

Another tactic employed by loyalty program providers that raised concerns among focus group members is when loyalty programs promote a cash back offer that will appear to be high in value, but require high spending thresholds, redemption limits, and expiration dates to ensure that few rewards are actually redeemed.²⁸⁴ The value of the cash back offer is intended to capture the consumer's attention, but it usually comes at a cost the consumer was not always intending to spend when entering the retail outlet. One focus group member explained this phenomenon as follows:

²⁸³ While admittedly outside of the scope of this investigation, a related development raising similar concerns that may warrant future study is the introduction of the Kawartha Loon on a permanent basis. At time of printing, the Kawartha Loon is accepted only in the city of Peterborough, ON, and can be exchanged for Canadian currency. For more information on the Kawartha Loon, please see Transition Town Peterborough, *Kawartha Loon Exchange*, website. Last accessed October 16, 2013, at http://thegreenzineonline.com/kawartha_loon/index.html, Ugyen Wangmo, "Local Currency Gathers Momentum," *Arthur*, September 16, 2013. Last accessed October 16, 2013, at <http://trentarthur.ca/local-currency-gathers-momentum/> and Peterborough This Week, "Trade your Loonies for Loons This Fall," www.mykawartha.com, February 27, 2013. Last accessed October 16, 2013, at <http://www.mykawartha.com/community-story/3715417-trade-your-loonies-for-loons-this-fall/>

²⁸⁴ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 12, and Loyalty Program Focus Group Transcript, November 19, 2012, 5:30 p.m., p. 14 and p. 25.

“You go into a store, you have a rewards card, and you’re going in there for specific items. And, all of a sudden, you see these signs, spend this much, and you get this much off. And even when you get that dollar amount off, you’re still spending more than what you intended to spend, anyway. I go into Shoppers, I want to spend a maximum of \$20.00. Then, they say, spend \$50.00, they take off the \$10.00, it’s still \$40.00. I’m still spending \$20.00 more than I intend to spend.”²⁸⁵

This report is not suggesting this tactic is necessarily a market failure, since loyalty programs operate in a world where the profit motive is the ultimate driver. It is merely to point out that some consumers see this tactic for what it is, bait, and have chosen to raise it as a potential issue. Moreover, one industry stakeholder in United States noted “these tricks can only persist for so long before customers become frustrated with the hoops they must jump through to get the rewards they feel they deserve.”²⁸⁶

The Federal Trade Commission (FTC) in the United States agrees, and refers to pricing practices where firms advertise only part of a product’s price and reveal other charges as the customer goes through the buying process as “drip” pricing.²⁸⁷ The FTC held a conference on drip pricing in May 2012 to review these practices, and sent warning letters to several hotel companies, stating that their mandatory resort fees might be illegal.²⁸⁸ The FTC’s Canadian counterpart, the Competition Bureau, has noted drip pricing is deceptive, and, according to one Canadian competition lawyer, has been sending signals that it sees disclaimer practices, for example, as a serious concern and an enforcement priority.²⁸⁹ No signal was louder than the Competition Bureau July 2013 announcement of legal action filed in Ontario Superior Court against two of Canada’s largest furniture and home appliance retailers, Leon’s Furniture Limited and The Brick Ltd., for what the Bureau believes are deceptive marketing practices, using the term “drip pricing” when discussing the matter in media outlets.²⁹⁰

²⁸⁵ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 12.

²⁸⁶ Sports Loyalty International, *The Economics behind Customer Loyalty: Using Coalition Program Assets to Turbo-Charge Results*, White Paper, p.23. Last accessed on June 24, 2013, at <http://www.sli21.com/?whitepaper=the-economics-behind-customer-loyalty>

²⁸⁷ Elliott, Christopher, “What You Need to Know About Drip Pricing,” *MintLife Blog*, February 14, 2013. Last accessed September 5, 2013 at <http://www.mint.com/blog/consumer-iq/5-things-you-need-to-know-about-drip-pricing-021/>

²⁸⁸ Elliott, Christopher, “What You Need to Know About Drip Pricing,” *MintLife Blog*, February 14, 2013. Last accessed September 5, 2013 at <http://www.mint.com/blog/consumer-iq/5-things-you-need-to-know-about-drip-pricing-021/>

²⁸⁹ Gray, Jeff, “Watchdog accuses Leon’s, The Brick of deceptive marketing,” *The Globe and Mail*, July 9, 2013. Last accessed September 5, 2013 at <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/watchdog-accuses-leons-the-brick-of-deceptive-marketing/article13101984/>

²⁹⁰ Gray, Jeff, “Watchdog accuses Leon’s, The Brick of deceptive marketing,” *The Globe and Mail*, July 9, 2013. Last accessed September 5, 2013 at <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/watchdog-accuses-leons-the-brick-of-deceptive-marketing/article13101984/>. Additional information at

Reward Seat Disclosures for Travel Reward Programs

Earlier in this section we raised the notion that basic rules are needed disclosing the number of reward seats available on travel involving loyalty points. While this may be useful to those consumers who are members of a loyalty program directly associated with a specific airline, such as Aeroplan and Air Canada, this poses a challenge when discussing other travel loyalty programs. Under the Royal Bank's Avion program, for instance, cardholders earn RBC rewards points, which can be redeemed for flights with any airline, or converted to other travel programs. Moreover, in 2010, Westjet initiated its Westjet Rewards program, where as long as seats are available, program members can redeem for them with their Westjet dollars. This fits with the definition of the Australian Securities and Investment Commission acknowledging the use of the loyalty programs as a form of "non-cash payment." Approximately 10% of Porter's available seats are allocated for redemption by members of their loyalty program, VIPorter, although availability is not guaranteed on all Porter flights.²⁹¹ Meanwhile, it is reported that Air Canada currently sets aside 8 per cent of its seats for rewards travel.²⁹²

From 2010 to 2013, IdeaWorks sponsored an annual "ezReward Seat Availability Survey," where researchers tried to book award seats at the lowest award level through over 20 frequent flyer programs, including Aeroplan. The results, while initially encouraging for Air Canada and Aeroplan, have become less noteworthy over the years the study has been conducted.

Competition Bureau, "Competition Bureau Takes Action Against Leon's and The Brick for Deceptive 'Buy Now, Pay Later' Promotions," *New Release*, July 9, 2013. Last accessed September 5, 2013 at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03582.html>

²⁹¹ Porter Airlines Inc., *VIPorter FAQ*. Last accessed on June 24, 2013, at <https://www.flyporter.com/viporter/faq?culture=en-CA#24>

²⁹² Mayers, Adam, "As TD, CIBC fight over Aeroplan, consumers win," *Toronto Star*, July 5, 2013. Last accessed July 6, 2013 at http://www.thestar.com/business/personal_finance/2013/07/05/as_td_cibc_fight_over_aeroplan_consumers_wi_n.html

Figure 7-2 Aeroplan Reward Seats Availability on Air Canada²⁹³

Year	% Success Rate
2010	93.6%
2011	82.1%
2012	78.6%
2013	66.4%

The results in Figure 7-2 present a significant challenge for Aeroplan, since in 2010 they could argue their members could redeem their points for available flights at almost any time. In 2013 however, the redemption availability figure of 66.4 percent is akin to their members only being able to redeem their flights if they made reservation on a Monday, a Wednesday or a Friday of any given week. Although it would be pure speculation to provide reasoning for this decline in redemption success since 2010, it would be curious to know what impact the upcoming seven-year mileage expiry date of January 1, 2014, had on the 2013 redemption success rate figure. Although Aeroplan has recently rescinded its seven-year mileage redemption policy, this did not take place until after the conclusion of IdeaWorks 2013 study.

As noted above, loyalty program providers change their terms and conditions occasionally for a variety of reasons, including measures designed to control their outstanding volume of loyalty currency. On previous occasions, concerns have been raised regarding the period of time that loyalty program providers give their members as notice periods for changes to programs. At the present time in Canada, there is no minimum notice period a loyalty program must give to its members advising them of

²⁹³ IdeaWorks, “Low Fare Airlines Offer Better Reward Seat Availability While Traditional Carriers Provide Mixed Results,” May 26, 2011, p. 2. Last accessed June 28, 2013, at <http://www.ideaworkscompany.com/wp-content/uploads/2012/05/Press-Release-56-Reward-Seat-Availability.pdf>, and IdeaWorks, “Value Airlines Fill Top 7 Slots with Best Reward Seat Availability, and Among Global Airlines Singapore is Best,” May 9, 2013, p. 2. Last accessed June 28, 2013, at <http://www.ideaworkscompany.com/wp-content/uploads/2013/05/Press-Release-77-Reward-Seat-Report.pdf>. The ezRez Reward Seat Availability Survey is based upon 6,720 booking queries made by IdeaWorks at the websites of 24 frequent flier programs during March and early April 2011. Travel dates spanned June through October 2011; with 20 top routes checked to assess reward seat availability. Booking queries for a party of 2 travelers were made at frequent flier program websites during March 2011 with minor follow-up work conducted during the first week of April 2011. For the 2010 report, queries were made during February and March 2010. Some airlines require a Saturday night stay for reward travel; all of the queries used date pairings that included a Saturday night stay and any departure time was acceptable. Furthermore, reward travel had to be available on the outbound and return dates queried. The 2012 Switchfly Reward Seat Availability Survey is based upon 6,680 booking queries made by the IdeaWorks Company at the websites of 23 frequent flier programs during March 2012. Travel dates spanned June through October 2012. The 2013 Switchfly Reward Seat Availability Survey is based upon 7,560 booking queries made by the IdeaWorks Company at the websites of 25 frequent flier programs during March 2013. Travel dates spanned June through October 2013

changes to the terms and conditions of any given program. In fact, a staple of the terms and conditions of virtually all Canadian-based loyalty programs is the right to change their terms without notice. While common sense dictates that changing terms and conditions without notice may not resonate positively with consumers, we believe it may be necessary to incorporate an industry-wide guideline to ensure consumers are given fair notice before any changes are undertaken by loyalty program providers. As was mentioned previously, the introduction by the CRTC of the mandatory Wireless Code of Conduct for the Canadian wireless device industry serves notice changes can be made to existing terms and conditions in certain industries, due to outside intervention.

Transfer of Loyalty Currency

One of the issues that was raised during focus group discussions was the ability to transfer loyalty currency from one program member to another. While respondents generally said they have never attempted this action, a review of the terms and conditions of a number of loyalty programs reveal that the ability to transfer loyalty currency depends upon the loyalty program provider.²⁹⁴ For instance, Shoppers Drug Mart's Optimum program allows the transfer of points from one member to another, while Hudson's Bay Rewards and Esso Extra members can combine accounts with others residing at the same address.²⁹⁵ Other Canadian loyalty program providers allow members to transfer their loyalty currency at a price. For those wishing to transfer WestJet dollars, for example, there is a fee of \$20-\$23.²⁹⁶ Under Aeroplan, members can transfer miles from one Aeroplan Account to another, at a rate of 2¢ per mile.²⁹⁷ Meanwhile, the fee to transfer AIR MILES reward miles from one account to another is 15¢ per mile.²⁹⁸ Finally, for members of Petro Canada's Petro Points, Club Sobeys,

²⁹⁴ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 75-76.

²⁹⁵ Shoppers Drug Mart, Terms and Conditions, last accessed on July 11, 2013 at www1.shoppersdrugmart.ca/en/Optimum/terms_and_conditions.aspx, Hudson's Bay Rewards, Terms and Conditions, last accessed on July 11, 2013 at www.hbc.com/hbc rewards/program/default.asp?tf=ABOUTREWARDS&pg=terms_conditions&page_label=terms_cond_Label&NAV=ABOUTREWARDS&CATTOUSE=0 and Esso Extra, Program Rules, last accessed on July 11, 2013 at www.essoextra.com/pages/program_rules.aspx

²⁹⁶ WestJet Rewards, Terms and Conditions, last accessed on July 11, 2013 at <http://www.westjet.com/guest/en/rewards/reward-program-terms.shtml>

²⁹⁷ Aeroplan, Transfer Miles, last accessed on July 11, 2013 at http://www4.aeroplan.com/use_your_miles/share_miles/launch.do

²⁹⁸ AIR MILES, Transfer of reward miles, Q&A, last accessed on July 11, 2013 at <https://www.airmiles.ca/arrow/Splash?splashId=11500076>

Best Buy Rewards Zone and the Scene program, the transfer of points between members is strictly prohibited.²⁹⁹

Bequeathing Loyalty Currency

Another issue that was briefly touched upon during focus group discussion was the notion of bequeathing your loyalty currency to someone in the event of your death.³⁰⁰ While a few focus group participants were aware this was possible, a survey conducted by LoyaltyOne in April 2013 revealed that only 1 in 10 loyalty program members know that they can bequeath accrued points and miles.³⁰¹ The Director of Marketing at LoyaltyOne noted, "These points will go unaccounted for unless Canadians work with their families to develop a points and miles bequest plan."³⁰²

AIR MILES, which is operated in Canada by LoyaltyOne, as well as Club Sobeys, Hudson's Bay Rewards and the WestJet Rewards program, all allow for the inheritance of loyalty currency.³⁰³ Aeroplan's estate transfer policy has a one year time limit, and there is a processing fee of \$30 plus taxes, while the Marriott Rewards program only allows spouses or domestic partners to inherit points.³⁰⁴ Under Esso Extra, where households are able to merge accounts, if what they refer to as the "Master member" dies, the Members' existing Points in the joint account will be distributed back to the Members based on each Member's actual contributions to the joint account, less their

²⁹⁹ Petro Canada, Petro Points Terms and Conditions, last accessed on July 11, 2013 at <http://retail.petro-canada.ca/en/independent/636.aspx>, Sobeys's, Club Sobeys's Program Rules, last accessed on July 11, 2013 at <https://www.clubsobey.com/Terms.aspx#clubsobeyprogramrules>, Best Buy, Best Buy Rewards Zone Terms and Conditions, last accessed on July 11, 2013 at <https://www.bestbuyrewardzone.ca/progrules.jsp> and SCENE, Terms and Conditions, last accessed on July 11, 2013 at <https://www.scene.ca/legal.aspx>

³⁰⁰ Loyalty Program Focus Group Transcript, November 15, 2012, 5:30 p.m., p. 74, and Loyalty Program Focus Group Transcript, November 15, 2012, 8:00 p.m., p. 56.

³⁰¹ *Canada Newswire*, "Loyalty Lives On," New Release, May 29, 2013, last accessed on July 11, 2013 at <http://www.newswire.ca/en/story/1173533/loyalty-lives-on>

³⁰² *Canada Newswire*, "Loyalty Lives On," New Release, May 29, 2013, last accessed on July 11, 2013 at <http://www.newswire.ca/en/story/1173533/loyalty-lives-on>

³⁰³ AIR MILES, Terms and Conditions, last accessed on July 11, 2013 at <https://www.airmiles.ca/arrow/AboutTermsAndConditions2>, Sobeys's, Club Sobeys's Program Rules, last accessed on July 11, 2013 at <https://www.clubsobey.com/Terms.aspx#clubsobeyprogramrules>, Hudson's Bay Rewards, Terms and Conditions, last accessed on July 11, 2013 at www.hbc.com/hbc rewards/program/default.asp?tf=ABOUTREWARDS&pg=terms_conditions&page_label=terms_cond Label&NAV=ABOUTREWARDS&CATTOUSE=0 and WestJet Rewards, Terms and Conditions, last accessed on July 11, 2013 at <http://www.westjet.com/guest/en/rewards/reward-program-terms.shtml>

³⁰⁴ Leong, Melissa, "Your loyalty points don't have to die with you," *Financial Post*, March 9, 2013. Last accessed July 11, 2013 at <http://business.financialpost.com/2013/03/09/heir-miles-your-loyalty-points-dont-have-to-die-with-you/>

proportional share of any redemptions, upon receipt and registration of written notice to Imperial Oil.³⁰⁵

For those consumers enrolled in the Shoppers Drug Mart Optimum program, their points are immediately forfeited back to the retailer when the customer dies.³⁰⁶ Meanwhile there are a series of loyalty programs such as SCENE, Best Buy Rewards Zone, Petro Points and Pet Perks that make no mention of a policy regarding the transfer of points upon the death of a program member.³⁰⁷

Conclusions

Given the very valuable nature of loyalty programs, we contend that Canadian consumers hold their loyalty currency balances as a form of “non-cash payment,” while the loyalty currency presently residing in the hands of consumers is very valuable to loyalty program providers. Consumers are demanding their loyalty programs offer more variety in redemption options, including an increasingly cash-like redemption process. Moreover, the development of an “open-loyalty economy” of points sharing, pooling and universal redemption has started to enable people to exchange some loyalty currency in a similar manner to actual currencies.

In response to concerns regarding the volume of outstanding loyalty currency in the hands of consumers, loyalty program providers have taken numerous measures in an effort to control their level of risk or liability, including devaluing and expiry tactics. The implementation of these tactics have proven to be such an irritant to consumers, they have, on occasion been willing to go to court in an effort to protect the loyalty currency they have so diligently collected. In response to consumer frustration, at least one loyalty program provider, Aeroplan, recently decided against the implementation of its loyalty currency expiry policy. Despite all of this effort, consumers remain faced with the prospect of receiving diminishing returns in exchange for their personal information and shopping preferences.

³⁰⁵ Esso Extra, Program Rules, last accessed on July 11, 2013 at www.essoextra.com/pages/program_rules.aspx

³⁰⁶ Leong, Melissa, “Your loyalty points don’t have to die with you,” *Financial Post*, March 9, 2013. Last accessed July 11, 2013 at <http://business.financialpost.com/2013/03/09/heir-miles-your-loyalty-points-dont-have-to-die-with-you/>

³⁰⁷ SCENE, Terms and Conditions, last accessed on July 11, 2013 at <https://www.scene.ca/legal.aspx>, Best Buy, Best Buy Rewards Zone Terms and Conditions, last accessed on July 11, 2013 at <https://www.bestbuyrewardzone.ca/progrules.aspx>, Petro Canada, Petro Points Terms and Conditions, last accessed on July 11, 2013 at <http://retail.petro-canada.ca/en/independent/636.aspx> and Pet Smart, Pet Perks Program Rules, last accessed on July 11, 2013 at https://petperks.petsmart.com/ProgramRules/PetPerks_ProgramRules_Group0.pdf

We contend the marketplace regarding redemption and expiry of loyalty currency is imbalanced in favor of loyalty program providers. While the existing market still provides value to consumers in this exchange, the power to change the terms and conditions unilaterally that currently rests with loyalty program providers does not inspire confidence going forward. Loyalty program providers have difficulty resisting the temptation to devalue loyalty currency in an effort to control outstanding liability. Therefore, we feel the time is ripe for additional scrutiny by federal and provincial policy makers regarding future alterations to practices relating to the distribution, expiration or redemption of loyalty currency. We feel a policy structure to monitor these practices would provide consumers with the counter-balance required to protect the investment they have committed to their loyalty programs of choice.

A tactic employed by loyalty program providers that raises concern is a cash-back offer that appears high in value but requires a high spending threshold on the part of the consumer. While not regarded here as a market failure per se, since it is the choice of the consumer whether they wish to meet the spending threshold, the tactic may eventually become a source of frustration for consumers.

Another consumer irritant is the notice consumers are provided when loyalty program providers employ their right to change the terms and conditions of their program. While presently there is no minimum notice period a loyalty program must give to its members advising them of changes to the terms and conditions of any given program, we contend it may be necessary to incorporate an industry-wide guideline to ensure consumers are given fair notice before any changes are undertaken by loyalty program providers. Other areas where we believe industry-wide guidelines would be beneficial to consumers include policies to transfer loyalty program currency from one member to another, as well as the bequeathing of your loyalty currency upon death. Currently, there are a variety of approaches to these practices employed by loyalty program providers in the absence of any overarching policy regarding the operation of these programs.

8.0 Conclusions and Recommendations

This investigation began with a detailed review of why loyalty programs exist and explaining their role in the market. The goals of loyalty programs included attracting new customers and retaining existing ones while prompting existing customers to increase their spending. Focus group research revealed that, increasingly, in response to the needs of consumers, businesses are providing special, differentiated service to their best customers. In addition, it was found one of the most popular vehicles loyalty programs have used in order to retain their members, as well as getting them to spend more, is the use of loyalty program-branded credit cards. In fact, it was found that the loyalty program associated with a credit card is the primary factor that makes a card their preferred choice, while many said they would switch credit cards if it wasn't for their loyalty program. We also noted that loyalty program associated credit cards are a significant revenue generator for Canada's banking institutions, specifically noting CIBC's Aeroplan Visa Cards, for example, are responsible for more than 10 percent of CIBC's profits.

This examination also considered what is being received by the consumer in the value exchange between loyalty programs and their members. In 2005, Union des consommateurs used a monetary rewards benchmark of 2%, claiming this was an acceptable rate of return for the personal information volunteered by loyalty program members. This benchmark was applied to selected loyalty program cards, no-fee credit cards, as well as credit cards with an annual fee. It was found that the benchmark of 2% was only routinely surpassed when a credit card with an annual fee was used by consumers.

When it came to the redemption of rewards, it was found the most popular among Canadian consumers were cash-back rewards, and consumers noted the convenience of automatic redemption versus having to apply to redeem loyalty currency. Moreover, customer loyalty program members indicated their interest in being eligible for so-called "soft benefits," such as special access to airport lounges, expedited hotel check-in, as well as being made aware of specifically targeted promotions in advance of the general public.

Evidence obtained through focus groups, the loyalty industry and government agencies confirmed Canadians still value their privacy. Canadian consumers want to know what data is being collected about them, as well as to provide their permission before retailers operating loyalty programs commence tracking them either online or by physical location. While focus group participants indicated some concern regarding the use of their information that is collected in the operation of customer loyalty programs, this did not inhibit them from participating in these programs. The concern is the

practice of loyalty program providers sharing member information with third parties. While identify theft was the most identified concern during these discussions, participants do not associate this risk with their loyalty program participation any more than to other sources of fraud, such as credit card use.

The evolution of social media use in Canada has presented another opportunity for loyalty program providers to expand their influence over Canadian consumers. A process labeled the “Cycle of Interaction” was used to describe a purchasing model where consumers and their loyalty programs can now interact with each other in a timely fashion that was not possible, from a practical perspective, only a few years ago. Customer loyalty programs carefully manage each member’s varying needs throughout a loyalty program’s lifecycle through a process of data capture, followed by deliberate offers. Consumers now have new opportunities to access each other and company representatives through participation in social media networks. Loyalty programs can bring customers special discounts and notifications, while consumers engage in increased interaction with each other, sharing product reviews and purchase experiences. In addition, product and service providers can now actively monitor what customers have to say about their offerings, and engage directly with individual consumers, in an effort to resolve issues introduced on social media platforms. The existence of web pages dedicated to customer reviews tells loyalty program managers and the brands they represent “the conversation is happening whether you’re with us or not.”

From the consumer perspective, the goal is to redeem reward currency in order to receive maximum value for the information they choose to share. For the loyalty program provider, it is to retain the customer, generate more revenue from them, give them a space where members can share their views and encourage them to become brand advocates. Brand advocates are consumers who use social media platforms to share their passion and provide input into the initiatives of the loyalty program of their choice, while influencing other consumers to purchase similar products. They represent the most loyal of customers and providing them a space to amplify their passion is important since consumers expect an online presence from the brands represented by their loyalty programs. This was reinforced by the finding that a majority of consumers surveyed trust online reviews and consider them influential when purchasing.

During this examination it was found that a number, if not all the elements of this “Cycle of Interaction” can now occur while a customer is in a retail location through the use of their wireless device. For consumers, this development is empowering, since the product history, customer reviews, and prices of comparable products, are all at their fingertips when looking at a specific item. It was found that younger consumers were

more likely to engage in these practices simply because they are more likely to own a wireless device with smartphone capability.

Consumer interactions with loyalty programs using their wireless device represents a key component of the marketing landscape in Canada going forward. While social media networks open the doors to new types of customer experiences, companies, sometimes through their customer loyalty programs, have interactive collaborations with social networks in order to bring customers special discounts and notifications of new opportunities at any given moment. However, these developments have not come about in the absence of consumer concerns. For instance, at least two-thirds of Canadian loyalty program members over 50 years of age described allowing programs to review your friends' status updates/photos to determine your eligibility for benefits and offering benefits to those who provide the loyalty program with access to personal information about you such as personal income as "creepy and weird."

Meanwhile, a significant number of Canadian consumers are using a reward program mobile application on a wireless device to download coupons, redeem rewards or receive offers. Through the use of tactics such as geo-targeting, designated market areas, and geo-fencing, loyalty programs' mobile applications attempt to give members the ability to see both targeted and mass offers available within a tight geographic radius; or in the case of coalition loyalty programs, the location of their program partners retail outlets. It is too early to tell exactly what long-term effects location-based advertising tactics will have on Canadian consumers. The ongoing challenge for loyalty program providers will be to create a forum for an information exchange that generates value for both themselves and the consumer. From our perspective, consumers need the opportunity to decide for themselves who they want to hear from, how they want to hear from them, and when they want to hear from them.

During this discussion, it was revealed a majority of Canadian consumers will shop at a store that allows them the opportunity to contribute towards a customer loyalty program reward, at the expense of others. It is in this fashion the operation of customer loyalty programs affect markets in Canada. For loyalty program providers, the goal is to get as many of their members as possible to express feelings of emotional loyalty to their product or service so they become brand advocates. These consumers are liable to fully engage in a loyalty program and are more inclined to redeem loyalty currency for rewards and to spend more, while encouraging their friends and family members to join them in participating in their loyalty program experience.

When reviewing why loyalty program existed, we noted the collection of consumers' purchasing data is the catalyst from which all other elements related to loyalty brand

marketing flow. We contend the effective analysis of this information has a direct correlation to increased profits for Canadian retailers, as well as greater consumer satisfaction. In addition, we propose the influence of customer-generated data from loyalty programs has grown from non-existent to a determining factor in multi-million dollar business decisions. Loyalty customer trend analysis is a powerful tool that can be implemented throughout an organization; however, it remains an open debate whether consumers are receiving a fair return for the provision of their purchasing behavior.

Points of commonality between the examination of loyalty programs conducted by Union des consommateurs (UC) in 2005, and this investigation included the marketing advantages of loyalty programs, as well as privacy concerns among consumers. In addition, both studies noted loyalty program databases allow merchants to better understand, generally, the consumption habits of their membership, as well as create more personalized marketing and promotions. UC made a series of recommendations in an effort to protect consumers, such as stressing that loyalty program contracts should be clear and readable, loyalty program administrators should inform consumers of the risks of joining a loyalty program before obtaining their consent, and loyalty program administrators should explain the potential consequences of the sharing of member information.

Despite the presence of loyalty programs in Canada, there is no specific consumer protection regulation of these programs. There are a series of laws or legal principles that can potentially apply to loyalty programs, but there can be uncertainty around their applicability.

Since most loyalty programs involve terms and conditions between the program and the consumer, contract law could provide remedies for consumers. However, contract law is rooted in the principle of freedom to contract where both parties have equal bargaining power, and this is clearly not the case in the operation of loyalty programs in Canada. Consumer protection legislation may not clearly apply, given consumers do not directly provide payment to the loyalty program in exchange for the reward points. While there have been recent consumer protections reforms in a number of provinces relating to gift cards, such as banning expiry dates, these have not been extended to loyalty programs.

Loyalty programs must comply with privacy laws, such as the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)*, that regulate how organizations in the private sector collect, use and disclose personal information in the course of commercial activities. Where a privacy practice does not appear to comply with *PIPEDA*, an individual can bring a complaint to the federal Privacy Commissioner, who must investigate the complaint and publish a finding on the complaint's merits. However, even if the complaint is well-founded, the Privacy Commissioner can only

make non-binding recommendations to bring the company's practices into compliance. The privacy commissioner in some provinces meanwhile, such as Alberta, British Columbia and Québec, have the power to order companies to comply with the law and these laws contain penalties for non-compliance.

While there are currently no laws in Canada that directly regulate loyalty programs as a financial service or a financial product, some discussions suggest loyalty program rewards could be recognized as having monetary value. The Canada Revenue Agency (CRA) has taken the view that where the employer does not control points accumulated under loyalty programs, the employee is responsible for determining and including in reported income the fair market value of any benefits received or enjoyed.³⁰⁸ In 2009, the CRA stated that it no longer requires loyalty points to be included in an employee's income as long as the points are not converted to cash, the plan or arrangement is not indicative of an alternate form of remuneration, or the plan or arrangement is not for tax avoidance purposes. Many provinces have laws that require unclaimed property above a prescribed minimum amount to be remitted to the provincial consolidated revenue fund. In 2012, Ontario announced its intention to establish a new unclaimed property regime and launched a consultation, with one aspect being if and how its proposed regime would apply to loyalty programs.

In Australia, the Australian Securities and Investment Commission (ASIC) has issued a class order which states that a loyalty program is “a facility through which, or through the acquisition of which, a person makes non-cash payments.” In the United States, it remains an open question whether loyalty programs could be subject to laws regarding money transmission and the issuance of payment instruments. Where loyalty programs allow consumers to accumulate value that could be spent with third party merchants, such as through an “open loop” prepaid card, loyalty programs could be subject to laws such as the Texas' Financial Code.

There are a series of consumer irritants regarding the operation of loyalty programs in Canada. Whether the irritants we examined can each be perceived as a market failure remains open for debate. Canadian consumers hold their loyalty currency balances as a form of “non-cash payment,” demanding their loyalty programs offer more variety in redemption options, including an increasingly cash-like redemption process. Consumers are also taking advantage of a developing “open-loyalty economy” of points sharing, pooling and universal redemption to exchange loyalty currency in a similar manner as actual currencies.

³⁰⁸ Canada Revenue Agency, Income Tax Technical News No. 40 (issued June 11, 2009). The Canada Revenue Agency provides some examples of where the employee must declare the taxable income and where employers must report the value of the benefit of loyalty program points on the employee's T4 slip.

Loyalty currency presently in the hands of consumers is very valuable to loyalty program providers. To loyalty program administrators, outstanding points represent an accounting liability as well as a missed opportunity. It was revealed that loyalty program members who have a positive loyalty currency redemption experience are more likely to become those coveted “brand advocates” loyalty program providers seek. However, loyalty program providers have employed tactics, such as devaluing and expiring loyalty currency, in an effort to control their level of risk. The implementation of these tactics have proven to be such an irritant to consumers, they have, on occasion, been willing to go to court, in an effort to protect the loyalty currency they have so diligently collected.

Due to the tactics employed and the control held by loyalty program providers, the marketplace regarding redemption and expiry of loyalty currency is imbalanced in favor of loyalty program providers. As a result, consumers are faced with the prospect of receiving diminishing returns in exchange for their personal information and shopping preferences. Thus, practices relating to the distribution, expiration or redemption of loyalty currency are an area where consumers should welcome additional scrutiny by federal or provincial policy makers.

At the present time, loyalty program providers have the right to change the terms and conditions of their program, largely without notice. This places consumers at a great disadvantage, since many of them have spent years investing in their loyalty programs of choice. In order to protect that investment, and serve as a counter balance to the overwhelming control exerted by loyalty program providers, it may be necessary to incorporate an industry-wide guideline to ensure consumers are given fair notice before any changes to program terms and conditions are undertaken by loyalty program providers. Industry-wide guidelines would also be beneficial to consumers regarding the transfer of loyalty program currency from one member to another, as well as the bequeathing of loyalty currency.

Recommendations:

Given the pervasive nature of loyalty programs currently operating in Canada, as well as their importance to retailers, we believe federal and provincial policymakers should take future opportunities to scrutinize their operations in order to identify policy areas that may require an industry-wide policy structure. Specifically, we recommend:

- That industry-wide guidelines be introduced regarding the practices relating to loyalty currency devaluation to produce greater certainty for consumers.
- That a federal or provincial agency (ies) be designated or created as complaints mechanism body (ies) for consumers on issues that arise relating to the operation of loyalty programs within that jurisdiction.
- That the Financial Consumer Agency of Canada, or other federal government agency with the appropriate capacity, be assigned to evaluate and rate credit card vehicles associated with loyalty programs for the benefit of consumers.
- That industry-wide guidelines be introduced regarding the length of notice given to consumers during future changes to terms and conditions for loyalty programs currently operating in Canada.
- That elements of loyalty program operations be assessed as part of the establishment of the Financial Consumer Code of Conduct that was announced as part of Budget 2013.
- That the federal government consider defining loyalty currency as a form of non-cash payment, with the intention of having loyalty currency enjoy protections similar to other forms of payment under the payments system in Canada.
- The introduction of industry-wide guidelines for practices relating to the transfer and bequeathing of loyalty program currency.
- The introduction of industry-wide guidelines ensuring that when a consumer withdraws from a loyalty program, all information pertaining to them, including their purchase history, is removed from the loyalty programs records permanently.