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Mercredi 30 octobre 2013

Standing Committee on the Legislative Assembly

Stronger Protection for Ontario Consumers Act, 2013

Comité permanent de l'Assemblée législative

Loi de 2013 renforçant la protection du consommateur ontarien

Chair: Garfield Dunlop
Clerk: Trevor Day

Président : Garfield Dunlop
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Wednesday 30 October 2013

Mercredi 30 octobre 2013

The committee met at 1301 in committee room 2.

STRONGER PROTECTION FOR ONTARIO CONSUMERS ACT, 2013

LOI DE 2013 RENFORÇANT LA PROTECTION DU CONSOMMATEUR ONTARIEN

Consideration of the following bill:

Bill 55, An Act to amend the Collection Agencies Act, the Consumer Protection Act, 2002 and the Real Estate and Business Brokers Act, 2002 and to make consequential amendments to other Acts / Projet de loi 55, Loi modifiant la Loi sur les agences de recouvrement, la Loi de 2002 sur la protection du consommateur et la Loi de 2002 sur le courtage commercial et immobilier et apportant des modifications corrélatives à d'autres lois.

The Chair (Mr. Garfield Dunlop): Good afternoon, everyone. I'd like to call the meeting to order. We're here at the Standing Committee on the Legislative Assembly to continue deputations on Bill 55, An Act to amend the Collection Agencies Act, the Consumer Protection Act, 2002 and the Real Estate and Business Brokers Act, 2002 and to make consequential amendments to other Acts.

RELIANCE COMFORT LIMITED PARTNERSHIP

The Chair (Mr. Garfield Dunlop): Our first deputation is Reliance Comfort Limited Partnership. Sean O'Brien, Jack Cook and Rob Jutras are here. Gentlemen, you have five minutes for a presentation, and each caucus has three minutes to respond and ask you questions after. I'll try to warn you when you get up to five minutes, because that goes pretty quick here. As you start to speak, could you just mention who you are into the mike so that Hansard can pick it up?

Mr. Sean O'Brien: Good afternoon and thank you very much for this opportunity to share our views on Bill 55. My name is Sean O'Brien. I'm the president and CEO of Reliance Comfort Limited Partnership. With me, I have Rob Jutras, our vice-president of sales and marketing, and Jack Cook, who is our general counsel.

Reliance is Canada's largest water heater rental company, with 1.2 million residential and commercial water heater customers in four provinces, including Ontario. Because we have the largest established rental base and we also pursue door-to-door sales, we provide a unique perspective on the current regulatory landscape and the urgent need for reform.

As you know, complaints about water heater rentals are among the most common received by the Ministry of Consumer Services. Reliance believes that Bill 55 will better address the increasing number of misleading door-to-door sales practices that have become a significant problem for Ontario consumers.

We congratulate the ministry for moving forward in a timely manner on this very important bill. Reliance is especially supportive of the prohibition regarding the installation of new rental water heaters during the new 20-day cooling-off period. This will help us ensure that consumers get a meaningful cooling-off right, given the unique nature of the door-to-door water heater rental process, and time for them and more information to make better decisions.

However, we are suggesting two key amendments that will, in our view, improve the bill and increase consumer protection. We are suggesting some additional consumer protections that can be developed in the regulations under Bill 55.

First, we think that the scope proposed in the amendment in section 43 of the bill should be narrowed. As it's currently drafted, the proposed 20-day cancellation right is intended to apply to any direct agreement for a water heater. Reliance is concerned that this will impact many legitimate deals, such as urgent replacements when existing equipment is no longer functioning or transactions where the customer has actually requested the appointment.

Because of this, Reliance recommends that the new 20-day cooling off period be narrowed to include only transactions resulting from unsolicited door-to-door sales or rental water heater activities.

In addition, Bill 55 provides that consumers will have the right to recover third party charges that are related to a new supplier's installation of water heaters during the 20-day cooling off period. However, we believe that the language in subsection 43.1(3) may be interpreted too narrowly and consumers may not be able to fully recover the related third party expenses.

For example, a consumer could face charges related to previous rental equipment, such as return charges, account closure fees or charges for damages to the hot water equipment that is returned by the new supplier. These sorts of charges may be seen as amounts that

would have been incurred for the customer, regardless of the breach of the act, and not recoverable.

In order to ensure that the consumer has meaningful remedies and that there are no hidden costs to exercising the cooling-off right, the language in this section should be clarified to ensure that consumers are entitled to recover all charges related to removal and return of goods replaced by the new supplier.

Reliance also has some suggestions with respect to regulation, both current and proposed. Our written submission has been provided to the Clerk earlier, and provides greater detail and language around these recommendations. However, for instance, there's a possible loophole in section 12 of the current regulation that should be closed so that suppliers cannot avoid protections under Bill 55 by structuring their rental contracts as leases governed by part VIII of the act.

Also, the new regulations should include provisions that an independent third party conduct recorded verification calls for each door-to-door rental of a water heater.

Equally important is that the new regulations include requirements for new water heater rental suppliers to notify the old supplier of the consumer's decision to terminate his or her rental contract. Timely notification to the existing supplier is a reasonable safeguard that exists in other regimes, such as the retail sale of energy, and would help reduce problems regarding customers being double-billed.

Reliance is committed to working with this committee and the government to ensure that the terrible abuses of consumers that have occurred over recent years are effectively ended. We would ask the committee to endorse the changes that Reliance has proposed, including them in the report to the Legislature.

We would be happy to take any questions from the committee at this time.

The Chair (Mr. Garfield Dunlop): Thank you very much. Boy, your timing is dead right on. I'm kind of like an NHL referee here; I just have to keep an eye on the penalties—

Mr. Sean O'Brien: That's good. It was good. I saw you looking at that clock.

The Chair (Mr. Garfield Dunlop): I'd now like to ask the official opposition if they have any questions—three minutes.

Mr. Jim McDonell: I know that you talked about restricting it to just direct door-to-door sales. Would you see that—as you tackle one issue, sometimes it moves along—other types of sales would also be included, like direct mail or calling? Sometimes, if you can't go door to door, you move on to the next step, which is a direct call to the customer. We already see a lot of people getting calls on various items.

Mr. Sean O'Brien: That's a very good question, and I think there are two things that are going to address other avenues. For example, on calls, there's the do-not-call list program that we all have to respect, and our process respects that from a code-of-conduct standpoint.

The other—direct mailing or other initiatives—is all driven through economics, in terms that it's a very costly avenue to try to generate sales activity. I think that just by the nature of the economics, that is an avenue that I don't think needs to be regulated at this time, because there's already some process in place: the do-not-call, for example, and then, for direct marketing and other marketing initiatives, pure economics are going to drive that.

Mr. Jim McDonell: I guess we're looking at something—a format here—that, once it gets initiated, you want to put some rules around it. You may want to open that up and look at a number of different avenues that customers may be contacted or—

Mr. Sean O'Brien: Right. Jack, is there anything, in terms of the detail we provided in our written submission, that would address what Mr. McDonell is talking about?

Mr. Jack Cook: I'm Jack Cook, general counsel for Reliance. No, our written submissions don't really touch on any other transactions—remote agreements or telephone enrolment. In our experience, the problems mainly faced by consumers right now are misleading door-to-door tactics, and we think that's what Bill 55 ought to focus on and address.

Mr. Jim McDonell: One of the other issues we seem to have with some door-to-door sales—putting in new contracts, even if they are taken—is putting in a fair end-of-contract condition, so that the consumer knows just how long the contract is and what the penalties are for getting out early, and being fair to the supplier as well, having some type of depreciation allowance so they can get their investment back, like yourselves, if somebody comes along and sells something. You don't want to be left on the hook with something that you haven't received fair compensation for yet. There's the tightening up the rules and what the return policies would be. Any comments on that?

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Mr. Sean O'Brien: Rob, would you like to—

Mr. Rob Jutras: Sure. We think that competition is great and that Bill 55 is really about managing the information. You talked a lot just now about giving the information up front. I think that's really, really important, and that's what we think Bill 55 can help do: get full disclosure on what the contracts are.

I don't think it's really about limiting competition in terms of regulating what the contracts look like. That's what people want to compete on, and I think that gives consumers a lot of choice. So I don't think Bill 55 should be about limiting the terms and conditions of the contract; I think it's more about making sure consumers understand those terms and conditions they're about to enter into.

The Chair (Mr. Garfield Dunlop): Okay. That concludes the time for the official opposition.

We'll now go to the third party. Mr. Singh?

Mr. Jagmeet Singh: Thank you very much for attending today; I appreciate your presentation.

I just want to clarify a couple of points. One is when you talk about your proposed amendments for 43(1)(a)

and 43.1(1). You're talking about how your issue is that it's too narrow in terms of its application. Does that mean that you're saying, or you would support an amendment, that would make this apply to any agreement as opposed to only direct agreements? So telephone agreements, any other form of Internet agreements—if there is such a thing—but other forms of agreements beyond just direct agreements; is that something that you would support?

Mr. Jack Cook: No. In fact, what we are proposing is that we think casting the net to include all direct agreements is too broad. The real problem that we think the government ought to address is the misleading door-to-door conduct, and in fact those direct agreements ought to be what is specifically addressed in Bill 55.

Mr. Jagmeet Singh: I understand. So then you, I take it, would not be supportive of something that would broaden it beyond that to say that any agreement should be covered by Bill 55.

Mr. Jack Cook: No, we're not proposing that at this point.

Mr. Jagmeet Singh: Okay. You would not be in support of that type of amendment?

Mr. Jack Cook: To be honest, we haven't really given it much consideration.

Mr. Jagmeet Singh: That's fine.

Mr. Sean O'Brien: If I could just add some commentary: I think the value there is that if today my device isn't working, my water tank's not working, and I can't get my current supplier in and I call up Reliance to come and fix this thing, the way the language is written today is that I'd have to wait 20 days for me to get that replaced. So it's not helping me as a consumer, because it's my choice as a consumer versus—Bill 55 was more around the misleading practices of the door-to-door salespeople, for when an organization doesn't have a strong code of conduct and behaviours behind that.

Mr. Jagmeet Singh: With the verification calls, I know you've kind of expanded on that in your supplementary submission about what you meant by the verification calls. My question is about the purpose or need for an independent verification call. Some companies are doing a verification call where there's no remuneration connected with it. There is no incentive if you get more calls in agreement; you're not going to get more money for that. They're just verification calls, but they're handled by the same company. You're advocating that it should certainly be independent; I think there's some support for that argument. What's your reasoning for the requirement that it has to be fully independent as opposed to all the other requirements—no remuneration, no financial incentive, but still be within the same company?

Mr. Sean O'Brien: Jack? Rob?

Mr. Rob Jutras: Yes. I think it's important that the verification call be done by an independent third party so you have a real verification. The customer knows that they're switching providers, they know the terms and conditions about which they are about to enter into, they know the price and they know the exit, to the point that was made earlier around the conditions of the terms and conditions. I think a lot of the companies are doing verification calls today. I don't see this as a big incremental cost to those businesses. We're very supportive of it because you get a really clean and informed consumer out of that verification call.

Mr. Jagmeet Singh: Sure, and just to clarify—

The Chair (Mr. Garfield Dunlop): Okay, that concludes this round.

We'll now go to the government members; you have three minutes. Mr. Colle.

Mr. Mike Colle: I guess the question I have is that, even with this bill, you're still going to have door-to-door salespersons, right? What's to stop them from developing a new scam at the door, given that they always come up with a new angle to hoodwink consumers? Is there anything in here that can possibly be used as an inoculation against—you know there are going to be future scams. They'll never stop coming to the door, no matter what happens. So is there anything in here that we could put to basically almost pre-empt these guys that are scamming already? They'll probably look through the bill too.

Mr. Sean O'Brien: Right.

Mr. Jack Cook: Sure, I can answer that. Obviously, the creativeness of the door-to-door scammers is always impressive—

Mr. Mike Colle: It is, yes.

Mr. Jack Cook: —and you can't always anticipate what's going to happen. We think one of the loopholes we've identified is in the current regulations, where section 12 of the current regulations allows for the structuring of agreements under a different part of the Consumer Protection Act that would get you around all these protections that are set out in Bill 55. That's one proposal that we think we could use to kind of, in your words, inoculate against those kinds of workarounds by the door-to-door scammers.

Mr. Mike Colle: I just don't quite understand that. In good Canadian Tire English?

Mr. Jack Cook: Sure; I'll do my best. Right now, in the current general regulations under the Consumer Protection Act, there is a range of sections set out in the act pertaining to direct agreements and what we're talking about in Bill 55. The regulation says those don't apply to the extent that an agreement—say, a rental transaction for a water heater—is structured as a lease; more along the lines of a car lease, for instance. That is governed under a different part of the Consumer Protection Act. So we think that one opportunity for scammers intent on defeating the system would be to structure their agreements as those sorts of leases, to avoid having to comply with these consumer protection initiatives.

Mr. Mike Colle: And that's specified in which amendment that you have, specifically?

Mr. Jack Cook: That is the first suggestion in our written submission, in terms of the additional regulations that would be required.

Mr. Mike Colle: Okay. Thank you very much.

The Chair (Mr. Garfield Dunlop): There's time for a quick—

Mr. Sean O'Brien: If I could add commentary, I think the key is, are you building a legacy business? At Reliance, we're definitely focused on building a legacy business.

The other thing—and it's in our submission—is, is there a way to actually create some more regulation around what does a contract actually say, the process you have to go through in terms of explaining to the customer what we're actually doing, and making sure that there's a wide variety in terms of different languages, so that any consumer has access to, "Exactly what we are getting into?" I think that's one of the key amendments or suggestions we're making in our submission, as well.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much, gentlemen. That's your time. I appreciate you being here today.

NATIONAL HOME SERVICES

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation, from National Home Services, Gord Potter. Mr. Potter, we want to apologize; your name actually says "Patter" in the typing there.

Mr. Gord Potter: Oh, that's not a problem.

The Chair (Mr. Garfield Dunlop): We've lots of Potters up in my part of the province.

You have five minutes, followed by questions and answers from the committee members.

Mr. Gord Potter: Okay, thank you. Good afternoon. I'm Gord Potter. I'm the chief operating officer of National Home Services. I wanted to thank the committee for the opportunity to speak today on Bill 55, specifically schedule 2 of that bill.

We are an Ontario-based company. We supply energy-efficient water heaters and other equipment, primarily to the residential market—existing and new home builds. We have about 250,000 consumers in the province.

Our products are generally of the highest energy efficiency and Energy Star-rated products. They're packaged competitively; as a new entrant to the market, we have to compete for each and every customer we gain.

We currently have 19 sales operations and distribution centres in the province. We employ just over 600 people, and that includes hundreds of local HVAC and licensed technicians in small and large towns across the province.

A quick little bit of background for context: As you know, most consumers historically receive their rental water heaters from the two main utilities, Union Gas and Enbridge. In or about the years 2000 and 2001, those two entities sold off those large customer bases, about 1.2 million each, to two large suppliers, now the incumbent suppliers in the province.

In the last few years, we've seen an emergence of new competitors entering into the market to compete for those consumers' business. Of course, that growth benefits consumers. However, with the increased competition in the market, and facing a growing loss of this long-standing profitable customer base, the two large incumbents have responded with aggressive anti-competitive practices, allegedly intended to protect consumers but in reality to stifle competition and consumer choice and safeguard, basically, their large market shares.

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As the committee is aware, both incumbent companies are currently facing litigation by the federal Competition Bureau for engaging in these practices. Strategically, one of the incumbent companies has, in fact, filed a six-person complaint to the bureau against several smaller competitors alleging misleading sales practices. One of those companies is National Home Services. Additionally, there continue to be ongoing lawsuits in the market, so it's a very litigious environment.

Similar to what occurs in most newly emerging markets, your smaller players will often employ a more direct sales method, such as door-to-door, to market their products. Over time, as the market matures and the companies mature, they'll expand out into telemarketing, direct mail, affinity programs, advertising and other sales channels to sell.

However, the clash between the large incumbents in the province trying to stop the loss of customers and, on the other hand, all the newer, smaller entrants trying to gain those same customers has created barriers and difficulties and frustrations for the consumers in this province, as they're caught in the middle.

The fact of the matter is, consumers have faced numerous issues, such as being double-billed, lost tanks, prolonged onerous processes for returning tanks, difficulty in cancelling agreements, alleged misleading and unethical sales practices, lack of disclosure, and have been subject to exit fees or buy-out fees of which they were not aware.

The fact, though, is that, through the media, consumer organizations and consumer agencies, there's evidence that both the large monopoly or incumbent suppliers, as well as some of the small entrants, have been the subject of those consumer complaints, not just the small new entrants.

So what we submit to you is that this is not a door-to-door issue, although it has primarily surfaced there. The root cause of the issue, and what we like to believe underpins the bill, is twofold. First, consumers are not being provided the information and disclosures needed to make an informed decision at the time of sale, and secondly, there are suppliers in the industry who do not employ, or may not be employing, adequate quality controls in the sale of their products.

In principle, we support the bill. However, the issue with the bill currently is that it only applies to direct agreements and, in essence, door-to-door sales. Basically, what will happen, if it passes as is, is that consumers who are sold in that manner will benefit from these new disclosures and mandatory requirements; consumers who are sold through other sales channels or means will not. Further, the protections expected in the regulations under this legislation which mandate higher standards for suppliers will only apply to those suppliers who are using that channel, and not for consumers who are sold through other markets, such as telemarketing and other channels.

In our view, and in my view personally, I think all consumers should be able to make an informed decision, especially in a new market where they've just only in recent years had the opportunity presented to them to choose something that was historically, for generations, just simply provided on a utility bill. They should all be informed, and they should all benefit from those standards. With that being said, we have some specific amendments we want to put forward for your consideration. Specifically:

Prescribe in regulation that there is full disclosure required of key contract terms and a mandatory recorded contract verification, and that, again, it should apply to all types of rental agreements and sales practices in the industry, such as telemarketing, remote agreements and direct agreements. However a consumer is sold, they should benefit from those minimum disclosures.

The cooling-off period, again, should apply to all sales agreement types and methods, not just direct agreements, as currently drafted.

The 10-day cooling-off period should remain in place. I don't personally believe a consumer needs 20 days or three weeks to make a decision. However, notwithstanding what the cooling-off period is, we believe that a consumer should have the right to choose to have the equipment installed during that period, should they choose and should the supplier be able to. As a protection for that consumer, we believe that the regulation should stipulate that if the unit is installed during that cooling-off period, the supplier, in verifiable form—so evidence that can be presented later—must reconfirm with that customer that they understand that their cooling-off period still applies and they still have the right to change their mind.

The Vice-Chair (Mr. Garfield Dunlop): Your time's getting wound up here, so—

Mr. Gord Potter: Is it?

The Vice-Chair (Mr. Garfield Dunlop): Yeah.

Mr. Gord Potter: Okay. For the last one, the consumer should have the right to assign an agent to act on their behalf as it pertains to managing matters with the existing supplier, including the return of the tank and account closure.

In closing—thank you, sir—we just have one more. The bill should prohibit the existing supplier from initiating communication with that consumer during the cooling-off period, to safeguard the consumer from any aggressive retention activities that occur. I've provided references there to what the CRTC ordered in the telecom industry, which stipulated similar protections for consumers. With that said, thank you for your time, and I'll answer any questions.

The Chair (Mr. Garfield Dunlop): Thank you very much. We'll now go to the third party. Mr. Singh, you have some questions?

Mr. Jagmeet Singh: Sure; thank you. I just wanted to start off with your concern regarding the cooling-off period. If your amendment was accepted, I think that the 10 days would not be something that people with be okay with, but if we kept it at 20 days and allowed for consumers to choose to install their units but they still had the right and, on the delivery and installation of the new water heater, they were advised that they could still cancel and then have the original water heater replaced at no cost to themselves, is that something that you would be supportive of?

Mr. Gord Potter: Yes. We would support, as a new supplier, that if that customer chose to exercise that right, we would bear the cost, with no harm to the consumer, in putting back the old tank and removing ours.

Mr. Jagmeet Singh: Okay. The position has been brought up that really the brunt of the complaints around the sales has been door-to-door. Given that complaint, if the majority of the complaints are about door-to-door and improper tactics being used at the door, what would the rationale be to broaden it to all agreements?

Mr. Gord Potter: Because right now we do have a young industry, and similar to what we saw in telecom and other deregulated services, if you've got an immature market, you have a lot of new consumers. What this bill, in my view, says is that we need to raise that bar. My view right now is that a consumer who responds to a direct mail piece that says, "Call in and get $50 off," versus a consumer that gets sold at the door or gets telemarketed is no more or less informed about that product, their rights and those key contract disclosures, regardless of how they're sold. So we're just saying that, simply put, all consumers should benefit from more disclosure: how much are the exit fees, who are you dealing with, what the all-in price is, and other things. All suppliers in the industry should be held to the same high standards.

Mr. Jagmeet Singh: And just for the verification calls, there has been an argument made—and there's some merit to it—that the verification calls should be done by a completely independent party. Even though one could have recorded calls, one could have a clear setup where there's no remuneration or no financial incentive given to the person; there's still that perceived non-bias of having an absolutely independent person. What's your perspective on that?

Mr. Gord Potter: My view is that the call is recorded from connection to disconnection. It's also made available to the ministry or other agencies. I certainly could be supportive of both. However, the one thing that needs to be pointed out is that there are a number of companies operating in the market who currently employ dozens of people who do that function today. Should it be mandated to be outsourced, you're going to end up with companies sending those jobs out-of-province, and we also have a number of people now that we have to find work for. So I would offer—

The Chair (Mr. Garfield Dunlop): That concludes your time in this round. We'll go to the government members. Mr. Colle?

Mr. Mike Colle: Thank you, Mr. Chairman. Your company—could you just explain in a nutshell what it does for people?

Mr. Gord Potter: What we do is, we sell water heaters and other equipment to people, to consumers in the

province. We also supply to several builders in the province for new homes.

Mr. Mike Colle: So how do you make your sale of water heaters?

Mr. Gord Potter: We primarily use the door-to-door channel, and we also do some telemarketing.

Mr. Mike Colle: What percentage of door-to-door as opposed to telemarketing? Any rough idea?

Mr. Gord Potter: It's in the 90%; the primary channel is door-to-door.

Mr. Mike Colle: Would you think that outside of your own company, in your experience, that is about the breakdown in most of the province—90-10?

Mr. Gord Potter: Yes, it is for all the newer entrants, generally.

Mr. Mike Colle: You're saying "new entrants." You mean new homes or new companies?

Mr. Gord Potter: No; I apologize. The new competitors or companies that have emerged over the last few years are all, for the most part, primarily using that channel. Your larger, more established players—I think one we just heard from was my peer from Reliance—do employ that channel to some degree. The other large incumbent does not; they ceased in 2010.

Mr. Mike Colle: This bill, though, would it therefore—I think you made a very solid recommendation that everybody should have the same protections, maybe, because they were solicited perhaps on the phone, through direct mail or whatever. I think that's a good point. But the thing is that this would at least cover most of the channels, the biggest portion of the market, right—the door-to-door?

Mr. Gord Potter: It would cover the door-to-door channel until all of those companies just started to start telemarketing the next day, or started a different affinity channel the day after. What we're saying is that we have a large base of customers who rent water heaters in the province. They've been sleepy for years and generations. They now have the opportunity—people are bringing this to them in one sales channel. If you direct regulation or legislation at that sales channel—and similar to, I think, some of the discussion you had with the folks before me—people may simply just change sales channels.

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Mr. Mike Colle: Just gravitate to telemarketing or whatever.

Mr. Gord Potter: Exactly. And there are a large number of transactions going on telephonically across the province by many of the suppliers. Those consumers, as I mentioned, are no less or more informed and should, in my view, benefit from those higher levels of disclosures.

Mr. Mike Colle: The only thing I find a bit inconsistent in your presentation is that you want to reduce the cooling-off period. You say 10 days is enough.

Mr. Gord Potter: Right.

Mr. Mike Colle: I mean, given the confusion that the average consumer has, including myself, about, "Do you rent? Do you buy? Which kind of water heater to use? Do you go to one of those new fancy direct on-and-off-switch type things or do you go with the old standard?" how is the average person going to get up to speed in 10 days, to phone around and to—and, in fact, who do you phone to find out whether you got hosed or not? I don't know.

The Chair (Mr. Garfield Dunlop): Give us a quick answer here.

Mr. Gord Potter: That's a great question. Number one, these are currently renting; they've been renting for generations. Number two, I think we recognize that the US has a three-day cooling-off period for all consumer products and has for some time. Right across Canada, we're 10 days.

With the advent of this legislation and regulations, which will now prescribe a higher level of disclosures about those products, as well as higher quality, you're now in a position—which doesn't exist today—where suppliers will be required to ensure that there is full disclosure so that that customer has the information on day one to make a decision, and nothing stops them from—

The Chair (Mr. Garfield Dunlop): Okay. Thanks very much. We'll now go to the official opposition. You have three minutes, Mr. McDonell.

Mr. Jim McDonell: You talked about the need to allow for an agent. What would the functions of that agent be, or what do you see?

Mr. Gord Potter: Currently in many industries, and as the CRTC ordered in telecom, the rationale very simply is, the average consumer should not have to be familiar with or have to try to understand what those industry processes are with respect to the exchange or movement around the equipment. Our view is that that's the supplier's job, which is also what the CRTC's view was, and what they've basically said is that they ordered that suppliers have to accept and acknowledge agency.

So when I go to sell a service to a consumer, part of that service is, I'll look after those things for them. I should be able to go to the old supplier and say, "I'm acting on behalf of Mr. McDonell. Here is his tank. Let me know what his charges are, and let's close that account," and resolve those issues on behalf of the consumer instead of putting him in the middle and having him deal with both suppliers back and forth.

Mr. Jim McDonell: You also talked about—or you didn't talk about this; it has come up about what's a fair timeline to depreciate this equipment over.

Mr. Gord Potter: Yes, and I believe we usually look at the life of the asset, and without thinking too much about it, I think 10, 12 years is the right timeline to depreciate it—maybe as much as 15, if we look back, but I think that's generally the time frame.

But to the earlier point, those are, I think, one of the key things that need to be disclosed up front with the customer: Is it a term contract? If you were to terminate early, what are your options and what are the costs of those options? So they know, entering into the agreement, what those options are.

As we've mentioned in here, we should also make the new supplier obligated to ensure that they also understand what charges they're going to receive from the old supplier, and if they don't do that, then the new supplier should be obligated to reimburse the customer of those charges.

Mr. Jim McDonell: I know in the telecom industry, they've used straight-line depreciation. Does that seem to work for this industry?

Mr. Gord Potter: It should.

Mr. Jim McDonell: Over, say, 10 years?

Mr. Gord Potter: Yes.

Mr. Jim McDonell: You also talked about the 10-day cooling-off period, or 20, whatever it is. Somebody willing to sign off, for instance, if the water heater needs immediate replacement—I mean, nobody likes to go without hot water. So you think it's fair that if somebody signs off, needs the water heater, that they can simply ask for it to be replaced, and it's taken out and all the costs go back to whoever put it in?

Mr. Gord Potter: I believe that that's another complication presented in the current draft: the fact that you cannot police whether or not a unit was impaired or out of service or to whoever's interpretation of whether it was okay to replace it because they felt it wasn't working properly.

But what I am saying is, for people that were replacing, the consumer should not have to wait three weeks. They should have the right to choose, and they should be able to acknowledge that they want it within that period. As a protection, we're saying that the new supplier needs to confirm with that customer, in a verifiable form, that they still understand that they're entitled to that cancellation right regardless, and, should they cancel, that new supplier should put the customer back to their old situation.

On the repair front, that's a whole different ball game, because you've got somebody coming out repairing a unit that's broken and needs replacing. I think there's definitely an inequity there, because if that company is called to go in and repair it and replace it, the customer should not have 20 days to tell them, "Now that you've fixed me, you get to come back and take it out at your cost."

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much, Mr. Potter and members of the opposition. That concludes your time today, so thank you very much for that time.

Mr. Gord Potter: Thanks very much.

ENERCARE INC.

The Chair (Mr. Garfield Dunlop): We'll now go to EnerCare Inc.: John Macdonald and John Toffoletto. It's the big binder—the big presentation. That's theirs.

Good afternoon, gentlemen. You have five minutes for your presentation. At 30 seconds, I'll tell you when you've got to wrap up. Thank you.

Mr. John Macdonald: Thank you. Thank you for the opportunity to appear before this committee. My name is John Macdonald, and I'm the president and CEO of EnerCare. I'm joined today by John Toffoletto, our senior vice-president, general counsel and corporate secretary.

Based in Ontario and a TSX-listed company, EnerCare is a provider of water heater, furnace and air conditioning rentals to over 1.2 million Ontario households. For over 50 years, EnerCare and its predecessors, such as the Consumers Gas Company and Enbridge, had been providing water heater rentals in Ontario, earning an outstanding reputation for safety, service and reliability.

We're here today to express our strong support for Bill 55. The fact is, Ontario homeowners have experienced highly aggressive, deceptive and, in some cases, fraudulent sales practices by many companies that sell water heater contracts at the door. At its core, Bill 55 is about creating transparency for consumers so they can become informed consumers.

Consumers have the right to know that it is a salesperson at their door, and who they represent. It's not a TSSA inspector, Enbridge, or any other government authority. Consumers have the right to know they're actually contracting for something, not simply replacing equipment with no strings attached. Consumers have the right to know what the terms of the contract are.

These are all very basic things, but what you've heard from a number of independent voices, to use the words of MPP McDonell, is that consumers do not know these facts because of the tactics of a number of door-to-door water heater salespersons.

You've heard from consumer advocacy groups, such as the Consumers Council of Canada and the Homeowner Protection Centre, that the situation is dire. Industry Canada funded the Homeowner Protection Centre to conduct an investigation, which is in tab 3 of our submission. You've heard from regulatory authorities, such as the TSSA, that these abuses undermine public safety. You will have heard that police organizations across Ontario regularly issue warnings to consumers about water heater salespeople using aggressive and misleading tactics to gain access to people's homes. Numerous examples of this are in tab 4 of our submission.

You will also have heard that the Competition Bureau, following an extensive investigation, obtained and executed search warrants against a number of companies on the basis that these companies knowingly or recklessly made materially false or misleading representations to the public in relation to door-to-door water heater sales. There have been almost daily media reports warning consumers about these door-to-door rental sales. Certainly we know that members of the committee have heard many complaints from constituents about these activities.

Mr. John Toffoletto: All of these independent voices, all of these commercially non-interested voices, have told you how bad it is, and yet you have also heard from some companies who say that these issues are not as pervasive and serious as these independent voices say that they are, and that comprehensive protection is not warranted.

Quite simply, such a position does not make sense. These companies claim support for the concept of consumer protection, but their statements and recommendations would most certainly undermine it and allow the abuse to continue. Either we believe the independent groups like the Homeowner Protection Centre, the TSSA, the police, the Competition Bureau and numerous constituents that have raised these issues in your respective ridings, or you share the view of these other companies.

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Some of you may remember that problems like these used to exist in the retail energy market for gas and electricity.

The House passed legislation in 2010 to crack down on this behaviour, and the number of complaints has dropped dramatically. That legislation sets the standard to be followed here. You have the same problems perpetrated by many of the same players; the remedy to be followed here must be the same.

We have identified seven potential amendments, or future regulations, that will accomplish this. Our amendments are in tab 1 of the materials we have submitted before the committee. The measures we proposed were introduced in the retail energy market and have the support of consumer advocacy groups like the Homeowner Protection Centre. They are not anti-competitive, but they are pro-consumer.

The Chair (Mr. Garfield Dunlop): You have 30 seconds.

Mr. John Toffoletto: Taken together as a package, the proposed measures and our submission under Bill 55 will create the same degree of consumer protection in the water heater market that exists in the retail energy market.

These problems have gone on long enough. Ontarians deserve protection from these predatory practices, and they need action now. Mr. Chair, we urge the committee to pass the bill with the proposed amendments. Thank you for your time. We would be pleased to answer your questions.

The Chair (Mr. Garfield Dunlop): Thank you so much, gentlemen.

We'll now go to the government members. You have three minutes.

Mr. Mike Colle: Thank you, Mr. Chair.

Thank you for this extensive bible here of all you ever wanted to know about water heaters. God—

Mr. John Macdonald: It's a fascinating subject.

Mr. John Toffoletto: More like door-to-door abuses, but anyway.

Mr. Mike Colle: Talk about the tip of the iceberg or the bottom of the iceberg—I don't know—but this is fascinating stuff for water heaters. Maybe we need a whole new ministry of water heaters.

Has there ever been any serious legal action or convictions of these perpetrators of these scams that you know of? I mean, there are a lot of reports in newspapers about people calling in, alerting the police, alerting whoever they can. Have there ever been any kind of repercussions, legally, for any of these perpetrators that you're aware of?

Mr. John Toffoletto: We know that certain salespeople have faced criminal charges. We have told you that the Competition Bureau is currently investigating three companies that do door-to-door sales. In obtaining the search warrants, they said that criminal provisions may very well have been breached.

Mr. John Macdonald: The challenge in many cases is that somebody may know that they've been deceived after the fact, but in order to pursue that claim, it's such a minor annoyance in consideration of the rest of their life—in other words, if they have to spend six days of their life pursuing a sworn-out complaint. In practice, most people are not that incented to fight for their rights. You can see the number of complaints to the ministry. It sort of demonstrates, with many thousands of complaints that are made to the Ontario ministry—and if you take the rule that for every one complaint, there are 10 people who didn't bother to even—

Mr. Mike Colle: They didn't call.

There has been no class action suit anytime that you're aware of?

Mr. John Macdonald: No.

Mr. John Toffoletto: The other actions—very often, we're dealing with abuses in respect to elder people and immigrants. There's a large embarrassment factor, as well, in terms of coming forward.

Mr. Mike Colle: It seems to me that the only way to deal with this is, therefore, with preventive measures up front rather than after the fact. Do you think the proposed bill—and given some of your amendments and others we've heard—will be enough to stop these actions? Or is it just going to be another slowdown? Do we have enough meat in here to put a serious halt to this type of predatory door-to-door stuff?

The Chair (Mr. Garfield Dunlop): You have 30 seconds for this answer, guys.

Mr. John Macdonald: We believe the proposed bill, with the amendments, will very much stem the abuses. Again, we look at the retail energy marketplace and, very much, similar types of rules dramatically reduced deception in that marketplace.

Mr. Mike Colle: Okay, thank you very much.

The Chair (Mr. Garfield Dunlop): Thank you very much, gentlemen.

We'll now go to the official opposition. You have three minutes.

Mr. Jim McDonell: I noticed that one of the previous witnesses talked about the incumbents being involved with the Competition Act. Maybe you might have something to say on that?

Mr. John Toffoletto: We're not actually the subject of any competition action—

Mr. Jim McDonell: Or have been in the past?

Mr. John Toffoletto: No, but Direct Energy is, and they've spoken to that.

Mr. Jim McDonell: Okay. As far as some of the talk about some type of contract, it would involve some type

of depreciation or with direct sales, but also the same thing would apply to any heater that's replaced, having some type of contract so that the customer, the consumer, would be able to know just how long the contract was, what the end terms were, penalties, whatever. Any comments on that?

Mr. John Macdonald: Our practice is that if somebody is having a replacement water heater, they sign a new agreement so that they know what their rights and obligations are and our commitment to them.

Mr. Jim McDonell: I guess I'm having a challenge. If we govern somebody who goes door to door with specific rules and regulations of specific depreciation penalties, how can we not include them all? It shouldn't matter how you purchase your hot water heater; you should be able to know how you can get out of the agreement sometime in the future.

Mr. John Macdonald: Some of the protection associated with the door-the-door legislation is unique to the door-to-door industry in the sense that, if you're replacing a water heater, you've called your incumbent supplier, you know what product you've got and so you know who you're dealing with. It's a voluntary decision by you, and typically, if you're getting it replaced, there's a reason for that; it's not a voluntary position.

Mr. Jim McDonell: I guess my point would be: If you decide, eight years down the road, that you may want it different, or somebody calls at the door at that time, there should be some way of knowing, "What do I owe on this unit?" If there's nothing up front, how do you know that?

It's fine to address the door to door, but, of course, there are many different avenues: telemarketing—

Mr. John Toffoletto: To be clear, our contracts make abundantly clear the requirements on termination. I think that's right. That should generally apply.

Mr. Jim McDonell: So would you agree to a standardized contract across the board that would apply to everybody and specify certain items in it?

Mr. John Toffoletto: No, because I think you're limiting consumer choice in respect of that. I mean, I don't see—

Mr. Jim McDonell: I'm just talking about a contract that would tell you what your monthly fee is, how long the term is and what the buyout clause is, if there's any.

Mr. John Toffoletto: Actually, I think the regulations currently provide for that.

Mr. Jim McDonell: A standardized form?

The Chair (Mr. Garfield Dunlop): Thank you very much to the official opposition. We'll now go to the third party: three minutes, Mr. Singh.

Mr. Jagmeet Singh: Good afternoon. One of the things that has been brought up before is broadening the application of the bill to all agreements, not just limiting it to direct agreements. Your position on that: Do you agree with that or disagree with that?

Mr. John Toffoletto: I think we're generally in favour of broadening it. I do worry, in terms of the honourable member's comment earlier: Where else could they go? I worry that they'll go there. If they can't do it door to door, they'll do it via telemarketing.

Mr. Jagmeet Singh: So broadening it would make sense?

Mr. John Toffoletto: Yeah, we think that's a good thing.

Mr. Jagmeet Singh: Okay. I've heard two arguments—counter-arguments—on the assigning of agents. On one side, in your package of materials, you say that assigning agents is an issue. It's a problem. It hurts a consumer. In your point number two, under the tab "EnerCare's written submissions," you say that it's not a good idea.

On the other side, I've heard that if you do assign an agent, it allows and facilitates the prevention of double-billing, because you have someone who can be the intermediary and make sure the arrangements are made. What's your argument for not allowing that?

Mr. John Toffoletto: Let me say this: The Homeowner Protection Centre—not a commercial party—which, again, studied this, says "ban agency." They studied this and said "ban it." They say that, because you shouldn't let a provider, whose self-interest may override that of the consumer, deal with it.

The reality is, agency does this: It allows all the misrepresentations to continue to be perpetrated, because the consumer never actually talks to anybody. They don't talk to their existing provider; they don't talk to Enbridge; they don't talk to anybody, and they never know that they're not just swapping out their water heater with an existing provider.

There's no complicated thing here. What you do, if you want to terminate, is call, get a number and return the tank. That's not complicated. You don't need an agent to do that.

Mr. Jagmeet Singh: Okay. It's often used in telecommunication—Bell and Rogers—where agency is often assigned. Why would it be okay in Bell's and Rogers' circumstances with land lines but not—

Mr. John Macdonald: There's a fundamental difference. Here you have the fulfillment of a product that may be intrusive to the home—it may require the movement of walls, the installation of new pipes. In the telecommunications business, there's a need. If one person disconnects—the preferred carrier disconnects from a customer—unless somebody connects, that person is left without long-distance service. So, firstly, you need to have a coordinating entity and, secondly, you have a physical product being delivered. In my view, the telecommunication example is a red herring for this.

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Mr. Jagmeet Singh: Sure. That's good. And new contracts: Would you agree that a new contract with an existing supplier should also fall within the protection of Bill 55? So if you've completed your end of an agreement with, you know, your existing water heater and you wanted to get another water heater, and your existing provider says, "We'll give you a new one," should that also be covered by Bill 55?

The Chair (Mr. Garfield Dunlop): A quick answer here, guys. Thanks.

Mr. John Toffoletto: Bill 55 is really geared towards door-to-door, so if you're simply replacing a water heater, a lot of these protections don't really come into play because you're not actually showing up at the door and misleading anyone.

The Chair (Mr. Garfield Dunlop): Okay, thank you. Gentlemen, thank you so much for coming this afternoon, and thank you to the committee members on this one.

ONTARIO REAL ESTATE ASSOCIATION

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation: Ontario Real Estate Association, Matthew Thornton and Johnmark Roberts.

Thank you very much, gentlemen. I'll just let these guys get out of here. There's quite a commotion—apparently they don't want to hear you. Matthew Thornton comes in the room and 10 people leave.

Mr. Matthew Thornton: That's right.

The Chair (Mr. Garfield Dunlop): Well, good afternoon, gentlemen, and thank you for your time. Matthew? Johnmark?

Mr. Johnmark Roberts: I'll be speaking this afternoon. Good afternoon. My name is Johnmark Roberts. I am the broker of record with B&B Associates Realty Ltd. here in Toronto and a member of the Ontario Real Estate Association's government relations committee.

Joining me today are Matthew Thornton, OREA's director of government relations, and Lou Radomsky, the association's outside counsel.

We would like to thank the members of this committee for inviting us to present on Bill 55, the Stronger Protection for Ontario Consumers Act, 2013.

To begin, OREA is supportive of Bill 55's amendments to the Real Estate and Business Brokers Act, or REBBA, which will permit our members to charge a combination of flat fees and/or percentage commissions. This change should give consumers more choice and flexibility when it comes to the real estate services they require.

The balance of our presentation focuses on a small amendment to the bill which we are recommending to this committee.

As you know, Bill 55 proposes amendments to REBBA to address the issue of phantom offers. Phantom offers are offers which have been fabricated by the listing sales representative to encourage potential buyers to rush or to increase the size of their offer. It is an unethical and unprofessional practice which OREA strongly condemns.

Bill 55 proposes a series of changes to REBBA designed to increase the level of transparency surrounding a real estate transaction and to address the perception that phantom offers are common in the marketplace. OREA supports more transparency and measures that will strengthen consumer confidence. However, OREA has serious concerns with section 35.1(2) of Bill 55, which reads as follows: "A brokerage acting on behalf of a seller shall retain, for the period of time prescribed, copies of all written offers that it receives to purchase real estate." Section 35.1(2) would require listing brokerages to keep copies of all unsuccessful offers they receive on a property.

OREA has two specific concerns with this section.

First, OREA is concerned that section 35.1(2) will violate the privacy of a buyer who would be required to leave copies of their offer in the hands of a party to which they have provided no consent for retention of their personal information, and there are no contractual agreements protecting their interests.

Second, OREA is concerned that section 35.1(2) will impose a red tape burden on Ontario real estate brokerages. Brokerages in Ontario sold nearly 200,000 residential properties in 2012. Many of these were subject to multiple-offer situations, and it is not unknown for a property to generate over 20 offers from interested buyers. With some brokerages transacting over 100 properties a week, section 35.1(2) would create a staggering new amount of paperwork and administrative issues for our members to manage. The red tape burden could cost brokerages millions of dollars in office supply, record retention, record disposal and infrastructure costs.

OREA's proposed solution would address our industry's concerns while continuing to achieve the government's policy goals. Please amend section 35.1(2) to read: "A brokerage acting on behalf of a seller shall retain, for a period of time prescribed, copies of offers or other documents as prescribed that it receives to purchase real estate." This proposed amendment would provide flexibility to the real estate industry in consultation with the Ministry of Consumer Services and the Real Estate Council of Ontario to come up with alternatives to the retention of full copies of unsuccessful offers.

As an example, we have provided committee members with a draft version of a cover page to the OREA Form 100 – Agreement of Purchase and Sale. This cover page would provide important information about the property, the buying and selling brokerages and when the offer was presented. It would then be retained by the selling brokerage after the offer was presented to comply with section 35.1(2).

In the event that RECO was investigating an allegation of a phantom offer, the selling brokerage would produce these cover pages to verify the existence of offers on their property. In doing so, this cover page or another document as prescribed would be both a deterrent to the practice of phantom offers and an investigative tool for prosecuting unethical sales representatives.

The red tape burden on Ontario real estate brokerages will also shrink from hundreds of pieces of paper per property to just one page per offer.

The Chair (Mr. Garfield Dunlop): Thirty seconds.

Mr. Johnmark Roberts: For these reasons, we urge all three parties to support this proposed amendment to section 35.1(2).

In closing, OREA would like to acknowledge Minister Tracy MacCharles and her staff for their efforts to engage

our association in a productive dialogue on this issue. Moreover, we would also like to acknowledge Mr. Singh and Mr. McDonell for meeting us and listening to our concerns.

Thank you, and I am happy to take any questions you might have.

The Chair (Mr. Garfield Dunlop): Thank you very much, gentlemen. We'll now go to the official opposition. Mr. Barrett, you have three minutes.

Mr. Toby Barrett: Thank you, Chair. First of all I want to commend OREA for your strong condemnation of this phantom offer business as unethical and unprofessional. I think of so many young people trying to buy a house, get a mortgage, insurance, water heaters and everything else, and to be presented with inaccurate information and they end up buying something that, it turns out, wasn't worth that in the first place. So I commend you for saying that in your brief.

Then you list the red tape problem with so many unsuccessful offers, but how do you keep track of these offers now? The real estate agents just keep them in their head? There must be some kind of a paper trail, or in a computer somewhere, anyway, isn't it?

Mr. Johnmark Roberts: With unsuccessful offers, it varies from person to person to person. My best practice is, I keep a copy of every offer that I've presented, but that's not necessarily the case because the paperwork adds up. If you're working with one client and they're unsuccessful in five or six properties, confusion can reign as to which is the valid offer when it finally comes down to doing things. So you have to keep your filing system and you've got to regularly dispose of these because, as I say, it does build up.

Mr. Toby Barrett: But you're talking about hundreds of properties a week. That must involve many, many real estate agents—

Mr. Johnmark Roberts: No. Right At Home brokerage—I know this because I was talking to the manager of the Don Mills branch—in July, they were processing 365 deals a week.

Mr. Toby Barrett: How many salesmen is that?

Mr. Johnmark Roberts: They have 2,500 salespeople.

Mr. Toby Barrett: They have 2,500?

Mr. Johnmark Roberts: Yes. The Toronto Real Estate Board currently has a membership of around 38,000.

Mr. Matthew Thornton: Just if I could jump in, Mr. Barrett, on one of the challenges with retaining copies of unsuccessful offers on a property: Just to give you an example, I know it's common practice in the GTA and other areas where there are a lot of competing-offer situations for the buyer's agent to go into an offer presentation, present their offer to the selling agent and then leave with a copy of their offer. So they don't actually leave the offer in the hands of the selling brokerage.

What we're proposing, as an example of an alternative, is to attach a cover page to the offer sheet itself. The selling broker would then retain that cover page to comply with this section, instead of the full offer itself. Going back to my example, if we were to leave the section as is, the selling broker would have to actually chase the buyer's agents to get those copies of those offers back, and that presents a whole host of other challenges.

The Chair (Mr. Garfield Dunlop): Just a quick question here.

Mr. Toby Barrett: Just very quickly: You're a self-regulating body?

Mr. Johnmark Roberts: No. We're governed by RECO, which is a DAA.

Mr. Toby Barrett: Pardon?

Mr. Johnmark Roberts: The Real Estate Council of Ontario is a DAA in the province, and they are our licensing and registrar.

The Chair (Mr. Garfield Dunlop): Okay, thank you very much, gentlemen. We'll now go to the third party. Mr. Singh?

Mr. Jagmeet Singh: Thank you. I just want to go over it again. I understand this alternative form would satisfy the definition of "another document as prescribed," and this document's cover page would be proof that an offer was placed.

Just walk me through: You keep a copy of all the offers yourself?

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Mr. Johnmark Roberts: Personally, as a best practice, I do, but realize that, if I'm representing a buyer, I don't leave a copy of my offer behind. Also, because it contains personal information in regard to the buyer, I don't keep it that long. These records build up.

Mr. Matthew Thornton: I think, Johnmark, you keep offers when you're representing a buyer's agent.

Mr. Johnmark Roberts: As a—

Mr. Matthew Thornton: Or as a buyer's agent, he's keeping a copy of all the offers he's presented.

Mr. Johnmark Roberts: It's not in the best interests of my buyer to leave a copy of the offer on the table.

Mr. Jagmeet Singh: And explain why it's not in the best interests.

Mr. Johnmark Roberts: A lot of factors. My buyer may be competing on two properties at the same time, or that evening. If an offer is on the table, an offer is good for a time period, an irrevocable time period. By walking out with the offer, (1) it doesn't leave the listing agent the capability of playing my offer against another offer, because it's not in their hands anymore; and (2) it gives me the flexibility to work on behalf of my client in their best interest, because they want one of the two houses or something like this.

Mr. Jagmeet Singh: Okay. Now, just to put it in a frame—if you want to frame it as a consumer protection, I think what I'm getting from this is that it would actually be contrary to consumer protection if there were records of their agreements out there in the world. Can you just frame it in that sense? How would it be contrary to consumer protection if consumers who were making offers on properties—if those offers were being retained, how would that hurt consumers?

Mr. Johnmark Roberts: I work in the Toronto market, which has areas that can be very hot. The information contained in that offer—first of all, if you leave it with a listing brokerage, the listing brokerage has no duties or responsibilities to the buyer's broker, period. It's the buyer's brokerage that has all those duties and responsibilities, so they have no duty or responsibility to protect the buyer in any way whatsoever. So you're leaving personal information in their hands.

As far as that goes, I don't want that personal information to be on the street two days or three days later when my people are competing again for another offer and have that information: that they can afford to go up to this or will do these types of things in the offer. That information does get out to a certain degree in the marketplace, but if you have it on paper available to a listing brokerage, which doesn't have any duties available to protect it—

Mr. Jagmeet Singh: And one last area—

The Chair (Mr. Garfield Dunlop): Thirty seconds.

Mr. Jagmeet Singh: Thirty seconds? How would this prevent against phantom offers, if you wanted to know that the price wasn't inflated because there were these offers that were fake, that were high? You couldn't show the actual price, though.

Mr. Matthew Thornton: I think, in terms of the content of the form itself, that's something that we're open to discussing and working with RECO and the ministry. Whether or not the price finds its way onto the form itself is, I think, a topic for discussion. I can tell you right now that it's not permitted under REBBA to disclose the content of an offer to another competing agent, so there would have to be additional changes to REBBA in order to permit that practice.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Thornton. We'll now go to the government members. Mr. Colle, you've got three minutes.

Mr. Mike Colle: I guess that's the same thing—that's it's a bit complex. We agree: We want to stop the phantom offers from taking place, and they do take place in a hot market, right?

Mr. Johnmark Roberts: Yes. It's hard to get a grasp of the numbers, but the Real Estate Council of Ontario, since 2004, has investigated four times. It's not as huge, but it does occur. In certain areas which are hot—on the street? Yes, it's happening.

Mr. Mike Colle: So, therefore, you're in agreement: There could be a way found without all that pretension of all those full offers, and storing them and keeping them. There might be a way of actually recording certain offers that were made, keeping your concerns about the competitive advantage of the salesperson.

I think you've been talking to the ministry about trying to find a midpoint which ensures that these phantom offers are screened out and perhaps stopped, at the same time giving assurances that these offers are going to be tracked somehow, and that it's not going to be a burden to you. Are you having those discussions right now?

Mr. Johnmark Roberts: Discussions are occurring with the ministry and with RECO, and under way. We've been expressing our concerns and trying to resolve the concerns. One solution we came up with was other documents, such as this cover page. Whatever document would have to be worked out with RECO and the ministry so it's acceptable to all parties, but the whole point is to provide a paper trail so that RECO can investigate, and where you have something in writing in cases of fraud.

Mr. Mike Colle: Yes. So, in essence, there can be a way of finding a methodology with a paper trail that's convenient and practical for you, and at the same time the government has that paper trail of offers etc.

Mr. Johnmark Roberts: Yes. It would combine a form or a paper trail plus directions from our registrar detailing procedure to incorporate.

Mr. Mike Colle: So that could be worked out through regulation—

Mr. Johnmark Roberts: All through regulation.

Mr. Mike Colle: —and through your proposed amendment, and then coming up with background reality additions.

Mr. Johnmark Roberts: That's correct.

Mr. Matthew Thornton: Yes. The important thing to stress is that the amendment—right now, the section says only offers, and we're proposing that small change to give that flexibility, so that we can enter into those sorts of conversations around prescribing regulations that are going to clarify a cover page or another form that all three parties can agree on.

Mr. Mike Colle: So it is doable?

Mr. Matthew Thornton: It is very doable, yes.

Mr. Mike Colle: Okay, thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much, gentlemen.

Mr. Matthew Thornton: Thank you.

Mr. Johnmark Roberts: Thank you.

The Chair (Mr. Garfield Dunlop): That concludes your time this afternoon. Thanks for attending.

RUMANEK AND COMPANY LTD.

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation, which is Rumanek and Company. Jordan Rumanek is vice-president. Mr. Rumanek, how are you doing? You'll have five minutes for your presentation and three minutes from each caucus's members. I'll try to warn you.

Mr. Jordan Rumanek: Okay. Good afternoon, Mr. Dunlop and standing committee members. My name is Jordan Rumanek, and I am a licensed trustee in bankruptcy, an administrator of proposals and an insolvency counsellor.

Interruption.

The Chair (Mr. Garfield Dunlop): Okay, guys. Go outside with that, okay? Excuse me. Can we just get everyone to go outside to do their chatting?

I'll let you start again. Thank you.

Mr. Jordan Rumanek: Thank you. Good afternoon, Mr. Dunlop and standing committee members. My name

is Jordan Rumanek, and I am a licensed trustee in bankruptcy, an administrator of proposals and an insolvency counsellor. I have practised in the field of insolvency for more than 20 years and am currently the vice-president of Rumanek and Company Ltd., which operates nine offices of Ontario. I'm also on the board of directors of the Ontario Association of Insolvency and Restructuring Professionals, also known as OAIRP.

My colleague Daniel Weisz told the committee last week that trustees in bankruptcies are appointed and legislated by the federal Office of the Superintendent of Bankruptcy, a division of Industry Canada. I'm pleased to be here today to talk to you about Bill 55 and, in particular, the proposed amendments to the Collection Agencies Act. We support this bill and would like to see it passed.

I would like to present the committee with an example that better illustrates our concerns. David came to my office after an experience with a debt settlement company. He told me how he liked that they presented a friendlier alternative to the more formal restructuring options available. He owed $54,000. He signed the debt settlement company's documents without fully comprehending them, and began making monthly payments of $1,350.

He was told to stop all other payments and ignore the collection calls. After three monthly payments, totalling over $4,000, David's wages were garnished. It seemed that the debt settlement company had not yet contacted David's creditors. David learned that the company's policy was not to contact the creditors until they collected a large sum of money for their clients, regardless of how long it would take. David abandoned the settlement soon after, and came to see me. By then, he was out more than $4,000, with no action taken on behalf of the debt settlement company.

Many of the deputations that this committee has heard on debt settlement companies surrounded the unregulated upfront fees. This leads to other issues, such as lack of accountability. Regulation of fees can go a long way to protect consumers.

Under the Bankruptcy and Insolvency Act, consumer proposals are based upon tariff. Debt settlement companies should be similarly regulated. The Bankruptcy and Insolvency Act outlines administrators' fees as follows:

—$750 on signing, but generally not taken until a significant payment has been received from the debtor;

—a second $750 payable on the approval of the consumer proposal by the court—again, generally once the funds are available; and

—lastly, 20% of monies distributed to the creditors under the consumer proposal.

This formula works. Debt settlement companies' fees ought to be similarly structured, with a reasonable upfront fee, a similar payment upon approval, or refunded to the debtor if the settlement is not approved by the creditors, and a reasonable percentage of any payments distributed to the creditors.

This structure addresses several issues. It fixes initial fees to a reasonable and manageable amount; it encourages timely contact and negotiation with creditors; it discourages the collection of payments without accountability; it allows the debtor to know within a reasonable time whether formal arrangements such as a consumer proposal or a bankruptcy will be necessary; and the debtor is spared making payments while unknowingly getting no service in return and jeopardizing his or her assets or income. A regulated fee structure will address the bulk of these concerns with the debt settlement companies.

I'd like to address one of the questions posed to my colleague Mr. Weisz last week at this committee. MPP Jagmeet Singh had asked whether the debt settlement legislation was better served as a separate bill rather than being included as part of the Collection Agencies Act. We believe it would best serve the people of Ontario to include the amendments in Bill 55.

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Regulation of this industry, and enforcement of that regulation, is needed now for the protection of Ontario consumers. Our concern is that the introduction of new legislation will continue to leave financially troubled residents exposed to the practice of upfront fees until legislation is tabled and passed.

I'd like to thank the committee for hearing me this afternoon. I'm happy to answer any questions.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Rumanek. We'll now go to the third party. Mr. Singh, do you have questions?

Mr. Jagmeet Singh: Sure, yes. Thank you. One of the issues that you've laid out is a way to address the upfront payment. I guess that's one of the major issues with debt settlement services, the setting aside of funds without any clear indication of whether or not the creditor knows that there's an agreement or whether there is an agreement, and there's a lack of transparency—

Mr. Jordan Rumanek: Correct.

Mr. Jagmeet Singh: So what you're proposing is a similar structure that trustees use?

Mr. Jordan Rumanek: This would be administrated as a consumer proposal under the Bankruptcy and Insolvency Act.

Mr. Jagmeet Singh: Okay. What I had asked your colleague before was that, in terms of the regulation—not what they can or can't do, but in terms of the regulation of debt settlement services. Collection agents have to be registered, and there is legislation that outlines what they can and can't do and what their registration is all about, their licensing is all about. But for the licensing of debt settlement services, right now it falls underneath collection agents. I was questioning whether or not there should be a separate legislation to license debt settlement services that's not collection agency-related. That was a separate issue, I think.

In terms of the services provided, would you agree with me that there are some models, in terms of services that debt settlement service companies provide, that are effective and that actually work, and whereas there are other models that have been the subject of complaints?

Mr. Jordan Rumanek: I think the model that is subject to complaint that was brought up even last week was the debt-pooling model. That's where the money is just put in this pool and nothing's being done—in my example here with David, where nothing's being done; he puts money in, and no contact.

There was another example of the informal proposal. I'm not sure how the company that made that presentation last week structured it. He's using the words "informal consumer proposal," which is very similar to what a consumer proposal is. I'm not sure how it is structured. I'm not sure what their fees are, what their fee structure is. I'd be curious to know.

Mr. Jagmeet Singh: Okay. I think you're absolutely right, though: The complaints have been with the debt-pooling mechanism, and then your example that you've provided here is also an example of debt pooling.

So while debt pooling is a problem, there could be other—I think in your proposal, the proposed amendments, you're actually allowing for there to be another way that people structure these services that could be beneficial, and you're providing a way for them to be reimbursed in a meaningful and organized way, I guess.

Mr. Jordan Rumanek: And transparent, so the debtor actually knows what's going on. I think the biggest complaints that I've heard is, "I didn't know what they were doing. The creditors kept on calling me." There just wasn't the feeling of the communication and the understanding of what was going on. I think that it really starts with, when the debt settlement companies get money, and it's in their pockets, their initiative to work kind of decreases.

Mr. Jagmeet Singh: So just as a trustee in bankruptcy—I know this is a bit of a loaded question for you—do you see a benefit to proposals that aren't official through a trustee in bankruptcy, that could be worked out without having to go through a bankruptcy trustee?

Mr. Jordan Rumanek: Of course. In this industry, there are many options. Some people don't know what a consumer proposal is, and they read this advertising, or have a friend—there's always some place for it. But to have it regulated, and the transparency, the communication and the understanding I think is the most important.

People are in debt, and they're looking for a solution. That's the main thing here. Have a solution that's well defined and that is understood by everybody.

The Chair (Mr. Garfield Dunlop): Thank you very much to the—

Mr. Jagmeet Singh: I think your measured responses show your objective nature.

The Chair (Mr. Garfield Dunlop): Thank you so much. Now we'll go to the government members: Mr. Bartolucci and then—

Mrs. Amrit Mangat: Then me.

The Chair (Mr. Garfield Dunlop): Okay.

Mr. Rick Bartolucci: Thanks very much, Garfield.

The Chair (Mr. Garfield Dunlop): Okay. Thank you.

Mr. Rick Bartolucci: Thank you very much, Mr. Rumanek, for your compelling presentation. You're a trustee, so obviously you're very cognizant of dignity in difficult times with the people that you interact with. I'm a bit of a novice at this particular area, so I'm wondering: When is debt settlement better than a bankruptcy or a formal consumer proposal? Or is it ever better?

Mr. Jordan Rumanek: That's more of a loaded question than MPP Jagmeet Singh's. You're comparing a consumer proposal under the Bankruptcy and Insolvency Act, which is government-regulated under the Bankruptcy and Insolvency Act—court involvement and creditor involvement. It's a federal act. An informal proposal is whatever I decide to do and whatever the creditors agree to accept. I'm not sure what structure there is in an informal proposal. If I was doing an informal proposal, I would base it on the Bankruptcy and Insolvency Act. It works. It's federal. The creditors understand the process of filing what we call a proof of claim saying how much money is owed. There are people signing papers. They vote on a proposal. They sign a voting letter. It's so much communication between the trustee or administrator and the creditor in the Bankruptcy and Insolvency Act for a consumer proposal. With an informal proposal, I'm not sure what they're doing. It would be nice if there is this discussion, regulation and signing of pieces of paper going back and forth between the administrator and the creditors. I just don't know if it exists.

Mr. Rick Bartolucci: Okay. So, do you discuss options with the—

Mr. Jordan Rumanek: Oh, yes. The majority of the trustees advertise the first appointment as free. The first appointment is to gather information and discuss alternatives. I always say to a debtor, right away, "One of the alternatives is to do nothing. You can always do nothing. You don't have to do anything." If somebody is unemployed and has no assets, they're judgment-proof. So there is always the option to do nothing. It's if they want to do something—if there's a creditor that's harassing them, if there's somebody garnishing their wages, that's when they want to do something. A lot of people don't want the stigma—I'll call it the B-word, bankruptcy—and that's where the alternatives are there. But there are many options.

Another option is a consolidation loan. Most likely, if they're coming to me, that route of the consolidation loan has already been tried and refused by the bank, for whatever reason—lack of income or the debt as a ratio. But there are always options. Under the BIA, I actually have to give the options to the debtor when we provide assessments. So every single person that comes in my office is given more than just a bankruptcy and proposal option.

The Chair (Mr. Garfield Dunlop): Thank you very much to the government members. We'll now go to the official opposition. You have three minutes.

Mr. Jim McDonell: Thank you for coming out. You talked about the percentage of the payments for a reasonable fee. Is there an incentive, then, for the agent to get

what's best for the client—say, if you owe $100,000 and the more you gather from the consumer and pay back, the more money you make? I'm saying, you really should be serving the consumer and not the creditor.

Mr. Jordan Rumanek: In your example of paying back more money to the creditors, well, doesn't everybody benefit? You have the creditor who is getting more money; most likely the trustee is doing a little bit more work and he'll be compensated accordingly; and the debtor is actually not filing for bankruptcy. He's filing a proposal and giving back something to the creditors as opposed to nothing. So I would think in that situation, every stakeholder benefits.

Mr. Jim McDonell: Well, generally, if I'm hiring an agent or a lawyer, I'm looking for the best deal that I can get. You know, that's the purpose. So I'm just wondering—it seems to be counterintuitive. Who would pay that 20%? Is that coming from the consumer or the creditors or—

Mr. Jordan Rumanek: Under the Bankruptcy and Insolvency Act?

Mr. Jim McDonell: Well, under your proposal here.

Mr. Jordan Rumanek: Well, under the Bankruptcy and Insolvency Act, it's the debtor making the payment to the administrator or trustee, and the trustee would be taking that percentage for doing the work of the distribution to the creditors. So this number of 20% has been since 1998. This percentage hasn't changed in over 10 years.

Mr. Jim McDonell: Okay.

The Chair (Mr. Garfield Dunlop): Mr. Barrett?

Mr. Toby Barrett: Thank you. I appreciate your presentation and the presentation last week from Mr. Weisz as valuable advice for this committee.

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Just very quickly, you used the analogy—you talked about David coming to your office with this debt and being presented some restructuring options. I guess my question is, what advice would you have if somebody like Dalton or Kathleen came into your office and explained—

Mr. Grant Crack: Out of order, Chair.

Mr. Toby Barrett: —that they were staring down the barrel of a $411.4-billion debt in the next four years? What advice would you have, in your experience?

Mr. Jordan Rumanek: Considering that I only deal with individuals—

Interjections.

The Chair (Mr. Garfield Dunlop): If you want to try, you can answer that question.

Mr. Jordan Rumanek: I wouldn't have an answer to a $4-billion debt load, no.

Interjection.

Mr. Jordan Rumanek: Depending on whether it's a bankruptcy or a proposal.

The Chair (Mr. Garfield Dunlop): Thank you very much.

CANADIAN ASSOCIATION OF DEBT ASSISTANCE

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter, the Canadian Association of Debt Assistance: Richard Cooper, Mr. Petrescu, Mr. Blais and Ms. Pietersen. I hope I got that right. You folks have three minutes, please.

I'll give you a 30-second warning. Proceed. Thank you.

Mr. Richard Cooper: Good afternoon. I'd like to begin by thanking the committee for the opportunity to be here today to speak to Bill 55, the consumer protection act. As mentioned earlier, my name is Richard Cooper and I am both the chairperson of the Canadian Association of Debt Assistance, or CADA, and the owner-operator of a debt settlement company, Total Debt Freedom.

With me today are three of my clients. We've got Larissa Pietersen, Henry Blais and Eugen Petrescu right beside me, who are prepared to share their personal experiences with our services during the question-and-answer phase. I am here on their behalf.

As you may be aware, CADA serves as the national voice of Canada's responsible debt settlement sector. Primarily, we're here today to support Bill 55, which codifies policies and procedures that already exist in our internal code of conduct. Anything that we can do to get the bad apples out is to be applauded.

That being said, we are deeply concerned that there are a few loopholes in the act which, if left unaddressed, will expose consumers to significant fiscal risk, which runs completely contrary to the objectives of the legislation.

Our primary concern is related to transparency. As you may know, there are two types of agencies that provide support to debtors: debt settlement services, such as the services I provide to my clients, and credit counselling agencies, which provide both debt settlement and general support to those facing a debt issue.

Debt settlement services work only for the client. We are advocates who are retained by debtors to get the best possible settlement on debt, which in plain English means the smallest amount. By and large, our clients have already paid for their debt several times over in interest payments and are stuck paying rates established by credit card companies that are extraordinarily high.

Needless to say, credit card companies do not look kindly on people like me because my job is to stop them from squeezing money out of people who will not survive being placed in a debt cycle for 30 years. CADA members do work that performs a vital social function by ensuring that just because one might be caught in debt, they are not less than others, and that they know that there is someone who will work for them, not against them.

In this work, we're totally accountable only to our clients, those citizens who need someone to stand up for them and only for them. While this means that citizens in debt may often pay less than their total supposed debt, I

believe that sometimes, in an era of easy high-interest credit cards, consumers can take on more credit than they should. However, this does not mean that they should be slaves to credit card companies for the rest of their lives. That's why I am proud of the work that I do to put money in the hand of the little guy, rather than the big bank.

Credit counselling services, on the other hand, perform a different function: They offer general support to those having difficulty managing debt. This is good work and we believe that it should continue. However, most of these agencies negotiate long-term payment arrangements between debtors and creditors, which is, in essence, a debt settlement agreement. The end result of this is debtors paying significantly more over a longer period of time and doing more damage to their credit rating than they would with a debt settlement service.

Publicly, this is presented as a positive thing, as it encourages consumers to pay the entirety of their debt, including compounded interest. I see how this benefits lenders; I struggle to see how this is beneficial to the consumer.

What is so problematic about this from our perspective is that the vast majority of credit counselling services hold themselves out to be either not-for-profit or charities. This creates a false impression amongst debtors that these agencies operate solely on debtor donations, which is truly not the case. Indeed, a significant proportion of revenue for credit counselling agencies comes from donations from the credit issuing agencies themselves—upwards of 60%, according to an earlier deputation to this very committee. One must only look at the boards of these not-for-profits to see that on each of them is a representative of a lending institution, which, to my understanding, is a condition of their annual donations. This creates a fundamental conflict, in our opinion, one that needs to be addressed, as creditors want to get as much money as possible; it's simple logic.

To facilitate transparency and equality, we would like the bill amended to include the notion of credit counselling agencies as part of the act and the mandatory disclosure of funding sources. This will ensure a level playing field; also, the consumers are given accurate information about who is funding the advice they receive. If we do not do this, we may as well amend the title of the bill to be the creditor protection act, because that's who it's truly going to help.

Moreover, we would like to ensure that any fee cap imposed, which we support, is applied to all agencies arranging payment between debtors and creditors. Being a member of CADA or a member of OACCS should not grant either a not-for-profit or a private agency the right to charge more. Instead, we'd like to see the fee cap imposed on direct and indirect fees. After all, if the rules are fair, then they should be applied to everybody. That is acceptable to all responsible participants in this sector. Otherwise, we could create a dynamic in which credit-granting institutions may able to leverage their extensive capital to co-opt debt settlement or credit counselling agencies.

In closing, I would encourage each of the committee members to review our background package, which will define in greater detail the specific amendments we believe are necessary, as well as information as to why we strongly feel the changes are both necessary and in keeping with the stated spirit of the act.

With that, I'd like to thank you again for the opportunity to present, and I welcome your questions.

The Chair (Mr. Garfield Dunlop): Thank you very much, sir. We'll now go to the government members. You have three minutes for your questions. MPP Mangat.

Mrs. Amrit Mangat: Thank you, Mr. Cooper, for your presentation. My question is, can you describe the typical services provided by your members?

Mr. Richard Cooper: The typical services—an average client would get into our program with $30,000 worth of credit card debt, unsecured debt, and three years later they would graduate totally debt-free for roughly about half of what they owe, including the debt settlement fee.

Mrs. Amrit Mangat: How do they charge for the services provided?

Mr. Richard Cooper: The fees are charged monthly throughout the life of the program.

Mrs. Amrit Mangat: Up front or after providing the service?

Mr. Richard Cooper: I'm not sure where the upfront conversation came from. It sounds like a fear-mongering ploy from credit counsellors and credit card companies. There is no fee charged up front by any debt settlement company that I'm aware of. The fees are collected over the life of the program.

Mrs. Amrit Mangat: Okay. And what is the business cost associated with that?

Mr. Richard Cooper: The business cost with settling debt?

Mrs. Amrit Mangat: Yes.

Mr. Richard Cooper: It's extraordinary. We probably do about 80% of the work before the first settlement is even finalized.

Mrs. Amrit Mangat: No, my question is with regard to your members. When your members provide a service, what is the business cost associated with that?

Mr. Richard Cooper: Oh, the fee we charge a client?

Mrs. Amrit Mangat: Yes.

Mr. Richard Cooper: It's 16% of the debt that's enrolled in the program, and that's collected over the life of the program. So it's actually considerably less than what a bankruptcy trustee charges for a consumer proposal, and we're getting paid by the client. It's less than what credit counsellors charge.

Mrs. Amrit Mangat: My understanding is that other jurisdictions, such as Alberta and Manitoba, have implemented debt settlement rules. Can you shed some light on how that has benefited consumers or harmed consumers?

Mr. Richard Cooper: Well, we haven't seen any benefit to that. We actually had clients in Manitoba when we were licensed there. When they made that unilateral change to the legislation, we weren't given an opportun-

ity to speak on it like we are here. So we notified our clients, and all of our clients complained about it. We referred them to their members of Parliament.

I think that it was a hasty act. I'm not really sure why it was done, because there was no consultation with my industry or any of the trade orgs.

Mrs. Amrit Mangat: Thank you.

The Chair (Mr. Garfield Dunlop): Any other questions from the government members? Mr. Balkissoon, you've got a minute there.

Mr. Bas Balkissoon: Just one. Can you repeat: You said you collect 16% of the debt?

Mr. Richard Cooper: It's 16% of the debt that's enrolled in the program.

Mr. Bas Balkissoon: So if I come in with $30,000, you're going to charge me 16% of the $30,000—

Interjections: It's 16%.

Mr. Richard Cooper: One-six, 16%.

Mr. Bas Balkissoon: One-six, yes; that's what I mean. But you might negotiate that I only pay back about 50%.

Mr. Richard Cooper: The total cost to get out of debt with our program averages around 65 cents on the dollar.

Mr. Bas Balkissoon: Okay. Thank you.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Balkissoon. We'll now go to the official opposition. Mr. Barrett.

Mr. Toby Barrett: Thanks to the Canadian Association of Debt Assistance. Just briefly: We just received a recommendation that debt settlement company fees could be structured. There was kind of a three-point plan: a reasonable upfront fee of $750 to $1,000; a similar amount payable on approval or refunded to the debtor if the settlement is not approved; and then, thirdly, a reasonable percentage of any payments—20% was in here, but a reasonable percentage. Could you comment on that recommendation or that suggestion?

Mr. Richard Cooper: I haven't seen that recommendation, but at a bird's-eye view, it sounds like that might cost more than what people are paying today.

Mr. Toby Barrett: Cost the person who owes the money?

Mr. Richard Cooper: It might cost the consumer more. What we do in my company is we have a money-back guarantee, so if any of our clients would be unsuccessful in us settling the debt, we'd refund the money. We've had that in place for, I don't know, six or seven years now. I've never had to cut a cheque.

Mr. Toby Barrett: I see.

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Mr. Richard Cooper: Creditors do yield in the hands of a skilled negotiator all the time.

Mr. Jim McDonell: Under the current legislation or the proposed legislation, do you have the power you need to stop the harassing calls, or is that in—

Mr. Richard Cooper: That's one of the loopholes in the current legislation; regulation 22.2 only facilitates lawyers having the capacity to stop phone calls. That's cost-prohibitive for somebody with credit card debt. We would like to see that change so that a debt settlement company could actually letter the creditor and the collection agency to stop phone calls, because, if you speak to the ministry, one of the biggest complaints that they get is that people get phone calls while they're enrolled in debt settlement.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. McDonell. Mr. Singh, from the third party.

Mr. Jagmeet Singh: Yes, thank you very much. One of the things I brought up in the House is that debt settlement services as a concept are providing a benefit to the consumer. That's what they're supposed to do. They're supposed to be able to fight on behalf of the consumer.

The complaints that I receive are normally that collection agents are too aggressive and are harassing constituents. But there are some models or there are some players out there that aren't conducting themselves in a way that's appropriate, and I think they're besmirching the reputation of the rest. I think that is kind of what your experience is, if I'm not mistaken.

Mr. Richard Cooper: Yes, that's a fair statement. I think the industry has been polluted by some very bad US players doing business in Canada.

Mr. Jagmeet Singh: One of the things I want to make clear is that it's important—do you think—for disclosure so that people know credit counsellors are funded primarily or at least half by the lenders themselves?

Mr. Richard Cooper: Absolutely. If you ask any credit counselling client that I've ever spoken to that has come into my office, they're not clear on what the source of funding is from credit counselling companies. A lot of them say it's free or that they get corporate donations, but they won't point directly to credit card companies.

Mr. Jagmeet Singh: Two questions I want to ask. The debt-pooling model: Can it be done in an effective way, and how do you do it? Second, what's the advantage of going through a debt settlement service for somewhat of an informal consumer proposal as opposed to going to a trustee in bankruptcy?

Mr. Richard Cooper: I'll answer the second question. It's interesting because not everybody is the right fit for the offerings of a bankruptcy trustee. I think it's a valuable service but, for example, if you're in a bondable position—you drive a Brink's truck, you're a bank teller—and you have a gun cabinet in your basement, you lose your bondability. So bankruptcy or consumer proposal is really not a good option for people. An informal proposal offers that flexibility.

There are situations where bankruptcy is where we send clients when they contact our office. It's really tailored to the individual's needs.

Mr. Jagmeet Singh: And the debt-pooling question.

Mr. Richard Cooper: I don't follow debt pooling or the definition of debt pooling. I know that it exists in Alberta as a concept. I've heard it thrown around today. But I don't know of any debt poolers in Ontario. The program that—

Mr. Jagmeet Singh: What's your model, then?

Mr. Richard Cooper: It's straight-up debt settlement. People get into the program. They follow a budget that we set for them. They save up money, which raises a lump sum, and then once they've raised a lump sum, then we go to the credit card company and negotiate the settlement. They now have an offer in writing. They make the payment. They now have a receipt. So you have offer and acceptance—you have a binding deal, and they're out of debt. We just repeat that process over the three-year period until all the debt is gone.

Mr. Jagmeet Singh: Do you get the agreement from the creditors up front or do you get it along the way?

Mr. Richard Cooper: We get the agreement to settle once they've got the funds available to settle. There's absolutely no point in me picking up the phone today and saying, "Henry's going to pay half of what is owed in six months' time. Can you not bother him?" It just doesn't work that way. You've got to protect the consumer from, let's say, just creditors, from phone calls. That's why there's a lot of work that is done up front by debt settlement companies, which is why if there is a fee cap imposed it needs to be fair amongst everybody that plays in the industry.

The Chair (Mr. Garfield Dunlop): That pretty well concludes your time. Thank you very much, Mr. Cooper—interesting presentation.

CREDIT COUNSELLING CANADA

The Chair (Mr. Garfield Dunlop): We'll now go to our final deputation of the day, and that is Credit Counselling Canada: Patricia White and Scott Hannah. Welcome to the committee, Patricia and Scott. You have five minutes for your presentation and three minutes by each caucus after. Thank you.

Ms. Patricia White: Thank you, Mr. Chair. Good afternoon, everyone. I should introduce myself. I'm Patricia White. I'm the executive director of Credit Counselling Canada, and with me is Scott Hannah, who is the CEO of one of our member agencies. We appreciate the opportunity to explain the perspectives of Credit Counselling Canada members in Ontario regarding Bill 55.

Credit counselling members provide money management education, advocacy and debt repayment programs for consumers coast-to-coast. The vast majority of the services provided by our member agencies are in financial literacy.

Education is the backbone of assistance provided to consumers. People don't know where to find answers to their financial questions. They are confused by the myriad of options and they are worried about their personal finances. This is where our members provide help to consumers. People need assistance in this vital life skill.

Some of our Ontario members have been serving their communities for over 65 years. Mr. Whitehurst from the Consumers Council of Canada spoke last week about the financial stress that people experience, and that often poor decisions are made at that moment. People are looking for solutions, the magic wand to make their problems go away; then they get taken in and find out that they've made a poor choice, and they feel more stressed. Consumers need financial services that they can trust.

We need legislation and regulations that protect people. We back you in all aspects of the bill. In particular, we support the cooling-off period, written disclosures in plain language, no payment in advance of providing services, the right to cancel services, registration, and prohibition of deceptive advertising. We feel that these provisions protect consumers.

Listening at last week's hearings, I was struck by the fact that whether we're talking about real estate, water heaters or debt settlement, the overriding issue is financial awareness and education. With more financially astute citizens, we would have fewer problems.

Let me address your questions about the funding of not-for-profit credit counselling services. Yes, our members are supported by donations from financial institutions. The Canadian Bankers Association members, as well as other creditors, provide donations to our member agencies to help them maintain and deliver excellent money management education and credit counselling services throughout Ontario. This support enables our members to provide low- or no-cost services to consumers. While the model for donations is based upon funds repaid, the donations are provided to assist our member agencies to deliver services and education, credit awareness, as well as debt repayment programs. I share with you the vision of the members of the CBA.

Canada's banks recognize that not-for-profit credit counselling services play a key role in providing money management and budgeting skills to their clients and the broader community. The banks are committed to strengthening the capacity of this sector and fostering the service it delivers. It is the work in education and rehabilitation that is most important to financial institutions. Yes, we charge consumers modest fees for service. Even with United Way grants, municipal grants and other support, there's a gap needed to be filled by those benefiting from the services we provide. Our client fee policy specifies that all fees must be transparent and geared to the client. No fees are charged in advance of service being provided, and fees must waived if the client is unable to pay. All our members provide counselling at no charge. The average monthly fee for debt repayment programs is $24.93. Clearly, our members are not abusing client fees. The goal is helping people in their communities.

People are embarrassed by being in debt, and they are looking for solutions that aren't always readily apparent. Some businesses offer quicker fixes, and consumers will pay just to have the problem resolved. In credit counselling, we state that there are no easy fixes. Consumers need to live without credit during the time of a repayment period, and they will have to change their spending behaviours along the way. Paying 100% of the debt owing is achievable, but requires discipline and help from our members to learn new skills.

Yes, there are bad apples in the debt settlement industry, as there are in other sectors. The difficulty for consumers is telling the difference and having a choice. This legislation provides consumers with much-needed protection against unethical practices.

Credit Counselling Canada looks forward to a consultation process for the regulations. We're prepared to answer questions you have. Thank you for your time.

The Chair (Mr. Garfield Dunlop): Thank you very much, Patricia. We'd like to—

Interruption.

The Chair (Mr. Garfield Dunlop): My phone went off here. Sorry; I'm supposed to keep that shut off. I don't know how it got on.

Ms. Patricia White: At least it wasn't me.

Interjections.

The Chair (Mr. Garfield Dunlop): No, I think it's his fault.

We'll now go to the official opposition. You have three minutes for questions and answers. Mr. McDonell.

Mr. Jim McDonell: Sure. Thank you for coming out today. You talked about where you receive your income, and I know the question has come up. What percentage would come from the creditors? How much would you rely on them to keep you solvent or keep you in business?

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Mr. Scott Hannah: I would say, on average, they provide about 50% of the funding. But just to give you some history on that, in Ontario, going back about three decades, most of our member agencies received funding from the Ontario government, and then that funding was stopped. With the financial assistance of the credit-granting community, they enabled the member agencies to continue providing services throughout Ontario. That's where it started.

Mr. Jim McDonell: I know we've talked a lot about how typically it's credit card debt that gets everybody on these. How do you typically handle that? Do they continue paying the higher rate of interest? When they get to you and they're done—they have no money—trying to cover 18% or 20% interest rates is a killer.

Mr. Scott Hannah: Well, the first thing that we'd help a client with is to have a look at their overall situation. So our members provide free counselling to look at all options and the impact of the various options. They can range from looking at conventional sources to obtain a consolidation loan at a low rate of interest to seeking help from the bank of mom and dad to perhaps establishing a debt management program through our member agencies whereby creditors will waive ongoing interest charges so consumers can get out of debt.

In many cases, they're beyond our scope of help because they left it too late, and we're going to encourage them to speak with the trustee in bankruptcy to explore either a consumer proposal where they'll be paying back a portion of the debt or to make an assignment of bankruptcy, again outlining the impact of all those options before they make a decision. At all times, we believe in encouraging our clients to sleep on it, because it has implications down the road for them, not just for today.

Mr. Jim McDonell: Do you have any recommendations as far as proposed amendments that need to be done to the legislation?

Ms. Patricia White: I think, overall, we're quite happy with the legislation. We support Jordan Rumanek's discussion about moving ahead with the legislation and the regulations because there are consumers who are impacted and we need to move ahead quickly. Ontario is following other provinces that have successfully achieved regulation and legislation, like Alberta, Manitoba and PEI, for example. I think there are other provinces that are following suit, the same as Ontario.

Mr. Scott Hannah: Just to speak on the issue regarding the number of consumers who experienced difficulty in the province of Manitoba, with the introduction of an amendment to the regulations we saw a 50% drop in the number of complaints due to debt settlement practices in Manitoba, overnight. So while I commend Mr. Cooper's organization in terms of how they operate, in terms of not charging fees in advance, that's the exception; that's not the rule.

Our concern is the fact that people are entering into contracts and, as Mr. Cooper said, they don't bother making contact with the creditors until they have funds. What happens in that year or two years before they have the funds? I'll tell you what happens, because we have consumers calling us, saying, "My bank has just garnished my paycheque. They've put a lien on my home. I'm being foreclosed upon." What happens in that time period? There's no legal protection for consumers. So when consumers come to us who aren't able to repay their debts in full or partially, we refer them off to a trustee in bankruptcy, where there is legal protection for that consumer. They're not stuck in no man's land.

The Chair (Mr. Garfield Dunlop): Thank you very much. To the members of the official opposition. Welcome, Ms. MacLeod. I want to pass something on to you. I know you had a very special birthday yesterday, but I also read in the news today where R. A. Dickey is exactly the same age as you are, because his birthday is today—from the Toronto Blue Jays, and you're dressed so nicely in blue today.

Ms. Lisa MacLeod: Well, thank you.

Interjections.

The Chair (Mr. Garfield Dunlop): Now to the third party. Mr. Singh.

Mr. Jagmeet Singh: Thank you very much.

My question to you is: Do creditors or members of lending institutions sit on the boards of credit counselling?

Ms. Patricia White: Yes, sometimes, but we have a restriction. We have a bylaw that says that only a certain percentage can be represented by any particular group so that there's no conflict of interest. Whether that would be credit granters or consumers or any other group, we have that restriction so there is no conflict.

Mr. Scott Hannah: In addition to that piece, though, this month, as a matter of fact, that's been removed

entirely. The financial institutions recognize that there's the perception of perhaps over-involvement, so they will not be sitting on the various boards of credit counselling entities going forward.

Mr. Jagmeet Singh: Going forward. Right now they are, but going forward they won't be. Okay.

Normally, if someone uses credit counselling services, they end up paying back the entire debt. It's not like you settle for a portion of the debt. Is that right?

Mr. Scott Hannah: In most cases; however, at times our organization will help consumers to settle debt. It's an upfront settlement on the basis of, if they have some funds to settle their debts, we'll put that forward to their creditors to see whether they accept it or not, and if they don't, the funds are returned to the consumer.

Mr. Jagmeet Singh: Okay. If one of your strategies is to counsel a consumer to pay back the debt and it takes two years or three years or four years, and if they pay back the entire debt, they're paying back the debt plus interest as it's accruing. So in a way they're paying back more than they actually owe.

Mr. Scott Hannah: That's not true. In almost every case, creditors provide full interest relief. There's the odd creditor who may say, "We're going to provide you with reduced interest relief," but in the majority of cases, it's complete interest relief. So if a consumer comes to us owing $30,000 on their credit cards, they will repay $30,000 on the credit cards plus, as Pat White has outlined here, a monthly fee that averages just below $25.

Mr. Jagmeet Singh: In terms of the funding being at least 50% funded by lending institutions, you wouldn't be opposed to having that be mandated as being disclosed in a more transparent or more upfront manner.

Mr. Scott Hannah: It is.

Ms. Patricia White: It is disclosed.

Mr. Scott Hannah: It's fully disclosed.

Mr. Jagmeet Singh: Okay.

Mr. Scott Hannah: We're quite proud of the fact that if we didn't have that funding, we couldn't provide our educational resources and conduct the extensive counselling at no cost to consumers. So it's not hidden.

Mr. Jagmeet Singh: Would you consider that a bias in your ability to provide services? If you're being funded by the group that is owed the money, as a consumer, one would perceive that as a bias that you may have an interest in making sure the people who fund the organization that you represent are being paid?

Mr. Scott Hannah: Well, let me give you some statistics. Across Ontario, our members may help about 17% of their clients to resolve their debts with the establishment of a debt repayment program. On average, they refer over 25% to trustees in bankruptcy—

The Chair (Mr. Garfield Dunlop): Thank you very much Mr. Hannah, and thank you to the third party.

We'll now go to the government members. You have three minutes. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you, Mr. Chair, and thank you for being here.

Very short and quickly: What's the real difference between credit counselling and a debt settlement service? Where are the advantages and disadvantages?

Ms. Patricia White: I hesitate to speak specifically about debt settlement, because I'm not in that business, but from the perspective of credit counselling, the significant difference is in education. People come to credit counselling and learn many things about using credit and managing their money; that makes the difference. That's why financial institutions support credit counselling.

Other pieces that we have are the accreditation of our members and the certification of counsellors; those are also very important. I've put those in the additional material for you. I don't know what the situation is in debt settlement, but those are achieving standards, and maintaining a high level of service is a piece that's very important for credit counselling.

Mr. Bas Balkissoon: The previous deputant said that most debt can be settled by a repayment of roughly 65% of the debt. When someone comes to you with debt, is that your target, or do you look at full repayment, as my colleague just asked in the question before?

Mr. Scott Hannah: We look at the client's overall circumstances. Our goal is not for the client to repay 100% or 65% of the debt; our goal is to look at the person's circumstances, to look at what's reasonable. When we look at a person, we say, "Let's help the person to resolve their financial difficulty in a reasonable period of time while maintaining a reasonable standard of living in dignity." Based upon those standards, you look at different options. It may be that bankruptcy is the best solution to accomplish that; at times it may be toughing it out, being a better budgeter and repaying the debt with interest. A person's circumstances and future prospects will determine the course of action. There's no goal in terms of: What debt can we settle?

When you take on an obligation of a credit card, your goal isn't to repay 50% of it; your goal is to maintain that. But when circumstances occur, you have to look at the whole picture and the long-term ramification of that, not just, "Here's a target we're going to shoot for."

Mr. Bas Balkissoon: So if somebody walks through your door, they wouldn't be given the option of a debt settlement agency that may be able to—and I have to take the other person's word for what it was—that they would be able to settle for less. You would not be able to provide them with that option and you would not even counsel them for that option. Am I correct?

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Mr. Scott Hannah: No. Our agency provides that service in an upfront service. We would not advocate saving up money in a separate account and exposing yourself to potential legal action on behalf of a creditor as well as damage to your credit history report. If a person was not in a position to repay their obligations, we would encourage them to speak with a licensed trustee in bankruptcy, where they have legal protection from the creditors, while reorganizing their debts given their ability.

Mr. Bas Balkissoon: Okay.

The Chair (Mr. Garfield Dunlop): Thank you very much. That concludes our time for the government members, and that also concludes your time today. Thank you very much for your presentation.

Mr. Scott Hannah: Thank you.

The Chair (Mr. Garfield Dunlop): That concludes our deputations. We have a couple of quick things here. Mr. Barrett, you have something from legislative research that you've passed around?

Mr. Toby Barrett: Yes. Thank you, Chair. Just a point of information for all committee members: We had so many deputants last week that there wasn't time for me to formally request a bit of research which may be useful for all members when you get into the clause-by-clause or writing amendments.

Last week, we had several presentations on water heaters as well, and there was a fair bit of mention not only of the Consumer Protection Act but also the Energy Consumer Protection Act, and suggestions that there were some good things in there. Perhaps we could use some of that, so I've requested research to do a comparison between the two. It just came to me directly. I thought, well, let's get it around to everybody. Thank you.

The Chair (Mr. Garfield Dunlop): Okay, so this is information for all the committee members?

Mr. Toby Barrett: Sure, if there's something useful there. Thanks to legislative research, the people who put that together.

The Chair (Mr. Garfield Dunlop): Okay, thank you very much. As it stands right now—yes?

Mr. Bas Balkissoon: Chair, in that same line, since we listened to the deputants and they were all mixed—some were water heaters, some were credit counselling—would it be appropriate that we get a summary of what we've heard on the two different issues?

The Chair (Mr. Garfield Dunlop): I'll ask the Clerk to clarify that.

The Clerk of the Committee (Mr. Trevor Day): The motion that the committee is following, their own motion, had that a summary of presentations will be prepared by Monday on all the presentations that we've heard.

Mr. Bas Balkissoon: Okay. Super.

The Chair (Mr. Garfield Dunlop): That takes us to next—sorry, Mr. Singh?

Mr. Jagmeet Singh: Thank you so much. I'm just trying to clarify the deadlines for the amendments.

The Chair (Mr. Garfield Dunlop): I was just going to do that.

Mr. Jagmeet Singh: Perfect, because if the deadlines for amendments are such that maybe receiving this by Monday—would it still give us enough time to review that?

The Chair (Mr. Garfield Dunlop): Yes. How it stands right now, the clause-by-clause is next Wednesday, November 12—

Interjection.

The Chair (Mr. Garfield Dunlop): November 6. At 12 noon, we start. Okay.

Let me start that again: clause-by-clause next Wednesday, November 6, at a starting time of 12 noon. We'll have lunch for all the committee members.

The amendment deadline is 12 noon on Tuesday, November 5, 2013, but we call this a soft deadline, because the amendments must be filed in hard copy with the Clerk of the committee. The legislative counsel for this is Michael Wood, who will be doing the drafting of the amendments.

Mr. Jim McDonell: So the amendments—by noon?

The Chair (Mr. Garfield Dunlop): We should have them by noon on Tuesday, November 5, yes.

Mr. Jagmeet Singh: When are we getting the summary?

Interjection: Monday.

Mr. Jagmeet Singh: It's really no minimal point, because I'm going to submit all of my amendments, probably, by tomorrow. I don't think it makes sense to—

The Clerk of the Committee (Mr. Trevor Day): The committee's decision to have a summary done was set previously, when we started dealing with this bill.

Mr. Jagmeet Singh: That's fine. It's just too far away, because I don't think anyone is really going to rely on it. You should have had your amendments in Monday morning, or at least Friday, if you were hoping to get them ready by Tuesday.

The Clerk of the Committee (Mr. Trevor Day): The amendment deadline is a soft deadline. It's set by committee, not set by the House, so we will accept amendments right up until the section is passed in clause-by-clause.

Mr. Jagmeet Singh: Oh, really?

The Clerk of the Committee (Mr. Trevor Day): Yes, it's a soft deadline. It's set by the committee. It's administrative, just to—

Mr. Jagmeet Singh: This isn't part of the programming motion then?

The Chair (Mr. Garfield Dunlop): Yes, it's part of the motion. Anything else?

Mr. Jagmeet Singh: This isn't time-allocated?

The Clerk of the Committee (Mr. Trevor Day): The deadline for amendments was not set in that motion. Therefore, this is a soft motion set by the committee. We are subject to that programming motion; however, this particular area was not set in that motion.

Mr. Jagmeet Singh: Wow. That's very good. What about the clause-by-clause? Is the clause-by-clause time-allocated? Does it have to finish by 6 p.m. that day?

The Chair (Mr. Garfield Dunlop): We have, actually, two days set aside. We've put the full three hours on the 6th, and then we've also got two weeks after that, following constituency week. We've got that full afternoon, too, if we have that many amendments.

Mr. Jagmeet Singh: Good. Wonderful.

The Chair (Mr. Garfield Dunlop): Is that okay with the committee? Any other questions? With that, we're adjourned. We'll see you next Wednesday at 12 o'clock.

The committee adjourned at 1455.

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