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**Standing Committee on
Justice Policy**

Better for Consumers,
Better for Businesses Act, 2023

1st Session
43rd Parliament

Tuesday 21 November 2023

**Comité permanent
de la justice**

Loi de 2023 pour mieux
servir les consommateurs
et les entreprises

1^{re} session
43^e législature

Mardi 21 novembre 2023

Chair: Goldie Ghamari
Clerk: Thushitha Kobikrishna

Présidente : Goldie Ghamari
Greffière : Thushitha Kobikrishna

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Tuesday 21 November 2023

**COMITÉ PERMANENT
DE LA JUSTICE**

Mardi 21 novembre 2023

The committee met at 0900 in committee room 1.

**BETTER FOR CONSUMERS,
BETTER FOR BUSINESSES ACT, 2023
LOI DE 2023 POUR MIEUX
SERVIR LES CONSOMMATEURS
ET LES ENTREPRISES**

Consideration of the following bill:

Bill 142, An Act to enact the Consumer Protection Act, 2023, to amend the Consumer Reporting Act and to amend or repeal various other Acts / Projet de loi 142, Loi visant à édicter la Loi de 2023 sur la protection du consommateur, à modifier la Loi sur les renseignements concernant le consommateur et à modifier ou abroger diverses autres lois.

The Chair (Ms. Goldie Ghamari): Good morning, everyone. I call this meeting of the Standing Committee on Justice Policy to order. We are meeting today to begin public hearings on Bill 142, An Act to enact the Consumer Protection Act, 2023, to amend the Consumer Reporting Act and to amend or repeal various other Acts. Are there any questions before we begin our public hearings?

**STATEMENT BY THE MINISTER
AND RESPONSES**

The Chair (Ms. Goldie Ghamari): I will now call upon the Honourable Todd J. McCarthy, Minister of Public and Business Service Delivery, as the first witness.

I would like to ask the committee if there is agreement to allow the deputy minister to attend in person with the minister for this meeting. Is there agreement? Yes.

Minister, you will have up to 20 minutes for your presentation, followed by 40 minutes of questions from the members of the committee. The questions will be divided into two rounds of seven and a half minutes for the government members, two rounds of seven and a half minutes for the official opposition members and two rounds of five for the independent member of the committee.

Minister, the floor is yours. Please begin.

Hon. Todd J. McCarthy: Good morning, Chair, and good morning, members of the justice policy committee. I am very pleased to speak today as the Minister of Public and Business Service Delivery—

The Chair (Ms. Goldie Ghamari): State your name for the record before you begin. Thank you.

Hon. Todd J. McCarthy: All right. My name is Todd McCarthy, and I'm very pleased to speak today as the Minister of Public and Business Service Delivery on our proposed Bill 142, the Better for Consumers, Better for Businesses Act, 2023. This bill contains a new Consumer Protection Act and proposed amendments to the Consumer Reporting Act.

I would like to first of all acknowledge Renu Kulendran, the Deputy Minister of Public and Business Service Delivery, to my left, who has kindly joined me today. I can say unequivocally that she and her team have provided valuable leadership in the development of this complex legislative package. I want to thank our ministry and her team for their great work.

Now, on October 30, 2023, I was pleased to join members of the House and lead off second reading of the debate with respect to this important bill. Our debate in the Legislature confirmed just how vital this package of consumer protection legislation is to the people of Ontario and to our economy.

As you may know, my ministry is responsible for delivering vital programs, services and products, including consumer protection and public safety, all with the goal of enhancing the quality of life for all Ontarians across our great province.

Consumer protection is integral to building consumer trust and is a cornerstone of a competitive and dynamic economy. Our government has an obligation to our fellow citizens and residents, because we are all consumers, and our government must ensure that safeguards are in place against unfair practices, including things like aggressive sales tactics and misleading claims. At a time when many families are struggling to pay for household essentials and make every dollar count, our government must make sure they do not face unnecessary hardships. So our proposed legislation would better protect consumers in the marketplace, strengthening their rights and their confidence and at the same time make it easier for businesses to comply with consumer protection rules.

Along with our proposed changes to the Consumer Reporting Act, it would improve and clarify that act while helping Ontarians monitor, protect and access their information and their credit scores.

Chair, I will start by providing some brief history on how our consumer protection focus started. Almost 60 years ago, under the government of John Robarts, then the Premier of Ontario, a Progressive Conservative government

initiated the first Consumer Protection Act of 1966. The current Consumer Protection Act, several decades later, in 2002, was also proposed, debated and received royal assent while a Progressive Conservative government was in office in this province. It was introduced in 2002 through the Consumer Protection Statute Law Amendment Act. The goal was to harmonize and update consumer protection laws to better serve and safeguard Ontarians. Now, almost two decades later, the Better for Consumers, Better for Businesses Act, 2023, is a continuation of this great legacy of almost 60 years, a legacy of putting Ontarians' well-being at the forefront and ensuring we have all the protections needed for Ontarians in our rapidly evolving and increasingly digital and service economy.

Much has changed even in the past 20 years in terms of how consumers purchase goods and services across the province. And that is why, after many amendments to the Consumer Protection Act, 2002, it has been suggested that there be a complete replacement of that act with the new Better for Consumers, Better for Businesses Act, 2023.

In the preamble to this proposed legislation, you will see that it contains four pillars that speak volumes to the purpose of this consumer protection legislation. The two most important of these pillars are that “consumers should have confidence that they are well-protected and well-informed when they buy goods or services in the marketplace” and that “the economy thrives when businesses understand their responsibilities and consumers can trust businesses when spending ... hard-earned” dollars.

Simply put, our government must empower consumers and support them while offering businesses a level playing field to promote marketplace fairness. Our new proposals would help better protect consumers against unfair business practices, building upon the protections in the current Consumer Protection Act of 2002. So the core principles of that act will continue, but they can and must be updated in this digital market that we now live in. And in doing so, we can and would, if the legislation is passed, better address what can be done when a business engages in those unfair business practices, as defined in the proposed legislation.

Now, since the 2002 act came into force in 2005, the current act has not been comprehensively updated. There have simply been, as I've indicated, Chair, a series of amendments over the past several years. And in today's increasingly digital and service-oriented economy, it simply does not reflect current reality. Over the years, our government has received an increasing number of complaints about harmful, misleading and costly business practices as well as real and perceived gaps in enforcement. We know these issues disproportionately affect new Canadians, seniors and other vulnerable consumers, while also undermining a fair and competitive economy.

When our government introduced the Rebuilding Consumer Confidence Act in 2019, my ministry began a comprehensive review of the existing Consumer Protection Act. And this was part of a broader strategy to rebuild the confidence of Ontarians in the marketplace.

The proposed new Consumer Protection Act reflects years of work, Chair, including extensive consultations

with the public and stakeholders over a three-year period. We heard during this time from a vast stakeholder group that included consumers, consumer associations, legal and advocacy groups, businesses and law enforcement officials, many that support our suite of proposed reforms.

This proposed legislation would help us better align Ontario's regime with other Canadian jurisdictions and would make us a leader in consumer protection and in the digital economy, while safeguarding our senior citizens and vulnerable populations, who are often exploited in this complex consumer world.

And so, we have called our proposed act the act for better implementation of consumer rights, while balancing that right and those rights with making it easier for businesses to comply, hence Better for Consumers, Better for Businesses Act, 2023—because we are strengthening protections while streamlining and clarifying requirements that would make it easier, if passed, for businesses to understand and comply.

The bill, if passed, would also introduce new enforcement powers to better enable my ministry to hold those few bad actors accountable.

Now, I would like to address the measures that we are exploring in more detail. To better protect consumers, this proposed legislation would update contract rules to adapt to changing technology and innovations in the marketplace. Many of these have been very recent. We would seek to address consumer harms by reducing barriers to consumer choice and advancing sector-specific protection measures, including unilateral contract amendments made by businesses, as well as automatic renewals and extensions and subscription traps.

0910

These practices—I submit, Chair—must be curtailed, including punitive exit options from time-shares and long-term leases of home-related equipment, high termination costs if a consumer wishes to end a contract early, and unfair practices such as aggressive sales tactics and misleading claims.

A single set of core rules would govern consumer contracts, regardless of the type of contract, the sector and how the business operates. Whether online, by phone or in person, we will, if this legislation is passed, make it easier for consumers to understand contracts. My ministry will also explore whether certain contract types need additional rules in instances where increased intervention is required. This will be consulted upon during regulatory development.

Another topic of concern in today's consumer marketplace is gift cards, especially as we approach the holiday season this year. Our government is proposing to transfer the current regulatory prohibition that gift cards cannot expire into the new act to ensure prominence and to enshrine this rule.

As we further develop the numerous proposals in this legislation that would be implemented in regulations under the act, we will continue to work with our stakeholders and the public. More than before, businesses would need to obtain clear consent from their customers for any contract amendments, renewals or extensions. Once implemented,

these proposed changes would also offer more choice to consumers and the right to exit and put their hard-earned dollars to work elsewhere for new or alternative services or goods.

Ontarians have a right to understand these contracts clearly, right from the beginning, right upfront, so that they can make purchases that suit both their needs and their budgets. By reducing costs to consumers when they terminate contracts and potentially change suppliers, we would also support competition and improved consumer choice.

Once implemented, these proposed changes would also make it easier for consumers to cancel subscriptions and memberships. If a business engages in an unfair practice, the new act would give consumers the right to rescind the contract one year after entering the contract or one year after the unfair practice takes place, whichever is later. Under this proposed legislation, if a consumer must take legal action to enforce that consumer's right to a refund under the act, and if the consumer is ultimately successful in court, that consumer would have the right to recover three times the amount that should have been refunded by the business in the first place. This would act, we submit, as both a general and specific deterrent against unfair practices.

Now, as a former trial lawyer and a former deputy judge in the Small Claims Court over many decades, I know just how important it is for consumers who have been wronged to have speedy justice and to receive fair compensation. That on-the-ground experience provided insight into how important it is to modernize consumer protection and to make sure that the rules and the core values upon which consumer protection is built in this modern and digital world are clearly understood by consumers and businesses alike.

Our proposed legislation also would have an exit option of 25 years for time-shares, as well as addressing other long-term leases. We know that understanding the true costs of long-term leases, such as for a water heater, including the cost to terminate the lease early, can be particularly challenging for seniors and newcomers to our province. Our proposed changes, therefore, would, if passed, establish specific rules for a new category of long-term contracts, primarily those for long-term leases of heating, ventilation and air conditioning, known as HVAC leases. This would also apply to other home comfort appliances.

To provide Ontarians more clarity and consumer choice, businesses would need to provide them with a clearly disclosed buyout schedule which shows that the cost to buy out the contract—what it is, specifically—and to obtain ownership of the equipment would decline over time to zero. This would have to be clearly disclosed to consumers by businesses selling these products or appliances. Additionally, by establishing a 10-day cooling off period and setting limits on termination costs for purchase-cost-plus leases, the citizens and residents of Ontario would have increased protections and options if they decide to end a contract early.

Our proposals will also allow Ontario citizens to share their experiences with a business without fear of repercus-

sions, as the free flow of information between consumers and among consumers is vital to improve competition and for businesses to improve their customer experience. Under the proposed legislation, businesses would be prohibited from including terms in a contract that try to deter customers from publishing reviews or that bill customers in response to the content of these reviews.

We believe that businesses would also benefit from our proposals, including clearer, simpler contract requirements that reflect our dynamic and increasingly digital-first marketplace. We must ensure that our laws support a fair and competitive economy, while striking a balance between strengthened consumer protections and supporting other government measures to reduce burdens and costs for businesses.

During these times of uncertainty, our government continues to create the conditions that allow for prosperity, innovation, job creation and a competitive economy as we attract new businesses and investments. If passed, the Better for Consumers, Better for Businesses Act, 2023, would allow my ministry to have stronger enforcement powers against the few bad actors who seek to take advantage of the most vulnerable consumers.

I want to reiterate that these strong enforcement measures are not intended to add any additional costs or burdens to business, because we know that the vast majority of businesses are compliant and upstanding, and understand that the customer service experience must be top of mind. So, before using its strongest enforcement tools, my ministry would need to be satisfied that there are reasonable and probable grounds to believe that an offence under the proposed new act has been committed and that the public interest demands that certain action be taken.

The new proposed Better for Consumers, Better for Businesses Act contains two schedules, the first being what I've outlined already—that's the new Consumer Protection Act, 2023—and the second schedule addressing the Consumer Reporting Act. This sets out what can and cannot be included in a credit report. It also governs the province's 29 registered reporting agencies, also known as credit bureaus or credit agencies. These provide information about consumers' credit histories, such as their borrowing and bill-paying habits. These histories can be provided to third parties such as creditors, insurers, employers and landlords.

In 2018, amendments to the Consumer Reporting Act were passed by the previous provincial Parliament, but they have not yet been proclaimed into force. This includes changes related to consumer access, consumer reports and scores, security freezes and ministry enforcement powers. The changes we are now proposing would, if passed, improve and clarify the act by giving consumers greater access to their credit information and a greater ability to limit how their credit information is shared, through what we call security freezes.

When agencies contravene the act and its regulations, consumers would be able to seek recourse, as well as to correct and protect their information, especially against identity theft. Additionally, under these changes, Ontarians could receive free electronic access to their consumer

reports and credit scores once each month—free access, without compromising their credit scores.

That is not all, Chair. My ministry is also working to address an area of very significant concern for consumer harm related to notices of security interest, or NOSIs. A notice of security interest may be registered on the land registry system by a business when it rents, finances or leases certain equipment installed in a home, such as a water heater or a furnace.

The Chair (Ms. Goldie Ghamari): One minute.
0920

Hon. Todd J. McCarthy: A NOSI allows a legitimate business to protect its legitimate interests, but it has been used of late for nefarious purposes by bad actors. We are consulting currently—between October 17 and this coming December 1—to see what might be done, in addition to section 60 of the proposed act, to take action on the improper use of notices of security interest.

We believe this is truly an act that is better for consumers and better for businesses, and I would be pleased now, Chair, to take any questions.

The Chair (Ms. Goldie Ghamari): Thank you very much. We'll now turn to the official opposition for the first round of questions. MPP Rakocevic, you may begin.

Mr. Tom Rakocevic: Thank you, Minister. Right off the top, I want to say that we as the official opposition supported, as you know, the legislation at second reading. Definitely it represents a number of improvements to consumer protection. I'm happy to be asking some questions. I also want to thank the minister for granting a short technical briefing before second reading of the bill. As well, I've had the opportunity to meet with the ministry on a number of different consumer-related issues in the last year or so, so I want to thank you all for that as well.

In evaluating the bill, a lot of it has been left to regulations. Of course, that can be challenging to determine what is the overall benefit or negatives about a bill. Can you comment on why so much of it was left to regulations?

Hon. Todd J. McCarthy: Though you, Chair: Thank you for the comment and the question from the member opposite.

This proposed bill has 121 sections. Compare that with 1966; there were 35 sections and just four parts. So consumer protection has become a lot more complex, and we've seen rapid changes over the last 20 years.

The plan is that if this committee sees fit to send this bill back to the House and it passes third reading and receives royal assent, we would engage in the regulatory process. That is essential in terms of getting some specifics in place by way of regulation.

But the act also, for example, moves certain regulatory provisions into the act. For example, the fact that gift cards do not expire is now moved from regulation to legislation in this act. And the core principles for unfair practices and unconscionable transactions are clearly specified in the act. We believe that's good for consumers and better for businesses.

But the regulation process is essential because this is a moving target. Practices continue to evolve in this digital world, and we're going to have to make sure that we deal with

them fairly and in a balanced way, by way of regulation. That would be a process that follows royal assent, before proclamation.

Mr. Tom Rakocevic: Okay. Thank you for that.

I know that you'll be consulting on the notices of security intent, but will you be consulting on any of these regulations as well, beyond that?

Hon. Todd J. McCarthy: Through the Chair to the member opposite: I think the question asks about two different processes. There is going to be current stakeholder and public input into regulation-making. That follows royal assent, if the bill is passed and receives royal assent. But the process about NOSIs, in addition to section 60 of the act, which would have the 15-day period of expiry for NOSIs—in other words, section 60 proposes that, if a consumer were to cancel a contract, when and if this law takes effect, the notice of security interest would have to be discharged within 15 days or else action could be taken that could lead to even a prosecution under the act.

But unless and until that comes into effect—and it would be delayed by the regulation-making and consultation period—we have in place a specific consultation period now, separate from this proposed bill. That commenced October 17. It concludes in 10 days' time, December 1. I encourage the member and members of his caucus to give the input that we will rely upon in terms of determining what action can be taken now under the existing legislation and the current regulations to deal with improper use of NOSIs even now, before we engage in the regulation-making process. They are, Chair, two different processes.

Mr. Tom Rakocevic: Yes. Thank you, Minister. It's just, with regard to regulations, in the last session of Parliament there was reform to Tarion and the creation of the HCRA. At the time, for instance, something that we had raised—it was actually an amendment that we had put down—looked at not allowing HVAC systems to be used in newly constructed homes. When I had talked to ministry staff at the time, they said that that would be addressed in regulation. They said that was a good idea; this is the type of thing that could be dealt with in regulations. That's kind of why there's the concern: A lot is left to the regulations, and there are some concerns as to what will and won't happen.

But I think part of your answer led to the other part: that a number of contracts were removed, as well, as part of this legislation. I know that tow trucks, as an example, are being dealt with in other legislation. But again, you can confirm that there will be no concerns like with the PAWS Act, where things are left unprotected as a result of it being removed from this legislation and being dealt with in other legislation. Can you again confirm that?

Hon. Todd J. McCarthy: Again, I thank the member for the question. Through you, Chair: This proposed legislation is designed to deal with most consumer contracts, as defined in the act, and the core principles of unfair practices and unconscionable transactions are clearly set out for the benefit of consumers and to ensure businesses can more easily comply with these core values.

But this is not the only piece of consumer protection legislation. When it comes to new homes, for example, we have the New Home Construction Licensing Act. We have the Ontario New Home Warranties Plan Act. Those are specific to new homes. And this act and those acts are no different than any other legislation, for the most part, that has extensive regulation-making authority in it, because in addition to the core principles—some of which are legislated; most of which are—one has to drill down in terms of the impact of the provisions of legislation by making regulations as authorized by the act. So I don't think that makes this act any different from any other.

And of course, as with any regulation-making process, we continue to consult widely, and it's wise to do so because there's no monopoly on a great idea that protects consumers and assists businesses in complying.

Mr. Tom Rakocevic: Okay. With regard, though—we did talk a little bit about new home—

The Chair (Ms. Goldie Ghamari): One minute left.

Mr. Tom Rakocevic: One minute left? Okay.

Well, can you confirm whether or not this will cover new home purchases? Like, any elements of this.

Hon. Todd J. McCarthy: The Consumer Protection Act—through you, Chair—as I indicated, is an act that covers most consumer transactions. When it comes to new homes, we have different legislation that's already in place, and that legislation is the New Home Construction Licensing Act for the province of Ontario, and also the Ontario New Home Warranties Plan Act.

We also have, of the 12 administrative authorities within my ministry, the condominium authority, and we also have Tarion as well to deal with freehold buildings, freehold homes.

Mr. Tom Rakocevic: Okay. All right.

The Chair (Ms. Goldie Ghamari): We'll now turn to the independent member for five minutes. You may begin.

Mr. Stephen Blais: Minister, thank you for coming this morning. I appreciate your presentation. Similar to my colleague MPP Rakocevic, as you know, we supported the bill at second reading and generally don't have any problems with what's in the bill. I think our bigger concerns are what's not in the bill, kind of following up on my colleague's line of questioning relating to new home construction. I appreciate there's other legislation that covers new home construction.

One issue in particular that has been of concern in Orléans—and I know it's been of concern in the GTA; I've heard the Premier speak about it—is the situation where a developer will sell a unit, either in a condo or in a subdivision, and then proceed not to construct that unit for years on end. The client then has effectively left their deposit out in limbo, hanging there, without collecting interest, and the developer will then go on and cancel the contract two or three years later. Obviously, the market conditions have changed, mortgage rates have changed, the cost of the home has changed, and the future homeowner hasn't had the opportunity to make any interest or capital gains on their deposit.

That is an issue that the government said that they would address. I don't know that it has been addressed,

and so I'm wondering why it wasn't included in this particular bill. And do you have plans to bring a bill forward to address that kind of situation?

Hon. Todd J. McCarthy: I thank the independent member, through you, Chair, for the question. This Consumer Protection Act is dealing with transactions that are not specifically in relation to new homes. We already have legislation with respect to new homes, and we already have an administrative authority, Tarion, that deals with freehold homes, new homes in that regard. The legislation I've indicated is the New Home Construction Licensing Act and the Ontario New Homes Warranties Plan Act and the regulations contained under those acts—

Mr. Stephen Blais: Minister—

Hon. Todd J. McCarthy: If I may finish, Chair—and there are regulations under that act, and there's an administrative authority.

0930

The member indicated two types of home purchases. Condominiums are the subject of trusts, so when a deposit is put down on a new condominium unit, the deposits are held in trust and accordingly protected, whereas with freehold, although there's no trust associated with the deposit, there is the compensation fund through Tarion. Deposits up to \$100,000 per home purchase are protected and refunded to the consumer, despite the fact that there is not a trust in place as is the case with condominium units. So the two types of purchases are different and have different protections associated with them, but protections nevertheless, Chair.

Mr. Stephen Blais: Yes, Minister, I'm aware of the regulatory and legislative environment. Thank you for educating the rest of the committee about that. The question was very specific, however. The Premier has indicated himself that he feels this is an issue. He said so on live television. We've got the recording of it. It's clearly a live issue.

It's not a matter of the deposits being protected; it's a matter of the fact that if you have your deposit sitting in the bank account of a home builder for two or three years, you as the future purchaser are not benefiting from that deposit. And then to have your contract cancelled three years later when mortgage rates are doubled, when home values are up 10%, 15% or 20%, your purchasing power with that deposit has declined significantly and you've blown through two or three years' worth of rent.

The Chair (Ms. Goldie Ghamari): One minute left.

Mr. Stephen Blais: So the question is: Do you plan to bring forward legislation or regulation that will give Tarion or HCRA the authority to stop that practice from happening and provide compensation to those potential home owners when that does happen?

There was a case in Orléans where Ashcroft Homes, one of the worst builders in Ottawa, had a subdivision and took deposits. Three years later, they cancelled those contracts, and then within weeks put those lots back on the market. That's crazy. That's crazy that that's allowed to happen, and there are always gaps in legislation. You're aware of that gap. The Premier is aware of that gap. My question is, are you planning to do something about it?

Hon. Todd J. McCarthy: Through you, Chair, to the independent member: It's a concern for everyone. The dream of homeownership should never ever become a nightmare for any individual couple or family. When it comes to new home deposits, we are—

The Chair (Ms. Goldie Ghamari): That's all the time that we have.

We'll now turn to the government side. MPP Coe, you may begin.

Mr. Lorne Coe: Chair, through you to the minister—and welcome, Deputy, as well. About two months ago, I chaired a round table for seniors, Minister, and we had representatives from the community to talk about the particular programs that were available. We also had a representative from the Durham Regional Police Service, Detective Franssen. He spoke about notices of security interest and the concerns that the police service had in Durham for the number of incidents of homeowners being defrauded out of thousands of dollars by unscrupulous, in some cases, service providers going forward.

I'd like you to speak, Minister, a little bit more broadly about how Bill 142 is going to protect our vulnerable communities like seniors—and there were several seniors that afternoon at the seniors centre in Whitby who brought up their concerns and who were victims of this type of crime. How is the government addressing the fears by the people like seniors who built the communities that we have the opportunity to live in today? Thank you, Minister.

Hon. Todd J. McCarthy: Thank you—through you, Chair—to the wise member from Whitby, who has always got his ear to the ground when it comes to his constituents in the people in our region of Durham.

We are very concerned about the improper and even criminal use of notices of security interest, especially in regard to those who have been victimized: new Canadians and seniors and other vulnerable Ontarians. Our government is actively working to address and reduce the harmful and inappropriate use of notices of security interest against consumers.

As announced on October 17, 2023, in addition to the section 60 provision in our proposed bill and alongside of it, a period of consultation is under way that commenced October 17 and will continue until December 1. Our government is consulting on changes to the legislation to help address issues relating to the misuse of NOSIs, but also what can be done under current legislation and current regulations.

The consultations can be the subject of submissions on the regulatory registry. I would encourage the member for Whitby to encourage his constituents and all members of this committee to encourage their constituents and to bring forward stories and concerns that you've heard in your constituency offices to help us find a solution to this problem. We want to address it, and I believe we can address it sooner rather than later with existing legislation and regulations. To the extent that we can, we will.

We've seen such a rapid rise in the use of NOSIs: 20 years ago, 450 in the entire calendar year of 2001, and now over 38,000 notices of security interest registered in 2022.

It is a serious problem, and a great many of those are being improperly and even fraudulently put into place. Quite frankly, those homeowners with significant equity in their homes are being targeted in a way that is completely unacceptable and is deserving of, in some cases, prosecution for criminal activity.

Obviously, police services have been involved to enforce the law, but we will do what we can in terms of the area of the existing Consumer Protection Act once this consultation period is concluded.

Mr. Lorne Coe: Thank you, Minister, for that response. Chair, through you to MPP Bailey, please.

The Chair (Ms. Goldie Ghamari): MPP Bailey.

Mr. Robert Bailey: Thank you, Chair. Through you to the minister and the deputy: Welcome, Minister and Deputy, here today.

I want to touch on a little different dimension: the 12 administrative authorities that you administer through your ministry. My key interest, because of the billions of dollars we're spending on infrastructure improvements across this province in smaller communities—water, sewer etc.—can you touch on any improvements or additions to the Ontario One Call Act? It's close to my heart.

Hon. Todd J. McCarthy: Yes. Thank you. Through you to the member, Chair: We have, as one of the administrative authorities under the jurisdiction of this ministry, One Call. It has a very important history that goes right back to the member here at this committee asking this question. I think it demonstrates what being a true parliamentarian is all about, and that is the member asking the question. During the 2011 to 2014 provincial Parliament, we had a minority government, and a private member's bill was initiated that was ultimately the motivation for what became the 2012 Ontario Underground Infrastructure Notification System Act. That act has been in place for 11 years and has worked quite well.

Could it use some improvement? Could it use some updating? I think so. But the fundamental core value of that was that the government of the day, in a minority Parliament situation, adopted a private member's bill in principle, as I understand it, and put it into place, which ensured that when it comes to locates, there's one call that needs to be made.

Quite frankly, it was important then but it's even more important now, because as we have this plan to build in Ontario highways, subdivisions of new homes, condominium developments, subways and highways and infrastructure of every type, we're going to building, we're going to be digging, we're going to be excavating, and we need to do it safely.

I thank the member for bringing forth this idea over a decade ago. I congratulate him on a government that he was not part of adopting his plan in principle and for the safe practices that it's created over the past decade. To the extent that it can be improved upon, we'll be consulting with the One Call administrative authority and anyone who wishes to have input to see if and when it might need some further improvement.

But I really do congratulate the member because, as I said, I've always known him to be a great parliamentarian.
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The Chair (Ms. Goldie Ghamari): Forty seconds left.

Hon. Todd J. McCarthy: This is an example where, even in opposition, he brought forth a great idea that came to be in terms of becoming legislation.

I thank the member for the question, and I thank him for his excellent work over the past several decades as a mentor to all of us.

Mr. Robert Bailey: Thank you, Minister.

The Chair (Ms. Goldie Ghamari): We'll go to MPP Dixon. You only have 20 seconds left.

Ms. Jess Dixon: Perhaps I will just say, Minister, and you can address this next time, I greatly appreciate you bringing expertise to this role as an expert in civil litigation and insurance litigation. When we return, I will ask you about the limitations to liability clauses.

The Chair (Ms. Goldie Ghamari): We'll now turn to the opposition members. Who would like to begin? MPP Rakocevic.

Mr. Tom Rakocevic: Back to the minister: Again, thank you for answering the first round. As I've stated, we obviously support it, and there are positive improvements to consumer protection in Ontario. But I think there are obviously some things we could do more on.

I think one of the big concerns that we have is the fact that it really doesn't come, overall, with enforcement mechanisms. If you're a consumer and you're facing a challenge, especially by a large industry player or a big company or a big business, ultimately, you have to go to court. I know you gave the example of the rebates where now, under this act, you will have the ability to get, I believe, three times the amount, if successful, if you win in court. But it could be a numbers game for businesses, where they may continue certain practices.

Without, really, overall enforcement, it will always put the burden on the consumer to go after them in the courts, and it's the age-old David-versus-Goliath situation. Could you comment on that one?

Hon. Todd J. McCarthy: I thank the member for the question. Because I was a former civil litigator and former deputy judge, I know that access to justice that has only one approach—that is, go to court and sue if you've been wronged—is not always the best approach, so we do need alternatives, and we have those in this act.

First, we have specific new enforcement powers included in the new Consumer Protection Act proposals. These enforcement powers include compliance orders on businesses facilitating contraventions. In the current CPA, compliance orders can only order persons who are contravening the CPA to come into compliance, not intermediaries. That's an important change. These complaints can be initiated by the consumer through dialing the 1-800 number or by going online to Consumer Protection Ontario. Also, the new act would extend the director's order-making power to cover any business whose actions have the effect of assisting a business to contravene the CPA.

When a complaint is made, what's important to understand is that creates an investigation process, and that is because, under the director, there are many investigators who can pursue action. But this action can include mediation, for example, between the consumer and the business, up to and including full prosecution and even jail time. So those enforcement powers—

Mr. Tom Rakocevic: Minister, in the interest of time—

Hon. Todd J. McCarthy: —are not something the consumer has to bring to court, if I may, Chair. A civil litigation and action in the Small Claims Court or Superior Court is entirely in the control of the consumer, but the complaint process—

Mr. Tom Rakocevic: Minister, I understand. Chair—

Hon. Todd J. McCarthy: —results in the director and the investigator—

The Chair (Ms. Goldie Ghamari): I would just like to remind members not to speak over one another. And given the limited time—yes, of course.

Mr. Tom Rakocevic: And I appreciate the answer. You brought up the pandemic, but the reality is, there were 30,000 complaints made to the consumer protection hotline and not a single fine was issued at that time. There are many instances where I know this legislation doubles fines in some cases, but when we've done analysis in many different areas, when fines are doled out, in some other areas, they're always very minimal relative to the max amount. So there's a concern, definitely, that comes with that.

But I want to move on with another issue, which is gouging. I know that, again, this legislation talks about gouging, but based on my understanding, it really is about comparing prices within an industry. So if you have one particular product being sold at X amount by one, which is significantly higher than all similar products, this is considered gouging. But what happens in the case of industry-wide gouging? When consumer protection experts and consumers are speaking out, saying that this is a huge challenge—we're overpaying, let's say, in the case of auto insurance relative to other provinces, even in North America. What does this legislation do to deal with industry-wide gouging in not just auto insurance but in other areas?

Hon. Todd J. McCarthy: Well, through you, Chair, of course, we have a system of government in Canada that is based on the division of powers between the federal and provincial governments. So certain aspects of improper price gouging might well fall within federal jurisdiction, but we always do what we can do provincially, and consumer protection can and must address price gouging to the extent that a provincial government can address it.

We've done it. This new act, if passed, is intended to strengthen prohibitions against unconscionable conduct, and this includes practices relating to price gauging. To the extent that there may be other remedies that have to do with industry-wide price gauging, there may be remedies in other legislation not within the jurisdiction of the province.

Providing greater clarity that price gauging is a prohibited, unfair practice in the proposed new act is intended to better enable the government to respond to price gouging

in the marketplace in the future. It is important to note that this prohibition would not address systemic high prices, including sectors such as grocery retail, because the CPA is not a price-control statute. This would be an issue relating to anti-competitive conduct that falls under the federal Competition Bureau.

Also, when it comes to high prices for groceries, we know that that's driven by the carbon tax—

Mr. Tom Rakocevic: Okay, Minister, I understand.

Hon. Todd J. McCarthy: —and we've continually spoken out against the carbon tax, fought it—

Interjections.

Hon. Todd J. McCarthy: —government to at least pause it, if not repeal it all together. That's the federal government.

Mr. Tom Rakocevic: I understand. Okay.

Hon. Todd J. McCarthy: We do what we can in the provincial government, and we call upon the federal government to do its part.

Mr. Tom Rakocevic: Well, I hope since the government has been very active petitioning the federal government to do certain things that you would be petitioning them on the issue of gouging across entire sectors.

Interjections.

The Chair (Ms. Goldie Ghamari): I just want to remind members, if you're laughing really loudly and I can't hear, that's actually not really helpful, especially since it's your side asking questions. I'd like to be able to hear MPP Rakocevic.

Mr. Tom Rakocevic: Thanks. Well, I hope again that this government will actually petition the federal government. If you say it's really at their feet to do something about this, because we're seeing it in groceries and many other things.

The final thing that I want to mention, and I don't have much time left, is that, as you're probably aware, I retabled the Consumer Watchdog Act this session, which I had tabled in the last one. The reason that I've done this is because in other parts of the world, namely the European Union, where they really are the gold standard for consumer protection, ministries have these bodies that are there to stand up for consumers, help advise governments as well, and take action when necessary, even proactively.

In the case that you mentioned, just like the minister in the last session did, the delegated authorities that are there in the many different areas are not protecting consumers. Many times, their boards appear to be captured by the industries they're supposed to protect against. So I'm really hoping that you will take the time with your ministry to look at the bill and understand that it is not something that would replace the Ministry of Business and Public Service Delivery, but it is something that could be there alongside a strong authority that could help this government and help all consumers, and I hope that you will take the time to look at it and consider it very seriously.

So again, I thank you very much for appearing in committee. I thank you for tabling this bill and your work on consumer protection in Ontario.

The Chair (Ms. Goldie Ghamari): We'll now turn to the independent member for five minutes. MPP Blais, you may begin.

Mr. Stephen Blais: On the issue of price gouging, we heard a lot from the Premier and the government during the pandemic about the steps the government would take to address specific price gouging at that time. I'm wondering if you could inform us how many actual charges or fines were levied for price gouging during the pandemic, because certainly we know that it happened.

Hon. Todd J. McCarthy: The issue of price gouging, as I've already indicated, is specifically addressed in this act, and the strong new enforcement powers against price gouging and other improper practices—unconscionable transactions and practices, unconscionable and unfair conduct—are specifically addressed in this act, and we take it very seriously.

I happen to believe that this act is among the best pieces of consumer protection legislation in terms of its improvements on existing legislation, and is one of the best consumer protection laws in the world, including the ability to take action to enforce against bad actors. Fortunately, there are only a few, but they do and can cause massive disruption and massive victimization. So these strengthened enforcement powers are available to the director and to the investigators and can be initiated through the complaints that are brought forward by consumers.

I can't give specific numbers at this point on how many charges were laid or fines levied during the pandemic specifically, but I'm sure that information can be obtained through my ministry or perhaps the Ministry of the Attorney General.

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In any event, we do take price gouging seriously. We take inflation seriously. We take consumer protection seriously. And that is why we've listened, why we've had the extensive consultations we've had and why we brought a full overhaul of consumer protection law into the 2020s with this proposed bill. I'm very proud of it, and I'm proud of my team for bringing it forward as they have. I look forward to further dialogue on the issue of notices of security interest in the time we have remaining through to December 1 so we can determine what can be done under existing legislation even before this proposed bill becomes law.

Mr. Stephen Blais: Thank you very much, Minister. So, you're committing to providing members of the committee with the number of fines that were levied for price gouging during the pandemic.

Hon. Todd J. McCarthy: Through you, Chair, I don't know that that information is necessarily available in one package. I just don't know, so I can't give that undertaking.

Mr. Stephen Blais: You're not sure if the government tracks its enforcement of important consumer protection legislation—

Hon. Todd J. McCarthy: I can defer to my deputy, who is sitting beside me.

Ms. Renu Kulendran: Thank you, Minister, and thank you to the member for the—

The Chair (Ms. Goldie Ghamari): Please state your name for Hansard.

Ms. Renu Kulendran: It's Renu Kulendran, deputy minister of the Ministry of Public and Business Service Delivery.

First, just to go back and perhaps answer a previous question, the minister has indicated that price gouging is really a multi-jurisdictional issue and has a federal component. In fact, the ministry has a memorandum of understanding with the Competition Bureau, and where issues of consumer protection intersect with marketplace issues, we do work collaboratively to share information to look at ways to collectively address marketplace issues. I just wanted to mention that.

The second thing is that not necessarily all complaints result in enforcement action and necessarily meet the threshold of the intent of the legislation.

The Chair (Ms. Goldie Ghamari): One minute.

Ms. Renu Kulendran: I would say that we can endeavour to get that information to you, but because those complaints were registered does not necessarily mean that they were resolved or considered out of scope. We can get back to you on the specifics.

Mr. Stephen Blais: I appreciate that. Not every person who makes a complaint to the police—not everything is always a crime. I appreciate that investigations have to happen and a judgment needs to be made.

My point, and I think the concern of Ontarians, would be that the Premier got up on television and said he was going to protect consumers from price gouging, and two and a half years later, the ministry and the government can't seem to provide any information on how many actions actually took place and what the results of those actions were. It seems to me that it's almost a little bit of an empty promise that was made.

If you're not going to track—and I appreciate you maybe don't have it, but you don't even know if it exists, otherwise there would be a commitment to get it—

The Chair (Ms. Goldie Ghamari): Thank you. That's all the time that we have.

We'll now turn to the government for seven minutes. MPP Dixon, you may begin.

Ms. Jess Dixon: Thank you, Chair, and through you: To return to my question, Minister, given your expertise in the area, which I think really comes through, can you explain a little bit further how Bill 142 is addressing some of the issues we have that are related to limitation of liability clauses?

Hon. Todd J. McCarthy: Section 7 of the proposed bill brings forward a core principle that “waiver” is not permitted in terms of the consumer contract under the Consumer Protection Act. That's a core principle. It's one of the bright-line principles that we have alongside unfair business practices and unconscionable business practices, and specific examples of those categories of improper practices are set out early in the legislation so that both consumers and businesses can understand it. Quite frankly,

what it does is it makes certain practices, including a full waiver of rights, substantive and procedural. It makes any attempt at such a waiver void in any consumer contract. That's the core principle.

We once lived in an age of caveat emptor, where it was buyer beware—the Latin for “buyer beware.” That has been completely replaced with the abolition of improper, unconscionable, unfair practices, such as a waiver of one's substantive and procedural rights when you're a consumer purchasing a consumer good or service. That's in section 7 and the provisions that follow that categorize examples. Plain English for lawyers is the way of the world; so that people can understand the legislation that governs them, we use specific examples of what is and is not an unfair or unconscionable practice.

Ms. Jess Dixon: Thank you, Minister.

The Chair (Ms. Goldie Ghamari): MPP Saunderson.

Mr. Brian Saunderson: Thank you to the minister and deputy minister for your presentation this morning. There's an issue that's very much alive my riding. We have a number of time-share businesses, and over the last couple of decades that's an industry that's got a reputation that runs hot and cold. In my riding, we have some very responsible time-share providers, but it is a long-term contract and it's an industry that has a reputation. So I'm very pleased to see and hear some aspects of the new Consumer Protection Act that are impacting on the time-share business. I'm wondering if you can tell us, Minister, the ways that Ontarians will be protected when entering into a time-share contract and what changes have been made to the current regulations.

Hon. Todd J. McCarthy: I thank the member for the question, through you, Chair. Our Premier, the Honourable Doug Ford, makes promises and keeps those promises. Promises made, promises kept—getting it done. When he identifies a problem through listening, we take action. That's what we're doing with the Consumer Protection Act, addressing price gouging and also listening and consulting the issue of the specific long-term time-share-type contract.

Up until the present day, these time-shares are in perpetuity, if I can put it that way. There was no way of getting out of them. Many families inherited time-shares from their parents or grandparents and there was no way of getting out of them. That was identified as improper and unfair. We listened to all sides on this, and it was a discussion about an ultimate end date for a time-share. We've proposed 25 years. Or, in the alternative, if the original consumer entering into the time-share has passed away, upon the passing away of that individual, their heirs and successors can elect to immediately end the obligations of the estate to continue with the time-share. Twenty-five years, or earlier at the election of the consumer who inherits that time-share, is what is proposed in this legislation. We consider that that's a fair balance, considering that it presently is in perpetuity with no other way to get out of it. This sets the ground rules clear for everybody involved.

And it's proposed to be retrospective, so it would catch new time-shares, when and if this act is proclaimed in force, and when and if this act is proclaimed in force, it

would catch existing time-shares going back many decades. The ground rules will be clear, and they'll be retroactive if the legislation is passed. We think that's right and fair for consumers.

Mr. Brian Saunderson: Thank you very much. That's my question.

The Chair (Ms. Goldie Ghamari): MPP Hogarth?

Ms. Christine Hogarth: Thank you, Minister and Deputy Minister, for being here. My question goes back to a question I had for Minister Romano when he was in your spot. I brought it to his attention. We were looking at our credit card statements and there were unwanted services or charges for subscriptions, and I thought now, with the Internet, we seem to press the wrong button and all of a sudden you see a charge on your credit card statement you didn't mean to actually get charged for. If you don't check your statement regularly, you keep paying these bills and you just don't know why you're getting charged.

In Bill 142, I noticed that there are some proposed changes that will address subscription traps, contract amendments and renewals and extensions. "Always check your credit card statement" is good advice, but can you just elaborate a little bit on how Bill 142 will address this?

Hon. Todd J. McCarthy: Yes. I thank the member, through you, Chair, for that excellent question. The Consumer Protection Act proposals obviously address the long-term leases and the long-term contracts, like time-shares, but also these smaller contracts. Memberships and subscriptions are a key concern, especially when one puts forward their credit card and finds that it's a never-ending monthly charge on something and they can't get out of it.

The Chair (Ms. Goldie Ghamari): One minute.

Hon. Todd J. McCarthy: What this new legislation proposes, through you, Chair, is that the government is seeking to clearly prohibit businesses from creating unnecessary barriers when consumers are trying to cancel a contract, particularly a subscription or membership-based contract. The new CPA would include a regulation-making authority to achieve this outcome, as the requirements will be set out in regulation, if the legislation is passed.

That specific rule change will make it easier for consumers to get out of membership subscriptions that they no longer want or need, and it will be clear to businesses that they can't force them to continue to allow their credit cards to be charged. So a very, very important provision—not as big a commitment as a time share, but very annoying for those who are faced with these monthly credit card charges.

Ms. Christine Hogarth: And it also adds up every month. It might even be just \$7, but it's important to that person with affordability issues, as there are today. Thank you for that answer.

The Chair (Ms. Goldie Ghamari): There's six minutes left, so at this point, that concludes—sorry, six seconds, not minutes. Six seconds.

At this point, I would like to thank the minister for his time. This round of questions is now done, and committee will recess until 3 p.m. Thank you, everyone.

The committee recessed from 1001 to 1500.

MS. NINA DEEB

MS. BARBARA CAPTIJN

MS. MARINA PAVLOVIĆ

The Chair (Ms. Goldie Ghamari): Good afternoon, members. The committee will resume its public hearings on Bill 142, An Act to enact the Consumer Protection Act, 2023, to amend the Consumer Reporting Act and to amend or repeal various other Acts.

The remainder of our presenters today have been scheduled in groups of three for each one-hour timeslot. Each presenter will have seven minutes for their presentation. After we have heard from all three presenters, the remaining 39 minutes of the timeslot will be for questions from members of the committee. The time for questions will be broken down into two rounds of seven and a half minutes for government members, two rounds of seven and a half minutes for the official opposition, and two rounds of four and a half minutes for the independent member.

I will now call upon our first presenter, Nina Deeb. Please state your name for the record, and then you may begin. You will have seven minutes for your presentation.

Ms. Nina Deeb: Good afternoon, Chair and committee members. My name is Nina Deeb. I am a full-time real estate broker, and I have been since 1996.

On Bill 142, the Consumer Protection Act: Consumer protection was delegated to the development industry, called HUDAC, in 1976. This was packaged to buyers as a benefit to them; the buyers would now, by law, have a warranty with their new home. The buyers had no choice. They had to pay the development industry for their protection. The buyer shifted this mandated cost to the buyer's legal bill.

Buyers now have two delegated authorities tacking costs onto their legal bills. When buyers buy a condominium, they have a third delegated authority to pay recurring monthly fees to. Tarion holds \$702 million in reserves, yet they found it necessary to increase their ceiling warranty fees by 333%.

Organized real estate in Ontario consists of 40 tax-exempt corporations. The CEO of the Ontario Real Estate Association was the Minister of Consumer Services who introduced the Consumer Protection Act in 2002. It specifically does not apply to consumer transactions for the purchase, sale or lease of real property. The act also does not apply to this 101-year-old organization that re-categorized health insurance as "dues" in order to increase their fees by 700%. OREA has 70 employees and is attempting to collect over a million dollars per employee by mandating health insurance on membership. Health insurance has nothing to do with selling real estate.

The industry is currently severing buyer representation. It claims to be increasing choice for buyers. Buyers do not pay for this representation; the builder does. When consumers do a job themselves, they do so to save the cost of the service. The regulatory change saves the builder the cost while eliminating the buyer's representation. There will be no savings to the buyer. This serves developers and will save them over \$1 billion a year. This is not a practice

that all builders will embrace. Corporate builders, through agencies, can sometimes pay \$300 for a new home sale.

The CPA specifically excludes a home purchase. The real estate and development industry offered their own private corporations for dispute resolution. This is a \$2-billion-a-year franchise of government authority to the development industry to run court quasi-judicial substitutions of their own. There's no equality of power between corporations and individuals.

The omission of protections for housing participants made economic space for 14 private corporations to sell mandatory warranties, insurance, registrations and consumer co-payment charges. These corporations produce nothing. They're advancing sector-specific protection measures while claiming to be protecting the public. If one fails, it could deploy one of their other authorities through legislative duplication. This was the testimony of David Roberts, a retired Tarion enforcement director.

Former Ministry of Government and Consumer Services and Common Sense Revolution operators make up the executive composition of these government-replacing corporations, including Ministers of MGCS, Solicitor Generals and Ontario's former Deputy Solicitor General, among others.

This bill proposes to introduce amendments regarding those that make false claims of government oversight. The delegated authorities choose names that lead the public to believe they are the government.

Hot water heaters by aggressive sales tactics: New home buyers have no choice in whether they have a rental hot water tank installed in their home. Corporate builders force hot water tank rental contracts as a non-negotiable part of their home package. The builders I worked for did not practise this. Buyers could purchase a hot water tank and have it installed in their new home. I worked for fantastic builders. The builders I represented always met closing dates. If buyers took the time to purchase their fixtures and updates, the builder would have the plumber or electrician install their fixtures. They had heating units in the homes, but the builder would sometimes use the furnace and air conditioners in the model homes.

Extend enforcement powers to cover the actions of the intermediaries, like the billing agency: This bill proposes to extend the crown to those corporations to use the government authority to collect funds. The crown must not be made available for private corporations. The government must preserve respect and use of the crown. These development industry corporations through their many regulators have the power to bankrupt consumers, advocates and critics.

OMVIC collects fees from all three participants of a car purchase. TICO received taxpayer funds for the past three years and has been lobbying for the power to charge co-pay fees from consumers. According to the Ontario auditor, between 2015 and 2019, the ESA collected \$17 million in inspection fees for inspections that did not actually take place. Within one year of the expansion of powers of the Condominium Authority Tribunal, six condominium residents died.

The idea to delegate power to private corporations for profit has resulted in devastating outcomes for individuals in volunteer positions and for consumers.

The Chair (Ms. Goldie Ghamari): One minute left.

Ms. Nina Deeb: The Minister of Consumer Services that created OMVIC, TICO and RECO is on the executive board of Tarion and OMERS. He was the registrar and the CEO of the Ontario College of Trades. The Minister of Consumer Services that excluded housing from protection is the CEO of the Ontario Real Estate Association. The ministry says it would like to hold bad actors accountable. The bad actors are the politicians and former civil servants that are still developing a shadow government. Who protects consumers when they have complaints regarding the development authorities?

In 1920, the real estate and development industry began as one association. This group of organizations is now 108. Consumers of housing do not have equal opportunity with the entire development industry. It would be highly inappropriate for more former MPPs with consumer protection posts to be appointed to these executive councils. Fast-forward 20 years: See the executive boards of Tarion, HCRA, OMVIC, BAO, RECO and CAO.

In conclusion, I would like to say that I find that this bill goes in—

The Chair (Ms. Goldie Ghamari): Thank you. That's all the time that we have for this round.

We'll now turn to our next presenter, Barbara Captijn. Please state your name for the record, and then you may begin. You'll have seven minutes. Thank you.

Ms. Barbara Captijn: Madam Chair and members of the Standing Committee on Justice Policy, thank you for this opportunity to speak about the Consumer Protection Act, Bill 142. I am an independent consumer advocate with 15 years' experience helping consumers navigate our complex system of consumer protections, particularly in the area of new homes. I've written 19 columns published in the Toronto Sun over the past four years, all of them on consumer protection issues. All of my work is on an unpaid basis.

The Consumer Protection Act is of vital importance because the consumer is the lifeblood of business, and confident consumers are more likely to engage with businesses and buy their products and services. A prominent entrepreneur once put it this way: Customer service is not a department; it's the whole company. Without consumer confidence in the marketplace, the economy can falter.

The preamble to this bill sets a positive tone. It says that its objective is to provide fairness, a level playing field and to make sure consumers are well protected and well-informed when buying goods and services in Ontario. This is the point of my presentation today: The protections provided to consumers in everyday transactions, such as health club memberships and gift cards, are not provided to the purchasers of new homes.

I am asking you today to consider broadening the scope of the bill to include protecting new home purchasers. Here's why: A new home is the largest purchase many consumers will make in their lifetime. Approximately 60,000

people purchase new homes in Ontario each year. Consumers must have clear, fair and accessible contracts in plain language with the interests of both parties balanced. Sadly, this is not what is happening.

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There is a complex and confusing patchwork of legislation which covers new home buyer protection in Ontario. There is the Ontario New Home Warranties Plan Act, the New Home Construction Licensing Act, the condo act—and these administered by two separate government agencies, Tarion and HCRA, the Home Construction Regulatory Authority. All of this is overseen by two separate ministries: the Ministry of Public and Business Service Delivery and the Ministry of Municipal Affairs and Housing. With ministers on these portfolios changing almost every year, the consumer is left with a confusing maze of legislation and agencies, and no independent body to turn to for easy and cost-efficient dispute resolution.

Lawyers and courts are not a viable option for most individual consumers, since these are costly, time-consuming, complex and overburdened. Many consumers would naturally look to the Consumer Protection Act to explain their rights and to provide options for cost-efficient and timely dispute resolution.

I'll give you six points of problems, which seem to me to set a double standard between the protections afforded to new home buyers and the protections that are afforded to those who buy ordinary, everyday consumer goods and services:

(1) The bill states that consumers should be able to understand contracts they sign. These should be written in clear and plain language. That's a basic consumer right and a good thing, but in new home sales, the government's mandatory 12-page addendum to new home contracts is complex and confusing and has been described as a "trap" for consumers by the judge in a 2020 Court of Appeal decision called *Ingarra v. Previn Court Homes*. Nothing has been done to simplify this document for consumers—nothing. If it's too complex for legal professionals, then it's too complex for consumers.

(2) The bill says consumers should have the right to give their views about businesses without fearing repercussions, but in new home sales, some purchase contracts prevent buyers from speaking out about any dispute with the developer, or they risk having the contract cancelled.

(3) Part II of the bill forbids unfair practices, such as representing used goods as new, but some new homes continue to be sold with used furnaces, such as those used during construction, without disclosing this to the purchaser.

(4) This bill prohibits businesses from demanding more money for the same goods or services after contracts have been signed, but in new home sales, this practice is being allowed, with price escalations sometimes in the range of \$200,000 being asked for by developers after the purchase contract has been signed.

(5) The bill protects the rights of consumers to start or join a class action lawsuit in many types of commercial transactions, yet class action lawsuits are forbidden in many new home contracts.

(6) There is a mandatory cooling-off period for many types of consumer contracts, including time-share purchases and gym memberships, but there's no such protection for new freehold home purchasers anywhere in the legislation. Deposit protection for new freehold homebuyers is also absent from legislation.

In all of the above examples, basic consumer protections are provided to consumers in many types of consumer contracts, but none of this is available to new home purchasers. Why not? The intent of this bill is positive, but its scope is too narrow.

The Chair (Ms. Goldie Ghamari): One minute.

Ms. Barbara Captijn: I'd like to sum up by saying consumers need to understand their rights, and I'll close with the words of Sam Walton, the founder of Walmart. He said, "I have only one boss, and that's the consumer."

Both businesses and government have an important role to play in making confident consumers. This bill must play a larger role. Thank you.

The Chair (Ms. Goldie Ghamari): Thank you very much.

We'll now turn to our final presenter, Marina Pavlović. Please state your name for the record and then you may begin. You will have seven minutes. Thank you.

Oh, we're having audio issues.

Ms. Marina Pavlović: Okay, can you hear me now?

The Chair (Ms. Goldie Ghamari): Yes.

Ms. Marina Pavlović: Okay, perfect.

Good afternoon, Chair and committee members. My name is Marina Pavlović. I would like to acknowledge and recognize that I'm currently in Ottawa, located on the unceded Algonquin territory. I'm an associate professor at the common law section, faculty of law, at the University of Ottawa, and I'm also a member of the Centre for Law, Technology and Society. My area of research and policy work is in consumer rights, particularly in the cross-border digital society, and my work covers subjects such as consumer rights, consumer redress, complaint-handling, access to justice, and technology law and policy.

My remarks are going to focus on the digital society, and in that I think they complement my fellow co-presenters in the way that I think we have all identified that there are certain gaps in the current bill. Before I actually move to specific comments, I would like to provide a brief framing for my remarks.

In today's society, with increased digitization of goods and services, virtually all aspects of our daily lives and social interactions are made possible by or conditional on being consumers first. I refer to it as the consumer-first paradigm. Indeed, citizens must consume digital products in order to fulfill other social, economic and cultural roles. We all experience this on a daily basis. Before we acquire a good or a service, we must click on a lengthy terms-and-conditions, a standard form contract imposing the provider's terms of service. These contracts are presented on a take-it-or-leave-it basis, and consumers have effectively become contract-takers—or, as my late colleague Ian Kerr noted, the contracts have become the rule and the businesses have become the rulers.

And so consumers are presented with a binary choice where they either accept the terms they're presented and get the access to the goods or services, or decline the contract and effectively be left behind. There are considerable concerns about these standard form contracts. Some have been addressed in the current legislation, and some are not addressed in the bill. I would like to actually provide several suggestions about levelling the playing field and ensuring that consumers in the digital sphere are equally protected as consumers in the physical sphere.

The first point that I would like to discuss is online agreements and the monetary limit. The current legislation sets a minimum limit of \$50 to any agreement for the rights that consumers have under particular sections of the consumer protection legislation. The current bill does not set the limit, and that is left to the regulations—and we can discuss that, as well—but it is really imperative to remove that minimum limit for online transactions because most issues that are happening are happening in the free sphere, where consumers' rights are being violated, and also it doesn't then capture types of services where you have a service for free for a certain period of time and then you get charged for it. For example, if you have a new car, certain services can be free for up to several years, and then they can start charging you for that. So removing that minimum limit is absolutely imperative.

Disclosure of information: One of the previous presenters also mentioned section 4 of the bill, which mandates "clear, comprehensible and prominent" disclosure of information by suppliers. The act does not actually define what constitutes "clear" and "comprehensible." A majority of consumer agreements today are drafted in language that is only accessible to those with a higher level of education, making them literally incomprehensible for consumers. They do not know what they're actually signing on to. My suggestion would be to use an objective criterion such as Flesch Reading Ease or the Flesch-Kincaid Grade Level, which are used in legislation in other jurisdictions to provide a specific level at which the language of the contract should be provided so that the consumers would understand it. So even if a contract were to be of a certain length, it would still be comprehensible to consumers.

Somebody else also mentioned class actions. Class actions are an incredibly important mechanism for consumers to vindicate their rights. The current bill, in section 14(1)(b), inadvertently restricts consumers from participating in national class actions. It allows for participation in class actions under the Class Proceedings Act in Ontario, but waivers that would not allow consumers to participate in class action proceedings nationally would still be enforceable. So I think it would be really important to ensure that consumers can actually participate in national class actions.

1520

The other section that I wanted to talk about a little bit is section 16.2, which as currently drafted only provides a non-exhaustive list of covered transactions. The language uses examples of, and lists three or four different types of, transactions, but I still believe it creates ambiguity as to

the ambit of the bill, particularly with respect to digital transactions, especially if it is read in conjunction with section 50, dealing with the cooling-off period, which only lists those enumerated contracts in section 16. As has already been mentioned, the cooling-off period is an absolutely essential mechanism for consumers. Again, in the current text of the bill, it doesn't actually provide any protections for consumers in the digital sphere.

Just quickly talking about the cooling-off period: Again, section 50—

The Chair (Ms. Goldie Ghamari): One minute left.

Ms. Marina Pavlović: I would suggest amendments to ensure that it covers consumers in the digital sphere.

The last point that I would like to make is the standard for assessing unfair practices. The bill as drafted does not provide an objective standard through which the court should assess whether a practice was unfair or not. I think there is room for improvement to ensure that everybody knows what they're looking for.

The bill is a unique opportunity to improve the lives of Ontario consumers, and I think my suggestions would ensure that the bill equally treats consumers in the physical and the digital sphere. Thank you. I welcome any questions you may have.

The Chair (Ms. Goldie Ghamari): Thank you very much.

For this round, we will begin with the independent member for five minutes. MPP Blais, you may begin.

Interjection.

The Chair (Ms. Goldie Ghamari): Four and a half minutes. My apologies.

Mr. Stephen Blais: No problem, Madam Chair. It's okay.

Thank you for coming this afternoon and for providing your deputations. Barbara, I'm wondering: If there was one thing that you would like to see added to this legislation that isn't currently in it, what would it be? And maybe briefly describe why.

Ms. Barbara Captijn: I think one thing which would help tremendously is a standard purchase contract for new home sales. There's a standard, six-page contract for resale homes, but builders write their own contracts for pre-construction homes, and these can be 50 pages long. Consumers have to initial each page and they have to initial each page of the 12-page, incomprehensible addendum as well.

So I would say a standard purchase contract for new home sales and, if I can make this recommendation as well, a new-home-buyer bill of rights. A new home buyer has to understand what their rights are. If they look at the Consumer Protection Act, they can't find anything in there. They look at the complex patchwork of other laws; they're barely understandable. As I say, I've been at this 15 years and it's still difficult for me to understand that addendum, and many lawyers and judges as well.

Mr. Stephen Blais: Thank you. What would you include in this new-home-buyer bill of rights?

Ms. Barbara Captijn: Some of the things that I've mentioned in my six points. I certainly think there should be deposit protection for new freehold homes. There should be the right to engage in any legal activity you want to. You should not be prevented from engaging in a class-

action, if you should decide to do that. It's cost-prohibitive, but still, you should have that option. You should have all of the rights which the consumer protection bill gives you, as well. You should have the right to speak out against a developer if that developer is doing things which do not conform to the contract, because consumers can't go to court to resolve disputes.

I also think that in a new-home-buyer bill of rights, maybe there should be an independent ombudsperson who is independent of all of these agencies and who could resolve in a quick and efficient way consumer disputes with new home builders. Then we'd get rid of a huge backlog of people fighting with lawyers in the courts. That's not the answer.

Mr. Stephen Blais: Tarion and HCRA are both intended to help consumers deal with home builders at various stages. Is the creation of the ombudsman necessary because Tarion and/or HCRA are not doing their job properly, or are they unduly influenced in some way?

Ms. Barbara Captijn: Good question, on point. Those agencies, many consumer advocates and consumers feel, are not independent of the people they're trying to regulate. We don't feel they're independent of industry.

The Chair (Ms. Goldie Ghamari): One minute.

Ms. Barbara Captijn: Tarion has an internal ombudsperson, but we feel they're not independent of Tarion or builders, therefore you don't get a fair shake. That's what we feel. And the processes are very complex, and they take too long.

Mr. Stephen Blais: Thank you very much. I don't think there's much time left. I appreciate it.

The Chair (Ms. Goldie Ghamari): Okay, thank you.

We'll now turn to the government. Who would like to begin? MPP Saunderson?

Mr. Brian Saunderson: Yes, thank you very much. I want to thank all of our presenters for your input and your work. As a lawyer who practised in the real estate sector, I can appreciate your frustrations. There is an aspect to an agreement for the purchase and sale of land and a building—it's covered by statute of frauds. It has different regulations and legal requirements that apply to it.

I'd be interested in getting your thoughts on how you could cross this threshold where you have the independent contracts that are covered by the Consumer Protection Act like the gift cards, like the services, like the NOSIs, because if there's a legal issue—maybe I'll start first with you, Professor, on this, because there is a legal distinction about agreements for the purchase and sale of land that make it difficult to fit it into the consumer protection regime, and that's why it has not been caught so far. So I'd be interested to hear your thoughts on how we could cross that threshold and include those types of agreements in a type of consumer protection regime. It's a difficult question, but I'd appreciate your thoughts on it.

Ms. Marina Pavlović: I do think there is an easy answer, though, because the way the current legislation is structured—it's somewhat mimicked by the bill—is that there are certain classes of contracts, the named contracts, that have particular protections because they're different than the larger group. So I think there is room to include contracts

of a particular kind under a separate heading that actually have specific rules that are different or in addition to general protections that consumers would have.

You can incorporate by reference, then, references to such frauds or other statutory schemes where these issues are dealt. So I don't actually think that it is a difficult thing to do, and we've done it in the previous—so in the current legislation, there is an enumerated list of contracts. Again, homebuyer stuff is not there, but there is no reason why it can't be put there. I think if you talk to the legislative drafters, there are creative tools by which we can actually put it in the legislation.

Mr. Brian Saunderson: Okay. And I don't know if either of you had anything you'd like to add to that answer.

Ms. Barbara Captijn: Well, I'm not a lawyer and I'm not an expert, but I've had a lot of years of experience with this, and I think that a consumer is going to look at the Consumer Protection Act. It's just logical. You buy a new home and you think, "I want to find out what my rights and protections are," so you go to the website of what's now called the Ministry of Public and Business Service Delivery, or whatever it's called—even the word "consumer" has been eliminated from that, which is extremely confusing to consumers. So you scroll that website and you find nothing which informs you of your rights. There could be a link there that could say to you, "If you're a new home buyer, go here. Here are your rights." There, the new-home-buyer bill of rights could appear.

I tried to find out, "Well, how do they do this in other jurisdictions?" The UK has a separate office which is part of the consumer protection act. If a consumer goes there, they can be led to other sites and other areas where they can find their answers. But this government and this ministry, I'm sorry to say, is just not opening to consumers to tell them what their rights are and explain them in a clear way and help them.

We need new home buyers. If the government is pushing to build 1.5 million homes in the next decade, we need consumers to feel confident, we need consumers to be well-informed and we need them to feel that this is a good thing that they can do with their life savings. We can do so much more, and I would start with the ministry informing consumers properly, informing new home buyers—at least that.

Mr. Brian Saunderson: Okay, and I take that criticism, but when you talk about this government—the Consumer Protection Act has never applied to real estate transactions, so you're looking at a major shift in that focus, and I appreciate that. You're seeing in this legislation that it is including contracts that weren't included before, like the long-term registration of lease agreements for hot water heaters, time-shares—

Ms. Barbara Captijn: Time-shares.

Mr. Brian Saunderson:—life leases, and pre-purchased credit cards, which, apparently, can have a depreciating value, which I did not know. These are all things that we're addressing in this legislation.

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I appreciate your comments on the real estate front, but I am still—and I took the professor's answer, but I still see issues in how we would sew together—well, you have to

cross a jurisdictional issue here, I think. So I will take the professor's comments back, and I appreciate your answers. Thank you very much.

Ms. Barbara Captijn: Fair, but time-share purchases are included, which is counterintuitive to me. If you're not including any real estate purchases, then don't include time shares in there. I think the condo act—sorry to take over the answer. But when the condo act was enacted, it took over protections for condo buyers, but they left freehold buyers out of the picture. That's a big gap in the legislation, period—all Ontario legislation. New freehold homebuyers don't have the same protections. That's a gap. To me, that's a problem.

Mr. Brian Sauderson: They do have Tarion, but I take your comments on the deposit protection. But in the purchase of any home, there's a deposit which is held in trust by either of the lawyers, right?

Ms. Barbara Captijn: Right, but there's no cooling-off period for new-freehold-home buyers. Condo buyers have it. Time-share buyers have it. I've seen buyers be put into high-pressure sales events where they've been forced to sign an agreement saying, "This agreement is legally enforceable," and they haven't had 10 days to consult with their own lawyer. This is wrong. It shouldn't be happening in Ontario. It should not be happening in Ontario, and it's a gap in the consumer protection legislation, which is why I'm here today.

The Chair (Ms. Goldie Ghamari): One minute left.

Mr. Brian Sauderson: And you're a real estate agent and you know that you can write that kind of a term into a contract. Certainly, as a lawyer, I've reviewed agreements of purchase and sale, which do not become binding until my client waives the condition. So there are ways to do some of that stuff, but I take your point.

How much time do we have?

The Chair (Ms. Goldie Ghamari): About 45 seconds—40 seconds.

Mr. Brian Sauderson: Okay. I'll continue on.

You raised an interesting point about time shares being fractional. It's not really fee simple, but it is fractional ownership, so I guess there is that door opening in there. But again, you have comparable systems with Tarion, which does protections for warranties on homeowner deficiencies and agreements for new homes, so—

Ms. Barbara Captijn: It's the builder's warranty, though; it's not Tarion's. Tarion does not provide a warranty and they don't regulate builders. I question what their purpose is, but they do not provide a warranty. They are trying to make sure the builder fulfills its warranty—

The Chair (Ms. Goldie Ghamari): That's all the time that we have.

We will now turn to the official opposition. Who would like to begin? MPP Rakocevic.

Mr. Tom Rakocevic: Thank you very much, and I want to thank all the presenters for being here today as well. I have seven and a half minutes, so if I interrupt, I hope you don't take it the wrong way; I just want to get through a couple of questions.

I don't blame the first two presenters for coming here today and talking about home purchases. In fact, for people who purchase a home, it's usually the largest purchase they ever make in their life. For a government to come forward with consumer protection legislation and revamping, as they say, the consumer protection system, and to omit homes as part of that—I can understand why you would be here asking about it. I raised the very same question to the minister this morning, asking why that was not included, and I was directed to the HCRA, saying consumers are protected when they go there.

So I have a quick question to Ms. Deeb and Ms. Captijn, to begin, simply stating: Do you feel that the delegated authorities, the HCRA and Tarion, are providing that strong consumer protection today for consumers?

Ms. Barbara Captijn: No, they are not. If you look at their board compositions, there aren't even any consumer advocates on either of their boards, so how can we convince consumers that their interests are being understood, heard and acted upon?

I would answer that to MPP Sauderson as well, who says that Tarion is a resource for consumers. There are no consumer advocates on those boards—there have never been any—and this is a huge shortcoming of both HCRA and Tarion. There are three builders on each of the boards, so their interests can be heard and understood, and then adapted into policy-making. Ours are not heard, not understood, and there's a reason for that. I believe those are two captured agencies. They are not working for the very people they were set out—the intent of the Legislature was consumer protection; I agree. We've strayed far from that. We're nowhere near that.

Mr. Tom Rakocevic: Ms. Deeb, would you be able to comment on that?

Ms. Nina Deeb: I don't think any of the delegated authorities are working as they should. There have been complaints since 1976, but the governments throughout the next 47 years carried on with installing these organizations. I think the industry lobbied for these organizations, and it was awarded to them.

Also, within this legislation, what I see here proposed is I see fines going up—doubling. These are fines going to private corporations that don't pay taxes. I don't see how that's helpful. We shouldn't be giving them more money. They have billions of dollars in reserves. I don't think we should be permitting them to be increasing their fines. Also, they don't require evidence for their fines. You don't actually have to commit an offence; you just have to think about it. It actually has a clause in here that says you don't have to have committed the offence, that you could have done everything in your power to not have contravened the act, but you'll still be guilty. I know there are some lawyers here. I question that type of law.

Mr. Tom Rakocevic: Okay, my next question—and in fact I'll ask all three, but I'll begin with Ms. Pavlović. With this legislation, do you believe that this brings Ontario as a jurisdiction, even considered internationally, to the gold standard of consumer protection, and are you aware that I have a bill called the Ontario Consumer Watchdog Act—

I had placed it in the last session of Legislature and I have re-tabled it again—which would institute a consumer watchdog here in Ontario who would act similarly to the Auditor General in being able to issue fines, penalties, provide reports? Do you believe that this would be a move in the right direction, and do you believe this legislation brings us to the gold standard, or is there room for more?

Ms. Marina Pavlović: I don't think the legislation brings us to the gold standard. I think it leaves a lot of room for improvement. In particular, we've been hearing a lot about transactions that have been left behind or outside of the scope of legislation, so I think there is room for improvement.

I'm aware of your proposal. I think it is something that all Ontarians would benefit from, but I don't necessarily think that it would be part of this package. I think what you have proposed would be a corollary institution to the legislation. The watchdog can only be as strong as the legislation that provides powers to it, and I don't necessarily think that this legislation gives as much as we could get at this point, so there is room improvement.

Mr. Tom Rakocevic: Thank you, Dr. Pavlović. Ms. Captijn, would you be able to—any comments on—do you believe this brings us to the gold standard with regard to consumer protection, and would you be in support of a consumer watchdog in Ontario, obviously running parallel to this legislation?

Ms. Barbara Captijn: Yes, I support the consumer watchdog and I wrote my thoughts on that when you introduced it. I'm very much in favour of that. It has to be independent, of course, of all these agencies.

Do I think that this brings us into the gold standard of consumer protection? No, because I've looked at the consumer protections that are available in the UK and other countries that we have similarities with, and to me, I don't think we're even near what's offered in the UK, for example, unfortunately.

Mr. Tom Rakocevic: Thank you. Ms. Deeb?

Ms. Nina Deeb: I think this is regressive legislation. I think we actually go backwards. Consumer protection should include everyone, including workers. So if you're working, you should have consumer protection. I'm a realtor, I act in business, so I don't have consumer protection because I'm acting within my business. And things like the largest purchase someone can make is excluded. That really brings to question, why? Why would it be excluded? It should be applied to everybody. That would bring us to a gold standard.

Mr. Tom Rakocevic: Thank you. In about the minute and 15 seconds I have remaining, I will ask this question primarily to Dr. Pavlović, but if there's time, to the others. Really, still under the system with the new act that's being proposed, if a person is having an issue, even with an industry-wide problem, they have to bring in a lawyer and fight it out in the courts. Do you see this as being a challenge for everyday Ontarians facing a large business or corporation, and do you think there's room for more protection when it comes to that?

Ms. Marina Pavlović: I do. I think there are two different types of enforcement that we're looking at. One would be through class actions that somewhat level the playing field,

and that's why I'm concerned that it basically still allows businesses to put in their contracts that consumers cannot necessarily participate in national class actions.

1540

I think there is a huge challenge with Small Claims Courts, and you may have heard in the news a couple of weeks ago that there are no mechanisms that allow consumers to actually enforce small-claims judgments. So even if they were to take the time out of their day, represent themselves before a Small Claims Court and actually win, they may not necessarily be able to collect on what they have won—

The Chair (Ms. Goldie Ghamari): I'm sorry, that's all the time that we have.

We'll now turn to the independent member for four and a half minutes. You may begin.

Mr. Stephen Blais: Professor, maybe just finish the answer you were just giving. Go ahead.

Ms. Marina Pavlović: I do think that there is considerable room for improvement in terms of enforcement. We can talk about different measures. Administrative monetary penalties can also be a measure for enforcement. The ministry can also take a more active role, so there are different paths for enforcement, but right now, consumers are relatively left alone.

Mr. Stephen Blais: Are there jurisdictions—you know, the Americans or the Europeans—that have some kind of mechanism of enforcing these small court claims that we could duplicate effectively?

Ms. Marina Pavlović: I think Small Claims Courts, on their own, are a good institution and they generally have been intended to allow people to self-represent. It is the adjacent infrastructure around them that doesn't necessarily lead people to getting what they have won—to necessarily collect. I think there may be different mechanisms to look into.

In BC, actually, we have a made-in-Canada solution. There is a BC Civil Resolution Tribunal that resolves Small Claims Court and they put a heavy emphasis on mediation and negotiation, and they also provide really good tools for consumers to equip them to actually represent themselves.

So, different paths that we can do, and again, we don't necessarily always have to look elsewhere. We do have some made-in-Canada solutions that are really good.

Mr. Stephen Blais: Yes, that's great. Thank you very much.

Ms. Deeb, I was reviewing your written submission again and you have a paragraph on the first page that talks about OREA and health insurance. Maybe I missed this in your presentation, but I'm just trying to figure out how that's relating to the bill.

Ms. Nina Deeb: The reason it relates to the bill is it actually doesn't apply to people that are working. If you are working, the CPA doesn't apply to you as an individual.

My professional organization, which is a non-profit, can increase their fees 700% and I have no consumer protection on that. It's been in the papers—

Mr. Stephen Blais: Sure, yes. So you're suggesting that your relationship with OREA is one of a consumer: You're

purchasing something from them as opposed to a member of an association.

Ms. Nina Deeb: It's mandated on us. It's not just a purchase. If we don't purchase this health insurance from OREA, we will lose our livelihood December 1, so this is mandated. It is a \$65-million mandate.

Mr. Stephen Blais: Yes, that's fine. Okay.

I'm okay, Madam Chair. Thank you.

The Chair (Ms. Goldie Ghamari): Okay, thank you.

We'll now turn to the government for seven and a half minutes: MPP Coe.

Mr. Lorne Coe: Thank you, Chair, and through you: Professor, thank you for being here and thank you to the other presenters today.

Professor, I think you'll know from your reading of the legislation that there is a number of measures in the legislation that strengthen consumer protection when people interact with businesses, in particular—for instance, limiting when businesses can make unilateral contract amendments or extensions, and ensuring some degree of notification to receive explicit consumer consent to new terms.

Does ensuring that businesses have to go back to consumers for contract renewals or extensions build a stronger degree of trust with consumers? And I ask that question because I know you have done a fair amount of research into consumer rights, and what I've just asked you turns on consumer rights, so I'm interested in your response to the question, please.

Ms. Marina Pavlović: I would agree with you that there are improvements. I would disagree with you that they are capturing all types of consumers. Again, even if you put the new home buyer stuff aside, I think in the area where I work, which is the digital sphere, there is very little protection for consumers of digital goods, particularly because of that minimum monetary limit of \$50.

Again, all of those notifications, including that terms need to be clear and comprehensible, are good, but we need an objective standard to assess that, because a lot of the times courts really struggle to figure out what would be the language that would be understandable to a typical consumer. There is legislation in a number of different jurisdictions that provides a standard that says a person with an eighth-grade education needs to understand this. It does put emphasis on clear communication to the consumers, and I think it benefits both consumers and businesses.

The other thing that you mentioned also is notifying consumers of the changes of the contract. Notification is good, but if the consumers don't have an option, it's like, "Okay, we've changed the contract terms and if you don't like them, we're not going to continue providing goods." That's not necessarily a good way to handle that. So, providing either some sort of a cool-off period or different mechanisms that allow consumers to find the time to look for an alternative purchaser—if there is any, because sometimes you're in the market where there are no alternatives.

I think we can do better, would be my short answer.

Mr. Lorne Coe: All right. Thank you, Professor, for that response.

And Chair, through you to MPP Bailey, please.

Mr. Robert Bailey: Thank you to all the presenters for being here today. I have a question around—it's my understanding that part of the measures to tackle unfair business practices would update the list of examples for prohibited, false, deceptive or misleading representations and make it so that business cannot use such language as false claims of government oversight or false prize offers. Furthermore, the bill would extend the right to rescind a contract for up to one year if it was found that an unfair business practice did occur.

We've often heard of the impact on consumers if they feel they've been duped, deceived, whatever word you want to use. Well, prohibiting this type of language, if this bill is passed, and extending an exit plan for consumers harmed by bad actors, will that help support protections for Ontarians? And whoever wants to answer.

Ms. Barbara Captijn: I'd love to answer; I just don't think I understood. Could you just rephrase? I just couldn't understand—I couldn't hear the question, I'm sorry.

Mr. Robert Bailey: Oh, sorry.

Ms. Barbara Captijn: I don't want to hold things up. If everybody else heard it, then please go ahead.

Mr. Robert Bailey: Does someone else want to answer?

Ms. Nina Deeb: Okay, sure. Thank you for the question. I'll answer that. As far as the confusing language and the association to government, I think that's the part that you're getting to there. It's about how the corporations will kind of attach themselves to government or say, "This is government sponsored." Who did I see that got in trouble for language with the Ontario auditor? It was actually Tarion. Tarion was—it was suggested that they remove "warranty" from their name.

I do think it's important that the corporations don't call themselves things that would indicate that they could be government. And quite often it's the "Ontario," the "provincial;" you just see names like the "municipal"—there was one name that was "municipal" something. It just makes it sound like it's government. It wasn't. It was a private corporation. So I agree; those shouldn't be used.

Mr. Robert Bailey: Chair, I'll yield to MPP Hogarth.

The Chair (Ms. Goldie Ghamari): Sure. MPP Hogarth.

Ms. Christine Hogarth: Thank you all for speaking today and sharing your expertise on the topic. When you think that Christmas is coming around and we often give out gift cards—one of the things I noticed in the legislation I'd like your opinion on: You give somebody a gift card and you assume it's worth the value that it is. One thing I liked in this legislation, when we talk about consumer protection, is regardless of that gift card—it should not expire.

So, I'm just wondering your thoughts on expiry of gift cards. We are in that season. Do you think this change and this legislation will make a difference? Anybody can answer.

Ms. Barbara Captijn: I think it's a good idea. There are a lot of basic principles in the bill which are good ideas. I just want them to extend to all consumers in the purchas-

ing of all goods and services, specifically new homes, but it is a good idea for gift cards.

I also think a very good idea is allowing exiting from time-share agreements. These shouldn't be going on to infinity. I think that's a good move. But that has to deal with real estate purchases and I think new homes should be covered under the act.

1550

The Chair (Ms. Goldie Ghamari): One minute left.

Ms. Christine Hogarth: Okay. Does anybody else have any comments on this piece of the consumer protection?

Ms. Nina Deeb: Through the Chair—

Ms. Marina Pavlović: I'm just going to—

Ms. Nina Deeb: Sorry, go ahead.

Ms. Marina Pavlović: I think it's a good thing. Again, one of the other things that was also mentioned was coupling it with pre-purchased credit cards, which are also really important.

But I think you also need to consider that sometimes these gift cards are provided by small businesses that at some point may actually cease to exist. And so, understanding the corollary, if they never, ever expire, if a business ceases to exist, how are we going to handle that? So perhaps just a little bit more tweaking in terms of understanding what happens if the business isn't there. I'm not worried about large businesses going bankrupt; it's small mom-and-pop shops who sometimes unfortunately have to close.

Ms. Christine Hogarth: All right. Thank you very much.

The Chair (Ms. Goldie Ghamari): Thank you. That's all the time we have.

We'll now turn to the opposition. MPP Rakocevic.

Mr. Tom Rakocevic: Again, thank you to the presenters. In the first seven and a half minutes, I heard from two of you that although there were some improvements, this does not bring us to the gold standard of consumer protection. In fact, one of the presenters said it was regressive and a step backward. I asked if there were things missing, and I heard with regards to the digital economy and online purchases, there were things that were certainly missing there—and, of course, the fact that one of the largest purchases a person can make, a home, is omitted.

I raised the question to all three of you of whether we need a consumer watchdog in Ontario and all three of you said, "Yes, this would be an improvement if done parallel with this legislation." I actually raised this again in the last session, tabled the bill, went to second reading and the government voted against the idea. At the time, just like when I asked about consumer protection with regards to home protections for new home buyers, I was told, "Well, we have a series of delegated authorities in a number of different areas that are providing consumer protection in many ways."

I mentioned the HCRA and Tarion, and there were even questions about board makeup and whatnot. In a broader perspective, do you believe that the host of many delegated authorities across Ontario right now are delivering a gold

standard of consumer protection in the different areas? I will begin with Ms. Captijn.

Ms. Barbara Captijn: I can only talk about Tarion and the Home Construction Regulatory Authority. We only need to look at the Auditor General's report on Tarion from 2017 to see that this agency was not fulfilling its consumer protection objectives. Then, Justice Cunningham's Tarion review in 2017 told the same thing. So next to nothing has changed there, except that now we have a "Tarion II" organization in the HCRA, and we've got the same problems and the same corporate culture, which is not looking after consumers' needs. It's looking after the needs of builders and, "Let's build more homes and let's make sure that everybody is out there building," but the consumers' interests are not being looked after by these two agencies.

The administrative authority model which is governing those organizations is also faulty, and that has been the subject of reviews many times. It has been found to be faulty. Why aren't we doing something about that? Consumers are the ones suffering, not industry, not the building industry.

Mr. Tom Rakocevic: Thank you.

Ms. Deeb, any comments on that?

Ms. Nina Deeb: I have studied all the delegated authorities, and I originally wanted to make repairs. I thought they were salvageable, but the delegated authorities are not a salvageable system. The government must take its authority back. It must rescind its administration agreements. These corporations do not permit me to engage in their annual general meetings. For someone to pay attention and say, "I read their annual reports," and they actually don't permit public engagement—you can't even ask them a question at their meetings.

So my response is that I don't think they're correctable. I think we have to rescind the authority. Thanks for the question.

Mr. Tom Rakocevic: Okay. Thank you.

Dr. Pavlović, any comments? In lieu of a consumer watchdog in Ontario, which exists in other jurisdictions that are considered the gold standard, do you think the host of delegated authorities we have in Ontario are delivering superior consumer protection to consumers here in Ontario?

Ms. Marina Pavlović: I think I'm going to defer to the previous two speakers on the areas where it's really much more impacted. I would say, in the digital sphere, we don't even have anything, right?

Regardless of the model that we have, I think where we need to do better is actually informing consumers of what their rights are and what the pathways to resolutions are, because that is not something that they know. That has been mentioned a number of times, that the information is actually not available to consumers at all.

Mr. Tom Rakocevic: How much time do I have, Chair?

The Chair (Ms. Goldie Ghamari): You have three minutes.

Mr. Tom Rakocevic: Okay. I think the government, in many areas, likes to look at fines and double them, and say,

“Case closed. We’ve fixed the problem. Now that the fines are doubled, there will be no more bad actors. They’re scared.” When you look at the Consumer Protection Act and what they’re suggesting, there are jurisdictions in parts of the world that have fines—even after doubling them here—that are more than 10 times the amount, which is more of a deterrent.

But when we see whether or not fines are being doled out in many different ways—let’s say that a fine might be up to \$100,000 in a case, if they get levied, or \$1,000 or \$2,000, is that much of a discouragement? Or is that just business as usual or just something that you’re going to have to do?

In absence of the fact that we don’t have the ability to proactively really go after people with fines, is the enforcement enough in Ontario to ensure that we have strong consumer protection as it is right now, in any area that you’re familiar with? Ms. Captijn.

Ms. Barbara Captijn: Well, saying that you’re going to double the fines and actually imposing the fines are two different things. If you look at the record of HCRA, look and see how many fines they’ve levied—\$12,000? You look at their website: It’s a sheep in sheep’s clothing. Saying you’ve got these fines is great. Levy some of them.

Mr. Tom Rakocevic: I’ll ask you, Dr. Pavlović—and I also want to add this one thing: During the pandemic—and I raised this to the minister this morning—30,000 complaints were made. People were encouraged to call the consumer protection hotline and told they would be protected, and it is our understanding that not a single fine was laid. Do you believe we’re doing enough to enforce bad actors in the province of Ontario in any sector with regard to consumer protection?

Ms. Marina Pavlović: More can certainly be done. I think there are legislative mechanisms that we can employ, but as has been mentioned before, it all really boils down to enforcement. It is something where there’s a lot of room to be desired, I would say.

The Chair (Ms. Goldie Ghamari): One minute left.

Mr. Tom Rakocevic: Thank you.

Ms. Deeb, I’ll give you the final word.

Ms. Nina Deeb: I don’t think that these authorities should be given guns. I think that these authorities should be given handcuffs. I’m not a fan of fines to these authorities. I don’t see that increasing taxation, increasing fines—you know what? It has not given us product. We don’t have more product; we just have more fines and more taxes on the same houses, same products. So I don’t think it’s an improvement. I don’t think that we should be increasing fines at all. I think that we should be looking to less law and more product.

Mr. Tom Rakocevic: Okay. In the remaining time, I just want to thank all three of you. You have definitely fought for increased consumer protection in your areas of expertise. We’re very lucky to have you share your expertise and your comments here today, and I thank you so much for answering my questions.

The Chair (Ms. Goldie Ghamari): Thank you very much. I’d like to thank the presenters for their time.

CANADIANS FOR PROPERLY
BUILT HOMES
HURON PERTH COMMUNITY
LEGAL CLINIC

LAW COMMISSION OF ONTARIO

The Chair (Ms. Goldie Ghamari): We’ll now turn to our next group of presenters. We’ll just give them a moment. Welcome.

Our first presenter is Canadians for Properly Built Homes. Please state your name for the record, and then you may begin. You will have seven minutes.

Dr. Karen Somerville: Good afternoon. My name is Karen Somerville, and I’m the president of Canadians for Properly Built Homes. I’m a volunteer. Everyone with Canadians for Properly Built Homes, CPBH—we’re all volunteers. I’m delighted to be with you here today.

I have listened to the last session; very interesting. As we consider much-needed consumer protection for newly built homes, I’d like to be able to discuss serious issues with municipal inspections during construction, Tarion, HCRA and, indeed, the administrative authority model itself, but I understand that these areas are out of scope today.

Instead, I’ll focus on one of the most important components of a newly built home: the furnace. Barbara Captijn mentioned that briefly, and I’m going to really focus in on that today.

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Picture this: You’ve saved and saved and finally can purchase a newly built home. You and your family move in; everyone’s excited. A couple of months later, the temperature drops, and the furnace kicks in. A couple of weeks after that, your furnace stops working in the middle of the night. You wake up in the morning, and your home is freezing. This is happening in Ontario far too often. I know it’s November by the emails that we’re getting at CPBH; I don’t need to look at the calendar, because the temperature has dropped.

For decades, builders have been secretly selling newly built homes with used and sometimes damaged furnaces. This happens when the builder uses the new home’s furnace for construction heat as the home is being built, even though there are other sources of heat that builders could use, such as portable construction heaters. Obviously, this is a serious issue that must be addressed through the enforcement of proper consumer protection legislation.

Plumbing and HVAC magazine published an article a few years ago entitled, “Damaged During Construction.” That article included the following from a manager at a Mississauga HVAC company:

“Just about everyone agrees that using residential forced air furnaces for construction heat is a bad idea. Drywall dust and other construction debris leaves the new homeowner with what is basically a used furnace that may neither perform as intended nor last as long as it should....

“The main problem is dust.... Debris gets tossed down the supply and return ducts. It’s a mess.”

Then there is also a quote in that article from the president of the Heating, Refrigeration and Air Conditioning

Institute of Canada. It goes as follows: “There have been so many issues with this; the biggest one being that the residential customer is taking over their new home and in actual fact they are not getting a new furnace. Who knows what kind of stress it has been under and for how long?”

In 2019, the CBC published a related article, and the following statement was made from a home inspector: “Over time, drywall dust can cause a lot of damage to the bearings inside of the furnace fans. It can grind them down and wear them out.”

Please note that all of those quotes are from industry people.

Our organization, CPBH, receives a lot of complains from homeowners about heating issues in newly built homes. People are usually shocked to find their furnace breaking down so early. To make matters worse, Tarion only offers a two-year warranty on heating systems. So if there are a couple of mild winters when your furnace isn’t taxed, and then, in the third year of occupancy in your home, you hit a cold snap, Tarion will likely tell you that your warranty on your furnace is expired. In that case, the homeowner is stuck not only with potential safety issues and the inconvenience, but also the costs.

Homeowner Dave Myatt was quoted in that CBC article: “I opened up the front of the furnace and it just looked like a bag of flour exploded in there,” Myatt said. “The furnace filter was caked with drywall dust and debris.”

That CBC article goes on to say:

“An HVAC repair company found drywall dust had entered the furnace’s blower and infiltrated the motor, doing possible damage to the appliance.

“Myatt said he felt cheated.

“‘You expect to have new windows, new doors...,’ he said. ‘The last thing you’d expect to have would be a second-hand furnace, or one that’s damaged.’”

CPBH wrote to former MGCS Minister Thompson about this. In 2021, she responded. Her main suggestion was for consumers to go to a lawyer to discuss remedies available to them—that from the minister responsible for consumer protection: “Go to a lawyer.”

CPBH did obtain a legal opinion that said that builders secretly selling used furnaces in newly built homes contravenes the existing Consumer Protection Act; it seems that enforcement is the issue. We understand that under the existing act, enforcement is primarily the responsibility of the consumer. This is obviously not a reasonable or appropriate approach for the ministry to take for something as important as a furnace in a country with winters like Canada.

As I start to wrap up, I’d like to leave you with another example. During the pandemic, CPBH received an email from a desperate mother of a newborn baby. They were living in a newly built home, and the furnace broke down in a cold snap. The mom was frantic as they could not find a repair company to come for almost a week. The mom said that to keep the newborn warm, the baby was sleeping in the bed with the parents. Imagine that: Would that be acceptable for you or anyone in your family?

The Chair (Ms. Goldie Ghamari): One minute left.

Dr. Karen Somerville: Purchasers of newly built homes need and deserve adequate consumer protection for their

furnaces. It’s CPBH’s position that it is not acceptable for the ministry responsible for consumer protection to simply tell consumers to get a lawyer. That is not consumer protection.

CPBH is requesting that Bill 142 be amended to prevent builders from using furnaces in newly built homes for construction heat and to ensure that this is enforced by the ministry. If that is not possible, we’re requesting that Bill 142 be amended to at least require builders to disclose in the purchase agreement that the furnace has been used during construction—again, with enforcement by the ministry, not consumers.

I’ll be happy to address any questions. Thank you.

The Chair (Ms. Goldie Ghamari): We’ll now turn to our next presenter, Huron Perth Community Legal Clinic. Please state your name for the record, and then you may begin. You will have seven minutes.

Mr. Jamie Hildebrand: Thank you for inviting me. My name is Jamie Hildebrand. I’m the executive director at the Huron Perth Community Legal Clinic.

I think it’s important to point out—I know you people know this, but my clients don’t know this—that the Consumer Protection Act is based or predicated on the idea that the consumer contract is a contract, fundamentally, of an unbalanced and unfair power dynamic. So if it’s to protect the vulnerable consumer, my clients are the most vulnerable consumers you can imagine.

We also need to appreciate a consumer good is not just “I didn’t get a good deal on that thing I went down to shop for the other day.” A consumer product, for example, is a telephone. This government and its digital first—yes, I’ve got to make sure I don’t call that “digital fist;” that’s what I could tell all my friends—program of delivering Landlord and Tenant Board hearings makes it in entirely critical that my clients have a functioning cellphone. And yet how easy is it for them to fall afoul of their carrier in what would otherwise be a Consumer Protection Act issue?

So I have a problem with the fact that you could have inadequate protection, leaving these people without a device that will keep them housed. It becomes critically important. And the power relationship, if they’re to call their phone provider—when they call me, they have no idea what a Consumer Protection Act is. They have no idea they’re a consumer, which is really, probably, to my main point.

I also do a little bit of part-time teaching, and when I teach contract, I put a typical cellphone contract on the overhead projector. I say, “Can anybody tell me what that paragraph, the terms and conditions of the agreement that you’re in, said?” Nobody can explain what it said, and I explain to them, “That says that the service never has to work, and you still have to pay for it.” The look on their faces is quite—they’re in shock. But I say, “Well, don’t worry. Don’t fret. There’s a Consumer Protection Act. Put up your hands as to how many people were aware of that fact”—not a single hand.

You have a wonderful piece of legislation that’s very high-minded and properly directed, and probably properly targeted. Does anybody know it exists? Does anybody know why it exists? Does anyone know how to deploy that legislation?

Then if I tell my clients, “Well, what you could do”—if they were to read that act, which is another problem. This is a big project. I think that if you’re going to have a Consumer Protection Act in this day and age, your target that’s going to use that act should be able to understand it. What does it tell them they can do? Commence an action. They don’t know what that means. They have to call a lawyer to ask, “What does it mean to commence an action?” “Oh, you can bring a lawsuit.”

So I would evangelize, if you make this legislation that’s supposed to accomplish so many wonderful things to protect the vulnerable portion of your population, make sure they can read it, make sure they know it exists, and make sure they can understand it. This is critical. I’m not surprised there aren’t more fines; who knows enough to deploy the legislation to get a fine? And who has the time?

This is another issue that came up with a previous speaker: the remedies. To commence an action or start a lawsuit to get your \$600 back when you’re living on a fixed income is just not feasible.

I note that there are appointed officials in this legislation. There are directors. There are investigators. Will there be an army of those people to do this, their bidding? I don’t think there’s going to be. But this legislation will not work unless people can understand it, and they’re made well aware of its existence, its critical importance and the help that the government professes to be providing. It’s absolutely essential.

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I would also say to roll up your sleeves and make it an attack in plain language. I know lawyers crafted this from its predecessors, from its predecessors, from its predecessors. The language is archaic; it’s technical; it’s mystifying. Roll up your sleeves. There’s a legal clinic in Toronto called CLEO, Community Legal Education Ontario, that could help with a plain-language revision of this bill, so that people who should be using it can understand it. I would advocate that not only do you tell everybody it exists; you make it so that they can understand it, and then you actually deploy staff who are actually going to help implement the provisions of the bill.

There are two very small things that I would also ask: I think the bill should state at its outset this bill does not abrogate or take away or derogate from any laws that may already protect the consumer in the common law or any other. That’s not explicit. I think it should be explicit, because it’s too tempting to say, “Well, I didn’t find a remedy in the Consumer Protection Act. I guess I don’t have one.” So you need that. That needs to be somewhere at the very beginning of the legislation.

And another pet peeve of mine: I believe it’s section 13 that warrants that services have to be of a reasonable quality. Put “goods and services,” not just “services.” I know there’s a reference to the same warranties that are contained in the Sale of Goods Act. The Sale of Goods Act is hopelessly thin. I’ve never actually been able to use it, so I think why not warrant that goods and services must be of reasonable quality? Why should you have to go somewhere and pay an extra \$150 so that the thing you bought

is going to last more than 90 minutes from the date of purchase? The common law would expect a reasonable time frame for that fee to work.

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Jamie Hildebrand: You should be able to go and make that case, and your consumer protection legislation should allow you to make that case.

In closing, I think you have to evangelize, every time you get on the subway, every time you turn on the radio or turn on the television, every hour or two: “Did you know that you’re protected by the Consumer Protection Act? Here’s how to avail yourself of that importance service. Here’s your government. Here’s your tax dollars actually at work.” I think you need to educate people, and you need to make it accessible, and you need to make it effective. You can’t forget: A consumer is not just a consumer, especially a vulnerable consumer. And the vulnerable people in my community that qualify for my services rely very, very heavily on goods that we may take for granted.

That’s all I have to say. Thank you very much for the honour and privilege of being able to speak to this committee.

The Chair (Ms. Goldie Ghamari): We’ll now turn to our last presenter, the Law Commission of Ontario. Please state your name for the record, and then you may begin. You will have seven minutes.

Mr. Ryan Fritsch: Good afternoon, everyone. My name is Ryan Fritsch, and I am legal counsel with the Law Commission of Ontario. I’m joined on Zoom today by my colleague Nye Thomas, who is the LCO’s executive director.

The LCO is a neutral, non-partisan, non-governmental law reform agency. We’re largely funded by the Law Foundation of Ontario and supported by Ontario’s law schools and the Law Society of Ontario. Our work is overseen by an independent board of directors.

I also want to direct your attention to three written submissions that we provided to the committee. The first is a June 2023 paper that the Law Commission published, Consumer Protection in the Digital Marketplace, a public consultation paper. To my knowledge, that is the most comprehensive and recent review of consumers’ digital rights, their online contracting rights, in Ontario today. We sent that to the committee about a week ago.

In addition to that, I brought printed material for you today. The first is a cover letter, and the second is a table with detailed legislative and regulatory law reform recommendations that I’ll be talking about today. What these documents summarize is a project the Law Commission has been leading for the last year and a half. That is looking at consumer protections specifically in the digital marketplace and in online contracting. Today, in that table, we’re providing you with 16 interim or preliminary recommendations for this committee to consider in reviewing Bill 142. I will go over these for you briefly, but the materials before you contain specific legislative and regulatory amendments, so I commend those to you.

Before I get to the recommendations, I’d like to note a couple of things that we really like in Bill 142 and that reflect the kinds of issues we heard when we went and

consulted with Ontarians on their digital rights. We like these—not just because these ideas are already in our June 2023 paper, but because they’re just good ideas and reflect how it is possible to balance consumer and business interests in an updated Consumer Protection Act.

Some of the ideas in the bill that we like are the new discoverability principle. This ensures that consumers can act when they find a problem or become aware of a problem, not after the clock has run out on them. We like the authority and the minister to issue fines for breaches of the CPA, which encourages compliance by design. We like the fact that you have extended consumer protections to a category of facilitators of consumer transactions like online intermediaries, who play an increasing role in everyday transactions that Ontarians conduct online. The bill also makes it clear that consumers can post online reviews without fear of reprisal from a supplier. So, we’re pleased that the new legislation has adopted some of the recommendations that the Law Commission has already made.

Why are these initiatives, these specific provisions so important to consumers in the digital marketplace? It’s because most consumers’ transactions now happen online, and the CPA needs to address this to protect consumers in the digital era. I want to give you two really quick examples of how this plays out in the everyday for consumers. The first example is about coffee. I know our Premier is a big fan of Tim Hortons as are many other people in the province, and perhaps the Premier likes to roll up the rim to win for a chance at a TV or a free coffee from time to time, but to do that, you now have to use the Tim Hortons app. What the Premier and over a million other Canadian consumers may not have known at the time was that the app was tracking their movements, every few minutes of every day, even when the phone was on standby and the app was closed. The tracking was so detailed that it identified places of work, businesses that the consumer visited, friends that they visited and so forth. None of this info is needed to buy a coffee, but it was purportedly authorized by a vague, non-specific, click-consent notice with a simple yes/no option: agree or don’t play. Canada’s Privacy Commissioner wrote that gaps in consumer contracting were at the heart of the issue and need to be addressed.

The second example: You’ve all heard of Fortnite. It’s one of the biggest video games in the world, played every day by millions of children. A 2023 investigation by the US Federal Trade Commission found that Fortnite intentionally designed their software using dark patterns. These are software and interface design techniques used to trick or nudge consumer choices. The FTC found that kids made over \$250 million in erroneous unwanted or unauthorized purchases as a result of these dark-pattern practices. Worse, when parents tried to contest these charges, Fortnite took steps to undermine credit scores or they banned the child’s account. Kids were locked out of the game, while their friends played on. These powers were buried or not clearly disclosed in the terms of service. They’re unfair in any event and are now subject to a class action in Quebec.

This is why Bill 142 matters. It matters because these kinds of transactions are occurring in the everyday and everywhere. In fact, if you took a look at a consumer’s contractual footprint—the number of these online terms and service contracts that they encounter—it would take a consumer over 250 hours to read their contractual footprint every year, and even if they do that, they would find the terms unfair and that their only real choice is not to play at all.

What we heard when we consulted Ontarians on the state of affairs is that you shouldn’t have to trade consumer rights to participate in the everyday digital economy.

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Ryan Fritsch: In this spirit, the Law Commission makes 16 additional recommendations to this committee as they begin review of Bill 142.

Very quickly, by way of summary, we propose that the bill needs to do more to make online contracting explicit in the legislation and to create regulatory powers to address specific issues that consumers are facing online.

Second, the bill should eliminate the \$50 minimum threshold. Because of that minimum transactional threshold, these examples I gave of the Tim Hortons app and Fortnite would not currently extend protections to consumers. They’d be left out in the cold with no protections.

Third, we’re recommending that the bill specifically identify and create regulatory authority over these dark-pattern practices. With regulatory authority, you can target specific practices, as they’ve done in the European Union and other jurisdictions.

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We also recommend that the bill create new—

The Chair (Ms. Goldie Ghamari): Thank you. That’s all the time that we have.

We’ll now turn to our first round of questioning, beginning with the government. Who would like to begin? MPP Dixon.

Ms. Jess Dixon: My question through you, Chair, is directed to the Law Commission. I want to first commend you on your very detailed presentation. It is, frankly, exactly what I usually like to see when I dole out homework as an MPP as far as specificity.

This is in no way my area of expertise. Can you help me, in a very layman’s way, understand what enforcement would look like, say, with the Tim Hortons example. What would you want to see done to prevent these types of contracts?

Mr. Ryan Fritsch: I’m very glad you asked that question. I think I have three things that could be done quite practically to improve a consumer’s ability to respond to these kinds of issues.

First and foremost, right now, under the Consumer Protection Act, consumers have very, very limited rights to damages. One of the challenges with online contracting—and what’s different about online contracting today as opposed to previous decades—is that many of these transactions are for low-cost services or free services, like your Gmails and your Facebook, or have incremental pricing. Right now, a consumer has no power to enforce rights if a

contract appears to be unfair or contain unfair terms. What you can do is eliminate the \$50 minimum threshold for transactions such that consumers could make complaints to the ministry, could bring in action for failure to record their rights, even in these small but often cumulative transactions. That's one.

A second way that you could help consumers is by establishing a new set of damages. Right now, consumers can only get damages for punitive and exemplary damages. Those are very, very high legal and evidentiary thresholds to meet, and the reward that a consumer might get is very unclear. The Law Commission is recommending two additional types of damages that would ameliorate this for consumers. One are called disgorgement damages. These damages arise not when you have suffered a loss—when I'm using a free service, I might not suffer a direct loss if I'm treated unfairly under the terms—but what disgorgement can provide is a remedy where someone else has profited off you and it can go after those profits. This would act as a general and systemic check and balance on the provision of free or low-cost or incremental services to consumers.

Second, we're also recommending that the legislation establish statutory damages. This is similar to the Copyright Act in Canada, which lays out literally a schedule of different damages for different offences. That would make it much more predictable for businesses to know what their potential risk and liability is, as well as empower consumers to act, because they would actually have a chance at getting something other than a refund on a five-dollar transaction. So that's two things.

Third, I just wanted to note that eliminating the \$50 minimum threshold would not be unusual for Ontario to consider. Other provinces across Canada have eliminated minimum thresholds for consumer protection and have not seen a flood of vexatious or frivolous complaints.

Ms. Jess Dixon: If I may, Chair, by way of follow up to that—and my criminal law background is coming out here versus civil. When you're talking about the idea of having almost scheduled damages, could I look at that from a deterrence perspective, as far as, ideally, not having to burden the courts with these types of claims but providing a clear framework to businesses in order to incentivize them or disincentivize them to engage in these types of practices?

Mr. Ryan Fritsch: Absolutely. I think it would have a deterrent effect. I think it would also dovetail with another recommendation that the Law Commission is making, which is that you actually increase the fines available to the minister. This is so that investigations can resolve with consent agreements with businesses and consent fines.

What we heard when we talked to several businesses as part of our provincial consultations is that they actually find those kinds of reports helpful because it gives them guidance on how the act is being interpreted and applied so that they can internalize those rules and make sure that their terms of service are compliant.

What you could do is actually dovetail that with the statutory scheme for damages. They could potentially be

equal, so that a consumer—if, for example, the ministry didn't want to take their complaint forward—would have that right to pursue a similar level of damages.

Ms. Jess Dixon: Okay. Thank you, Chair.

The Chair (Ms. Goldie Ghamari): MPP Kusendova-Bashta?

Ms. Natalia Kusendova-Bashta: Can you please expand a little bit more—you spoke about creating regulatory authority for dark-pattern practices. Can you give us other examples? You mentioned video games, but we have parents here in this room and children are engaging online more and more frequently. Can you give us other examples of these dark-pattern practices that may be happening in our community?

Mr. Ryan Fritsch: You bet. We've actually got a footnote in our introductory letter that I've given you that links to a report by the OECD just a few years ago on dark patterns. In there, the OECD identifies and categorizes over two dozen different types of dark-pattern practices.

I can tell you right now that everyone in this room has seen them and experienced them, even if you didn't realize it. Dark patterns can be things like when it's really unclear if the toggle is checked on or off, sometimes the colouring can be confusing, and you can be like, "Well, does that mean I've opted in or I've opted out?" It can be unclear.

Dark patterns are things like a game one student told me about where they literally put the "Decline" button right next to a much larger "I accept" button.

Interjection.

Mr. Ryan Fritsch: No joke. What happened was he accidentally clicked the "I accept" instead of the "Decline," and this triggered a \$50 fee for something in the game.

Dark patterns are new and they're specific to online contracting, but they're not inscrutable.

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Ryan Fritsch: What we've seen in other jurisdictions, particularly the EU, is that they've been able to create regulatory authority over dark patterns and very specifically, in regulations, list what those dark patterns are so it's clear as day, both to consumers and businesses, that those are prohibited practices. That, I think, is one of the major improvements we could make with this new Consumer Protection Act: Don't require the consumer to go out and enforce their rights; make it clear what is prohibited, because right now all of these consumer complaints are individualized. There's almost no systemic ability to bring what happens to me in my game or with this app or with buying a coffee or any of that kind of thing. It's always left up to me. So if you make it clear in the legislation that there are new unfair practices, that activities like dark practices should be prohibited, then everyone's on the same page about what's expected.

Ms. Natalia Kusendova-Bashta: Are the dark patterns specifically targeted at children?

Mr. Ryan Fritsch: They can be, yes. They absolutely can be. In the Fortnite example, for example, the FTC found that at one point—

The Chair (Ms. Goldie Ghamari): Thank you. That's all the time we have.

We'll now turn to the official opposition. You may begin.

Mr. Tom Rakocevic: Thank you to the presenters. This was very, very informative.

I'm going to begin with Dr. Somerville. First of all, I want to thank you for the work as a volunteer that you've done for many years with Canadians for Properly Built Homes. You basically said you were limited in scope in what you could talk about, so I will ask you about delegated authorities so you can jump out of that scope, because I think it's important to listen to that here.

I also want to mention to all members of the committee as well: What you're bringing up about the furnaces is something that was discussed during changes to Tarion and when the creation of the HCRA occurred. At that time, it was asked whether or not—basically everything you described, that people are buying newly built homes. These furnaces are failing. This is something that you may not know a year or two after you've taken ownership of the home. This is the type of problem that could happen in the long run, something that could happen in six, seven or eight years, because it reduces the lifespan. We did put forth amendments at the time, and the government and their staff had said, "We'll deal with this in the regulations." Why do I bring this up here? A lot of this bill is being left to regulations.

So I'm going to ask about the delegated authorities: Do you believe in Ontario these delegated authorities are doing a good job standing up for consumers?

Dr. Karen Somerville: Thanks for the question. I focus on certain delegated authorities. I can't speak to them all. The primary ones that we focus on are Tarion and HCRA, a little bit with the ESA and TSSA. Those are the primary ones that we focus on.

Definitely if you take a look at the Auditor General's reports over the past five or so years, you'll see that with the four that I have named—Tarion, HCRA, ESA and TSSA—there have been significant issues raised by the Auditor General of Ontario. With HCRA and Tarion—as most people there probably know, HCRA is a couple of years old now. It was spun off Tarion. Many people that we talk to feel that it's actually worse now than when Tarion was both the regulator and the warranty backup. They're not a provider. So, there continue to be very serious issues and we are attempting to raise these issues, both with the ministry—certainly with the executive of HCRA and Tarion.

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Just today, I received an email responding to an email that I had written to the board chair of HCRA—so, just a very quick example. They have an annual meeting requirement in their accountability agreements with the ministry. HCRA's meeting that took place this past summer—they had advertised that it was going to go to a certain time in their advertisement and the chair wound up 15 minutes early, leaving people standing at the microphone and leaving lots of people online with questions. I wrote about that and the answer that I got today from a manager at HCRA on behalf of the board chair said that they allow 30 minutes annually at their meeting for questions and

answers—30 minutes. People won't drive across Toronto to go to that meeting, let alone come from other parts of the province.

I could give you lots of examples, but the short answer is no. We have very, very serious concerns about those two delegated authorities in particular.

Mr. Tom Rakocevic: Thank you for that.

I'm going to move on now to Mr. Hildebrand. I think you had mentioned that it's about letting people—first of all, thank you for all of your work in the legal clinic and for what you've done, I'm sure, for your clients over the years.

You said it's just a matter of letting people know that the act is out there, but you also mentioned, especially for lower-income families or individuals who are very vulnerable, the difficulties to actually get legal representation and successfully fight some of these large companies. So do you believe in this system where it's really—you call the consumer protection hotline and you're told, "Get a lawyer," and then, in turn, you have to spend money to protect yourself when you've been harmed. Do you think that there's more that could be done proactively?

Mr. Jamie Hildebrand: I do think there's more that could be done proactively, and I think the problem is not just that the consumer needs to understand this legislation, so do businesses. I think businesses don't understand it or don't respect it, and I think this is a historical problem.

There's a case called *Kanitz v. Rogers Cable TV*, and I don't know if you remember this. It was in the year 2000 or 2001, where someone sued Rogers for their poor cable service and they didn't realize their contract had been changed without them knowing it. You can read the case; it's interesting. Justice Nordheimer said, "No, no, everything Rogers did was fair. It was okay. There was a mandatory arbitration clause."

The Consumer Protection Act was amended almost immediately to make it illegal to have a mandatory arbitration clause. While the example I gave you of where I put the contract on the board and show the students—well, there's a mandatory arbitration clause in that contract that came two years after the amendments to consumer protection legislation.

Why did Rogers think—was confident enough—to have a contract that completely ignores the dictates? Well, because somewhere in the contract, it says "to the fullest extent permitted by law." Oh, it's illegal.

So, I think everyone has to understand the protections that are there, not only consumer, but also business has to be made aware.

I also do think it's not enough. If I tell my client, "Yes, we can go and sue to get your money back," or, "We can go and sue to end your contract," that's months away, and they have an immediate problem. So, I do think they need a more robust enforcement branch of this legislation. It's just not enough to give the people, "Okay, you get a ticket to go to court. Off you go. No, wait another 18 months for a little pre-trial where something might happen, or not." Meanwhile—

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Tom Rakocevic: Thank you very much for that.

Mr. Fritsch: First of all, thank you very much for these questions and your work. You had a very, very fascinating presentation, and I have a second seven-and-a-half-minute portion that I'm going to be focussing on you.

But I do want to say in the little bit of time that I have remaining that I think you are really presenting to us the fact that the world is really rapidly changing; we have this massive digital economy, and I believe it was you who pointed out that most transactions are happening there.

This legislation is making improvements and you listed some of them, but I think we need something massive. I think you're describing an entire future that may catch the ministry itself unprepared. Do you agree with that? I think you mentioned the EU, and in many ways, they are looked at as the gold standard, so I'm going to focus on that. But do you believe we have a lot to learn from the EU when it comes to consumer protection and being proactive?

Mr. Ryan Fritsch: I think one thing to note—

The Chair (Ms. Goldie Ghamari): That's all the time that we have—sorry. You'll have to wait for the next round.

We'll now turn to the independent member for four and a half minutes. MPP Blais, you may begin.

Mr. Stephen Blais: Thank you all for your presentations. Mr. Fritsch, you had begun discussing how the dark-pattern issue with video games was targeted at kids. You had started to talk about the FTC and I'm wondering if you could get into that.

Mr. Ryan Fritsch: Sure, I'd be happy to finish that thought off. The FTC investigated these design techniques that Fortnite was using, and they found that they were targeted at children. One of the things that they did was that children became accustomed to pressing a controller button for “cancel” and a controller button for “accept.” They switched those, so as a result, when kids were prompted, “Do you want to buy this thing in the game?” the kid would think they're hitting “no,” and in fact they were hitting “yes.”

Mr. Stephen Blais: So they're switching “yes” and “no” on a PlayStation controller or something—

Mr. Ryan Fritsch: Yes, absolutely, for sure. And then there's no ability to opt out after that's already happened. The transaction happens automatically.

There are reports, too, that are available in our June 2023 paper that look at practices by social media companies who have designed their product specifically to, frankly, be addictive to children. In those cases, oftentimes those risks are not disclosed in the terms of service. One thing that we are recommending is that, instead of burying things, vaguely, deep in a terms of service that no one can reasonably read, key information about risks to the consumer, consequences for the consumer and the core elements of the deal be made available prominently in a disclosure box at the outside of the contract or when you're signing up for an online service.

Mr. Stephen Blais: I have a 14-year-old at home. Fortnite is certainly something that we've experienced on computer and Xbox and with any number of other games, I'm sure. Maybe just for other parents of teenagers at home, could

you maybe describe one of these dark-pattern situations that their kids might be exposed to and, in the absence of some consumer protection, which I'm sure we'll work on, what might parents do to protect their kids on their credit cards from this kind of abuse?

Mr. Ryan Fritsch: Right. I can't speak to the credit card issue; we're just looking at online contracting. But look, things like improved notice and disclosure make a difference. It's not just kids who can be tricked by this stuff; it's other Ontarians with vulnerabilities—older Ontarians, people with disabilities, people from linguistic communities. They can all be tricked by these patterns.

So it's vital, I think, that the legislation attend to these problems. Things like a prominent disclosure box with key information at the outside of the contract before you sign up for something is vital to informing not only the person using the product, but also the person who's helping them: their parents, their friend or other.

Mr. Stephen Blais: I can see how the EU could do something; I can see how the FTC could do something. How could we, in Ontario, as a subnational consumer protection element, actually do something that's effective, that basically wouldn't just bar the game from being used here?

Mr. Ryan Fritsch: Well, what you would do—and this is what we've recommended in our submissions for you, and we've provided legislative language around this—is to include as an unfair practice—I think it's under section 9 of the Consumer Protection Act—dark-pattern practices and empower the minister in regulation to identify what these dark-pattern practices are. You don't have to ban the software at all. You just have to say that misleading consumers shouldn't be happening and here's the ways that those can happen.

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Stephen Blais: So I guess my point is not banning the software, but if we're the only jurisdiction that makes that requirement and it's not done at a national level or an international level with the EU or the Americans, would the game just simply not become available for Ontarians to use?

Mr. Ryan Fritsch: There's a consequence of that. I put that kind of question in context of the fact that Ontario is not only the largest economy in Canada, but something like the 15th- or 16th-largest economy in the world. So most service providers probably wouldn't want to cut that revenue source off.

1640

Mr. Stephen Blais: They would respond well if Ontario did it because of our size.

Mr. Ryan Fritsch: And Ontario wouldn't be first here either. For example, in the United States, there are age-appropriate design codes for software and for online contracting, specifically to protect vulnerable people like children and like older consumers, so we wouldn't—

The Chair (Ms. Goldie Ghamari): That's all the time that we have, sorry.

We'll now have to turn to the government for seven and a half minutes. Who would like to begin? MPP Dixon.

Ms. Jess Dixon: Back again to the Law Commission: I'm just scanning your very fulsome and lengthy report online. Can you talk a little bit more about who you consulted with? What kind of stakeholders and how many people's opinions are reflected in this report?

Mr. Ryan Fritsch: For sure. LCO conducts its consultations under the guise of confidentiality, so I won't name people specifically, but I can tell you about the scope of our consultations and the types of groups that we talk to.

We released a paper in June 2023, and that launched an open consultation with anyone in the province who was interested in talking to us. I believe we talked to and convened over a dozen meetings, and this comprised around 70 participants. We had representatives who are advocates on behalf of older Ontarians. I had a consultation where I sat down with about a dozen students from a high school in Toronto to talk about the kinds of issues that they were seeing. We talked to linguistic and ethnic communities on the specific challenges they're facing, and we talked to advocates for persons with disabilities.

On that point, I'd like to highlight the fact that we are making another recommendation: that the legislation could make it an unfair practice for contracts to be inaccessible. This is distinct from accommodation, which is individualized upon request often. Instead, accessibility would ensure that all Ontarians with any ground protected under the Human Rights Code would be, by definition, protected under the Consumer Protection Act and able to access the contract. This would also provide a remedy to those people through the Consumer Protection Act, so they don't have to go to the Human Rights Tribunal and engage in what could be a many-year litigation against folks.

Ms. Jess Dixon: Again, not in any way my area of expertise: With some of what you're suggesting, are we running into any jurisdictional barriers? Would we have servers in other countries, multinationals that then do not want to do business in Ontario because we're overly prohibitive, that type of thing?

Mr. Ryan Fritsch: Jurisdiction is a challenge, for sure. What the Consumer Protection Act asserts is that anyone who does business in Ontario or with a person in Ontario is seized of jurisdiction under the Consumer Protection Act. That's it. That's the legislative authority.

I think remedies are probably the way to think about how we address that, and we've made several recommendations about how that could be improved already. Two that I would like to add additionally that could help with the jurisdictional issue: establishing a terms-of-service registry so that if you are providing an online contract to someone in Ontario, it would be registered with the government. What's amazing about that is that this would create a transparent public database of all the terms-of-service contracts that people are facing, which would facilitate study, things like systemic investigations by the ministry and the ability to bring claims forward representatively by consumers. Right now, none of that is happening. This would actually greatly expand the jurisdictional reach of the current provision in the legislation.

The other thing that we heard: Many, many folks we talked to, almost unanimously, say they were supporting

some kind of consumer watchdog of some kind. This would be an independent organization with a mandate to investigate consumer issues, to engage in representative actions on behalf of consumers and to investigate systemic issues, because, as I say, many of the difficult situations that are happening to consumers in the online space are individual. It's small transactions, happening in the everyday, with compressed timelines, and it's really hard for anyone to look at the big picture about how it's not just about that one consumer, but the million people who buy a coffee every day. And so, that's why we're making some of those recommendations, among others.

Ms. Jess Dixon: Chair, where are we at with time?

The Chair (Ms. Goldie Ghamari): Three minutes.

Ms. Jess Dixon: I'm also interested—you mentioned consulting with high school students and youth. Just on an opinion level, did it appear that they had comprehension of the predatory practices that they were falling victim to, or were you sort of illuminating them in the context of your discussion?

Mr. Ryan Fritsch: It was a combination of both, I would say. In some ways, the students are by far more sophisticated than other people in Ontario. Young people are undoubtedly the heaviest users of Internet services and products by far, so they're relatively sophisticated. But when you point out some of the invisible systemic issues that are bedeviling consumers in this space, they were as surprised as anyone else. Their reaction was consistent with what we heard from a lot of the folks who we consulted with, which is that many of these issues perhaps should not be left to contract. It shouldn't be up to consumers to agree or disagree or to try and enforce their rights. Instead, you can enumerate these things in the legislation.

You have the power to identify unfair practices through amendments to the Consumer Protection Act, 2023. You can give yourself regulatory power over things like dark patterns. The legislation itself becomes the standard terms. Those become the standard terms that all businesses and all consumers have to comply with. They're transparent, they're known. That's the way that I think you get at a lot of these kinds of issues.

Ms. Jess Dixon: With regard to the dark-pattern techniques, I notice in your report it talks about being more subject to regulation in the EU. I remain concerned about the implications of foreign businesses feeling that Ontario is hostile—as much as I understand that. So where would we be as far as other main trade partners' companies that do have a website presence in Ontario?

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Ryan Fritsch: Ontario is actually quite a distance behind most other leading jurisdictions. A lot of this stuff has been legislated in the EU through two pieces of recent legislation, the Digital Services Act and the Digital Markets Act. And in the United States, you see robust powers accorded to an organization like the Federal Trade Commission, who can do these kinds of systemic investigations and make systemic recommendations through consent orders and consent fines.

So, in fact, the jurisdiction that's lagging is Ontario, and the opportunity that we have with amendments to the

Consumer Protection Act, 2023, is, in fact, harmonizing Ontario with what's happening in other jurisdictions. At the same time, you can put an Ontario spin on it to ensure that you're reflecting the needs of Ontario consumers specifically.

The Chair (Ms. Goldie Ghamari): Thank you. That's all the time we have.

We'll now turn to the official opposition. You may begin.

Mr. Tom Rakocevic: There really is not enough time to discuss this, but just in what you had said alone, Mr. Fritsch, the fact that so much of what is happening online are these micro-transactions that are not going to be captured by that \$50 minimum—the minister has said repeatedly during the tabling of this consumer protection bill, and even here, that caveat emptor is gone—“Let the buyer beware”—that it doesn't exist anymore more. And here, you're saying the problem is we're allowing these contracts, and another speaker, Mr. Hildebrand, was saying, “Do they even know what they're signing?” And so, do you believe that caveat emptor still exists in some way, shape or form in the way things are going here in Ontario?

Mr. Ryan Fritsch: Our research leads us to understand that there are many improvements that could be made to the Consumer Protection Act, and that could specifically address the kinds of consumer protection needs in the online space that they currently don't enjoy.

Mr. Tom Rakocevic: And you further mentioned that there should be the creation of a regulatory body in itself just for dark patterns alone, and I think you've really made a strong case as to—we are lagging behind here in Ontario. More and more transactions are ending up online. Our children are making purchases on their phones. They don't even know what they're signing. I hear that you had said to create a disclosure box, which is good, but, again, in the case of young people, our children, they may not even know what they are signing. There are practices that are insidious, where they do everything they can to try to trick you into clicking the wrong button.

Ultimately, you had said that you would support the creation of a consumer watchdog. In other jurisdictions like the EU, you have individuals or offices similar to an Auditor General that could levy fines, inform governments and really take us to the gold standard. Can you again explain why we need a consumer watchdog running parallel to the activities of this ministry to protect consumers here in Ontario?

1650

Mr. Ryan Fritsch: Sure. So what consumers face in the online space are problems that are put upon them as individuals. Under the current Consumer Protection Act, if a transaction happens to be covered by the CPA—which it doesn't cover many online transactions because of the minimum \$50 threshold—if a consumer is able to avail themselves of rights under the CPA, it's up to them. They have to make a complaint to the ministry. They have to pursue litigation. It's very, very difficult to motivate yourself to activate your rights when you might be talking

about very, very small transactions that happen in the every-day.

The discord is that those very, very small transactions can have very, very big consequences for consumers. This is the huge gap right now. The Tim Hortons app example is one: Just because I wanted to roll up the rim and get a coffee and, all of a sudden, a detailed consumer profile has been made about me. That isn't necessarily held by Tim Hortons; it could be sold or shared more widely. There's now a data brokering industry that is also largely unregulated.

So right now, it's all on consumers. What they can actually get in terms of systemic remedies is practically nothing. I think what is consistent with everything we heard is that there is absolutely a need for an independent organization that could do this kind of work for and on behalf of consumers. Other provinces have similar systems; Quebec, for example, is one.

We're also recommending that the minister make better use of the powers that they already have under the CPA. This would dovetail with a lot of the other recommendations that we've made. To be clear, we've heard that there's interest in these kinds of things on both sides of the transactions. Not only for consumers, but many of the businesses that we consulted with across Ontario as well said things like consent orders with fines are very, very helpful because it's a transparent way for them to understand how to interpret and apply the legislation and be proactive about both protecting consumers and themselves as businesses.

Mr. Tom Rakocevic: Thank you very much.

I have three minutes, 15 seconds left. I'm going to go to Dr. Somerville. We are dealing with consumer protection legislation. One of the biggest purchases a person might make is a home. This consumer protection legislation is not covering issues that come to that. We're told to go to the delegated authority. You've talked about the two delegated authorities dealing with that, and you have mentioned concerns that we are not at the standard of consumer protection; we're far from where we need to be right now.

Do you believe we need a consumer watchdog in Ontario running parallel to the work of this ministry and this legislation to protect consumers?

Dr. Karen Somerville: Yes.

Mr. Tom Rakocevic: Easy. Okay.

Mr. Hildebrand, I also want to ask you: Do you believe that it would be very helpful to have a consumer watchdog or similar office or basically the existence of that here in Ontario to provide consumer protection in addition to the rules that are here?

Mr. Jamie Hildebrand: I think it's critically important. I think if you don't have it, you're just going to have the same song and dance over and over and over again.

I agree with Mr. Fritsch entirely that leaving it up to the consumer—they don't have the time or the inclination or the determination to fight over this money. Just imagine the corporate world breaking all those tiny chips off the table. They're big to the consumer.

Mr. Tom Rakocevic: Absolutely. Again, we are in a system where it is imperative upon the consumer themselves

to know what they're getting into, many facing language barriers. Maybe it's a child making an unwitting purchase on a video game. We have legislation that's not covering or really providing a lot of the protection in the digital area. To provide them a little understanding, this is a big, big, big issue. It's something that's beyond the scope of what they're dealing with, and it's in a world that's constantly changing, with the advent of AI and other things. We're not able to keep up in many ways, and that's why we need an independent office, a consumer watchdog, to run parallel to this legislation.

The final comment: Is it enough—

The Chair (Ms. Goldie Ghamari): You have one minute.

Mr. Tom Rakovec: Should we expect our consumers to have to go every time to court, even if we arm them with federal laws, without a proactive system to take down industries that are doing bad practices? Is it enough to have it all on the back of the consumers? Do you believe that, Dr. Somerville?

Dr. Karen Somerville: The example that I provided today on used furnaces I think is very, very good at demonstrating this. People have no idea what to do with something as basic but important as a furnace. They don't know where to go and when they go to the delegated authorities that we've been talking about they're getting the runaround. It's critical. This is not only just about money, it's about safety issues as well—that newborn that I talked about.

Mr. Tom Rakovec: Understood.

Mr. Fritsch, Mr. Hildebrand, should it be left on the consumer's back to have to always go fight in court, or should governments be doing more to proactively enforce bad actors—

The Chair (Ms. Goldie Ghamari): That's all the time we have.

We'll now turn to the independent member for four and half minutes. MPP Blais, you may begin.

Mr. Stephen Blais: Mr. Fritsch, you've been the focus of many of our questions and I think it's just speaks to the importance of the digital environment that we're all living in and participating in, especially, as we discussed, our kids and vulnerable individuals in particular. I think many of us probably have lessons to be learned and may or may not have been taken advantage of by some of these practices. The Tim Hortons example is, I think, prescient. I use my Tim Hortons app probably on a weekly basis so I'm sure they have a very good map of my consumer behaviour.

Something that you've mentioned that, in fairness, I had not thought of, is the data broker industry. Would Ontario, jurisdictionally, be able to regulate those kinds of practices? Again, it would seem to me that naturally it would fall to the federal government or the national government to do that but I appreciate that our size, economically, gives us some measure of control there, maybe.

Mr. Ryan Fritsch: I can only answer within the scope of the work that we've done. But one thing that we heard is that consumer protection and privacy law are generally

complementary. Privacy law is also a shared jurisdiction federally and provincially. Ontario doesn't have a private sector piece of privacy legislation right now, but nothing is stopping them from doing so.

One recommendation we make as sort of a policy recommendation in the project is that the province consider establishing a private sector privacy regime so that it can start taking some of these kinds of issues into account.

Mr. Stephen Blais: Is Ontario an outlier in that regard in Canada?

Mr. Ryan Fritsch: I'm not sure.

Mr. Stephen Blais: Dr. Somerville, this issue of the furnaces during construction: What is the most basic and most straightforward way to deal with this legislatively? Cut through all the chaff and everything else: What's the quickest and easiest way for us to deal with that?

Dr. Karen Somerville: Don't allow builders to use the furnace in the home for heat in the winter for construction heat. Make builders bring in portable heaters.

Mr. Stephen Blais: Okay, that's great. Thank you.

Thank you, Madam Chair. I'm done.

The Chair (Ms. Goldie Ghamari): Thank you. That concludes this round. I'd like to thank the presenters for their time.

At this point, we will call upon our last set of presenters.

1700

TRANSUNION CANADA
ONTARIO BAR ASSOCIATION
CANAGE

The Chair (Ms. Goldie Ghamari): I would like to call upon our first presenter, TransUnion Canada. Please state your name for the record and then you may begin. You will have seven minutes.

Mr. Clarke Cross: Good afternoon, Madam Chair. My name is Clarke Cross. I'm the director of government relations for TransUnion Canada and Latin America. I'm accompanied today by my colleague Johanna FitzPatrick, TransUnion's managing counsel, regulatory and privacy.

I'll be focusing my remarks on the second schedule of Bill 142. That is the suite of amendments to the Consumer Reporting Act.

By way of introduction, TransUnion is a leading provider of credit information services, operating in Canada since 1989. We are entrusted with protecting and maintaining accurate and up-to-date credit information about Canadians. For business, we verify credit applications of customers so that businesses can make informed and accurate decisions about an applicant's credit worthiness, thereby reducing their financial risk. For consumers, we provide tools, resources and education to help them manage their credit health and achieve their financial goals. TransUnion maintains credit information on consumers furnished by its data suppliers, mostly financial institutions and government entities located across Canada.

The current credit reporting system is efficient, rapid and cost-effective. We are proud of the speed at which we

are able to process requests for credit information so that credit decisions are made quickly—often within seconds. Over one million consumers access their TransUnion credit information in a given month and consumers have access to their credit information 24 hours a day, seven days a week.

Let's return to Bill 142. Since TransUnion and other stakeholders began consulting with the government of Ontario in 2021 on plans to modernize the act, we took the position that any changes must be drafted with care to ensure that new rights extended to consumers must be implemented in a manner that also supports the ability of credit reporting agencies to operate efficiently. As when modernizing any highly technical bill, it's reasonable to expect the need for some fine-tuning, but overall we think the changes to the Consumer Reporting Act contained in Bill 142 are aimed in the correct direction.

So what's changed? First, the amendments will provide Ontarians with a new tool to help prevent credit fraud through the introduction of a viable security freeze solution. Secondly, the changes to the CRA will also promote financial literacy by providing consumers with free access to their credit score information.

Let's take a closer look at security freeze. Security freeze is a protective measure that will allow Ontarians to direct consumer reporting agencies to block access to credit information for certain prescribed transactions. In Ontario, the ability to apply or lift a security freeze will be offered to consumers for free and through multiple channels: online, by phone and, for traditionalists, by mail. Once implemented, it will be a powerful tool for Ontarians who have been the victims of credit fraud or suspect that they could become victims of fraud. Ontario will also join Quebec as only the second province in Canada to have a functioning security freeze solution.

Our experience implementing security freeze has informed us that it is critical to incorporate some exceptions so that a security freeze cannot be allowed to block all types of inquiries. Security freeze requires precision. By that, I mean it should protect consumers by preventing the issuance of new credit or the increase of existing credit, but it should not impede the ability for authorized parties to access consumer credit information for legitimate purposes. For example, financial institutions need to have the ability to monitor the performance of those accounts they have already issued to the consumer.

The way security freeze provisions are drafted in Bill 142 demonstrates that this government has taken a wise approach. It's providing a new protective measure to Ontarians without blocking all types of inquiries.

There, however, are some technical changes that we would recommend. As it's drafted, Bill 142 provides options for consumers to apply and lift the security freeze, as well as to suspend the freeze as directed by the consumer. When creating security freeze, TransUnion did not build in a suspension feature because we believe the system operates best when the consumer has full agency to apply or remove the security freeze. Further, as we are unable to suspend security freeze, TransUnion would require a significant

additional period of time to build that functionality, which we've calculated would be about a year and a half. We think that redesigning the system for suspension capabilities would needlessly delay the launch of a security measure that Ontarians could access to prevent fraud.

Another game-changer contained in Bill 142 creates a right of access for Ontarians to receive a free copy of their consumer credit score. TransUnion currently provides Ontarians with free access to their consumer disclosure, which is all the information contained on a consumer's credit file, but it does not include a consumer score. We believe this measure will help support financial literacy by helping consumers gain insights into how their credit management practices are generally perceived by lenders.

Bill 142 also proposes key changes to the amount of information that credit reporting agencies are required to provide consumers when they request their consumer disclosure. While it's laudable in its intent, in execution, we'd be required to report information that we do not collect or that could potentially confuse consumers. For example, Bill 142 requires that CRAs include contact telephone numbers, addresses and email addresses for any organization's personnel that reports to or accesses information from a credit reporting agency. We don't collect that information, and we maintain that the best source of that contact information for consumers is not CRAs, and to check creditors' account statements or websites. We have additional concerns that providing email contacts on the credit report could encourage consumers to share information by email, which is not a secured method of communication.

There's an additional provision for agencies to provide consumers with a copy of any credit report that was communicated to an authorized third party who accessed the consumer's credit file.

The Chair (Ms. Goldie Ghamari): Twenty seconds left.

Mr. Clarke Cross: However, credit reporting agencies communicate to third parties through data streams, so complying with the legislation would mean furnishing consumers with long lines of unreadable code and raw data.

All in all, we think that all of the technical problems in the bill can be addressed through targeted amendments, and we're excited to continue working collaboratively with the government of Ontario to improve Bill 142, making it both better for consumers and better for business.

The Chair (Ms. Goldie Ghamari): That's all the time that we have.

We'll now turn to our next presenter, Ontario Bar Association. Please state your name for the record, and then you may begin. You will have seven minutes.

Mr. Mohsen Seddigh: Good evening, Chair and committee members. Thank you for the opportunity to speak to you today. I am Mohsen Seddigh, secretary of the board and council of the Ontario Bar Association. I'm joined by my fellow OBA representatives today Dan Edmondstone and Jennifer Babe. We're here to present on behalf of the OBA, which is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who

practise in every area of the law, in every region of the province.

Our written submission contains comments and suggests amendments on several sections of the proposed new Consumer Protection Act, developed by an OBA working group of practitioners representing a number of different practice areas.

I will use our time here to speak to some highlights. We will be happy to answer any questions you may have.

Turning first to the notice of security interest, or NOSI, provisions in sections 60 and 93 of the new act, we strongly support the intent of these provisions. NOSIs have been a significant problem for consumers and a tool that has often been misused by bad actors seeking to extract exorbitant amounts of money from consumers. The primary victims are often senior citizens, Ontarians with disabilities and new Canadians with limited English.

The new duty of suppliers to discharge NOSIs in certain circumstances, as well as the enforcement mechanism, are all positive additions contained in Bill 142. We recommend targeted additions to further strengthen the intended consumer protections.

1710

First, we recommend expanding the application of the requirement to discharge NOSIs to all consumer contracts, because consumers face NOSI issues through many different types of consumer contracts.

Second, we recommend the addition of a requirement to discharge any related financing statements registered under the Personal Property Security Act. To effectively remove all burdens relating to a consumer contract on cancellation or termination, a supplier should be required to discharge both the NOSI and PPSA financing statements.

Third, we recommend requiring suppliers to notify relevant credit reporting agencies so that consumers' credit reports are cleaned. Many suppliers also use credit reporting agencies as a pressure tactic, but even when used in good faith, a supplier should have to notify any relevant agencies on termination or cancellation that the debt has been extinguished.

We would also like to note that the OBA intends to provide a submission on the NOSI consultation paper that's ongoing now, and you will have that before the deadline.

Our second recommendation is to remove the broad powers to make retroactive regulations in subsections 107(2) through (4). We acknowledge and support the need for robust regulatory powers in order to be flexible and deal with novel issues as they arise, but as you know, subsections 107(2) through (4) would permit the potential retroactive application of regulations and sections of the act to any consumer contracts that fall under any of the broad subject areas captured by the regulatory powers in subsection 107(1).

This could result in virtually any preexisting consumer contract being altered in a way that fundamentally modifies or extinguishes the rights and obligations agreed to by the parties. It would bring a concerning amount of contractual uncertainty into the market. Suppliers could see their revenue projections upended by changes brought in after the fact,

including altering the associated costs or terminating existing contracts.

There would be nothing worse for a business climate than uncertainty. The ability to rely on contractual rights and terms is essential to a functioning economy and retaining business in Ontario. Parties need to have confidence that the contract they signed can be relied upon. In our respectful view, the broad regulatory powers in sections 107(1) provide sufficient authority to deal with emergent issues respectively as they arise and in a timely fashion, without implicating the fundamental principle of contractual certainty.

Finally, our last comment is on the addition of section 54, which would permit—

The Chair (Ms. Goldie Ghamari): One minute left.

Mr. Mohsen Seddigh: Yes, thank you.

Our last comment is on the addition of section 54, which would permit the termination of entire agreements that contain a single prohibited term or acknowledgement. We strongly support the need to make sure consumers are not bound by unfair terms; however, we think that this important goal is accomplished through the provision contained in subsection 14(2) of the new act and that the impact of section 54 is too broad. We support the power in subsection 14(2) to void prohibited terms or acknowledgements without terminating the entire agreement, and would suggest that section 54 be removed, as long as subsection 14(2) remains in the proposed act. This helps ensure contractual certainty while providing the necessary protections for consumers.

I would like to thank you very much for the opportunity, and we would be very happy to answer any questions you may have.

The Chair (Ms. Goldie Ghamari): Thank you.

We'll now turn to our last presenter, CanAge. Please state your name for the record, and then you may begin. You will have seven minutes.

Ms. Laura Tambllyn Watts: My name is Laura Tambllyn Watts. I'm the chief executive officer of the CanAge, Canada's national seniors' advocacy organization. I'm also a lawyer who focuses on aging, disability and consumer issues.

By way of background, CanAge is a non-partisan, non-profit organization which works to advance the rights and well-being of older Canadians located here in Toronto.

Joining me today are two of CanAge's graduate student team members working on their MSW degrees, and I will be dividing my time with one, Aiman Malhi.

We want to thank you for the opportunity to make submissions to you today. We're going to start off with our many areas of approval then highlight five specific areas where we believe some changes or greater specificity could be provided.

We will also write our submission and send that to you shortly.

We'd like to start by congratulating the government on this important bill. The streamlining of the legislation is a real benefit to Ontarians, whether they be consumers or the business, and the focus on dealing with the modern reality of online shopping is a key improvement. We applaud the strengthening of the existing consumer protections, par-

ticularly in the area of cancellation rights and the area of unfair practices, information for consumers required by business and also in the area of unconscionability more broadly. That extends to our enthusiastic support for the addition of unconscionable acts. Indeed, with an estimated one and six Ontarians the victim of elder abuse and an expected one in four to fall prey to financial exploitation, we believe at CanAge that this proposed bill will have the effect of being a new tool in the tool box to fight elder financial exploitation, although it will of course provide a broader net for all Ontario consumers. We also appreciate this bill protects the rights of consumers with disabilities by highlighting deceptive, false and misleading market practices.

We would like to emphasize that in addition to specific mentions of disability, we would like to see some specificity with regard to cognitive impairment, noting the dramatic increase in dementia, undue influence and cognitive impairment as an area of financial exploitation.

We approve of the increase in fines for individuals and corporations, and we believe that that will provide an opportunity to promote better consumer practices.

We also note with general approval the security freezes and the changes to consumer credit oversight.

We would like to move into five specific areas that we do feel could be improved. At the outset, we note that all consumer contracts could benefit from this inclusion, and without the areas of gift cards, pre-purchased cards agreements, loyalty cards and reward points and auto work, there is a gap that we would like to highlight for this group.

My colleague and I will focus on our five key areas. They are as follows:

- increased work on subscription traps to enable easy cancellation;
- ensuring inclusion of what’s known as “dark patterns” in the regulations;
- clarity on notice-of-disclosure mechanisms;
- unilateral contract amendments; and
- a general comment about the possibility of oversight with the creation of an independent consumer watchdog.

In brief, we believe that there should be some additional work done to ensure that subscription traps are addressed. It is very difficult to cancel subscriptions. We believe that it should be as quick as entering into a contract. Many of us will of course understand that you may need to go through many layers in order to cancel, and we believe that mandatory inclusion of visible, clear cancellation options in the primary account measurement page is key.

The second point is, we would like to make sure that there is an opportunity to influence consumer behaviours in a more positive way rather than the dark patterns that we see which can include things like small-text footnotes obscuring certain information and descriptions that obscure cancellation.

I will now turn to my colleague to continue and close.

Ms. Aiman Malhi: Thank you, Laura.

Now we’re just going to review some of the notice-of-disclosure mechanisms. We look forward to better understanding how this bill will interweave with accessibility

considerations and requirements in the regulation of contracts. We’d like to see greater clarity at this point, including a clear definition of accessibility that is consistent with the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act, and also noting cognitive impairment. The unconscionable-act component should explicitly be defined as a business practice that takes advantage of a consumer’s inability to protect their own interest as a result of personal disability, ignorance, illiteracy or inability to reasonably comprehend the terms or language of a consumer contract or similar factors.

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Crisp definitional aspects of this legislation and further expansion of these subsequent regulations will be important to achieve the goals of these changes. Additionally, to prevent cases of confusion of miscommunication between consumers and businesses, accessibility standards, as set out in the Accessibility for Ontarians with Disabilities Act, for any or all correspondence between consumers and service providers, should be adhered to. These should include the use of simple, comprehensible language in all contracts and written communications, as well as means for consumers to get clarification with a business representative, should they have any questions or concerns about their contracts.

The Chair (Ms. Goldie Ghamari): One minute.

Ms. Aiman Malhi: On to unilateral contract amendments: Unilateral contract amendments pose a significant problem for consumers in the digital market space. Consumers have the right to be informed about meaningful changes to the terms of contracts that they are engaged to, no matter the scope of the challenges. CAMH proposed the establishment of protocol standards for the informing of consumers when changes to a contract have occurred and that consumers to be able to exercise their rights to opt out in cases where amendments have meaningfully alerted the original terms of contract.

The Chair (Ms. Goldie Ghamari): Okay. Thank you. *Interjection.*

The Chair (Ms. Goldie Ghamari): Oh. Can she—okay.

Ms. Laura Tamblyn Watts: Thank you. We just wanted to conclude by noting that we support the establishment of an independent consumer watchdog organization, as proposed in Bill 122. That organization would allow for unbiased handling of consumer rights violations and appropriate complaints, and could aid in advocacy assistance for consumers, provide educational sources and conduct systemic investigations—

The Chair (Ms. Goldie Ghamari): Thank you very much. That’s all the time we have.

We’ll now turn to the official opposition to begin. MPP Stevens.

Mrs. Jennifer (Jennie) Stevens: Thank you, Madam Chair. Through you, I’ve got a few questions, just for clarification purposes, to the representatives from CAMH.

You mentioned—and I find it very intriguing, because I’m from St. Catharines. Within my riding, there was a gentleman who had a significant lien that was put on his house, because he suffered with cognitive disabilities. The

bad player, may I say, constantly was going back to him and selling him water heaters. I think the gentleman just didn't understand what the bad representative was selling to him.

Can you clarify? You did mention that there is room for improvement in this act for people who suffer with cognitive disability. Would you be able just to enlighten me on that again?

Ms. Laura Tamblyn Watts: Thank you for that excellent example, and one that thousands of Ontarians, specifically older people with cognitive impairments, experience on a regular basis.

We believe that within the framing of the term “disability,” there is an opportunity to be more specific and to ensure that people understand that we don't just mean just physical disabilities, but cognitive disabilities: challenges to the ability to understand information and appreciate the consequences, which would either make them vulnerable to these types of practices or possibly void the contract to begin with, with the inability to provide consent contractually.

Mrs. Jennifer (Jennie) Stevens: Well, thank you for that. One other thing that we've heard over and over again this afternoon from different representatives does focus in on the simplification of the wording within this act for people like seniors or the less fortunate who are illiterate, may I say. Across Ontario, I'm sure we do have several examples of that. Would there be a part within this act that you would like to see that improved?

Ms. Laura Tamblyn Watts: Thank you for the question. Our focus on ensuring that this legislation meets with the accessibility legislation in Ontario—we feel if these two things are melded together, it will achieve that. The accessibility-for-Ontarians legislation has a fulsome understanding about what best practices are in these areas. So we would like to see that legislation and that language referenced in this particular bill.

Mrs. Jennifer (Jennie) Stevens: Thank you very much for that clarification.

Madam Chair, if I may, I'm going to pass it over to my colleague.

Mr. Tom Rakocevic: Thank you. Time?

The Chair (Ms. Goldie Ghamari): Four and a half minutes.

Mr. Tom Rakocevic: Okay, thank you. Thank you very much to my colleague. And thank you, all presenters, for being here today and sharing with us.

I'm going to focus on CanAge for now. First of all, thank you very much for your advocacy. One of the things that you had mentioned was the dark patterns; we had a presenter discussing that as well. It brought to mind a fact that I hear from seniors who complain about consumer interactions in my constituency—and other vulnerable individuals and elderly—which is that as we move more and more online and digital, there seems to be a loss and a lack of options for some who don't want to move everything to the digital space, who still want to have face-to-face interactions or use pen and paper, mail letters and make phone calls—all of that. We're seeing a change where there's almost a loss of consumer options in many cases.

Can you comment on that? Is that something you hear from your membership? Do you have any ideas or comments on that?

Ms. Laura Tamblyn Watts: Thank you for the question. We do see this regularly. While Ontario seniors are generally very technologically literate, particularly those over the age of 80 see a sharp drop-off. We also hear a strong preference, both from our research and from our members, to have the option to make sure that they can still get paper-based materials. It is going to be critically important that that level of choice be still embedded and isn't taken away. And if I could just offer one further aspect to that: that they not be charged for that choice. In many cases, certainly, paper materials may be made available, but at a financial cost. We believe that is inappropriate.

Mr. Tom Rakocevic: Thank you for that. Certainly, I'm sure we all hear these types of complaints, so this is something very important to say.

I want to thank you. You had mentioned the need for a consumer watchdog and your support for the bill. Other jurisdictions around the world, namely the EU, for instance, are looked at as having a gold standard for consumer protection in many ways. That's because the governments have these bodies—external bodies, regulatory bodies—that have a very explicit consumer protection focus. Can you talk about why you believe that's important here, where we need proactive enforcement and, essentially, more power to consumers, rather than having consumers have a government that basically says, “Here are some laws to protect you. Go fight in the courts?”

Ms. Laura Tamblyn Watts: We know how critically important it is to have that oversight, and note with great approval Bill 122, the Ontario Consumer Watchdog Act. In short, everyday consumers don't have the ability to oversee the full range of contracts or the good behaviour. They also don't have the opportunity or ability to deal with systemic issues. We believe it is critically important for the success of this bill and for the success of everyday consumers such as vulnerable seniors to have that. We note with great approval the gold standard in the EU and would like to see similar aspects replicated in this legislation or correlative legislation in Ontario.

Mr. Tom Rakocevic: Thank you very much for that. And again, that would run parallel to this legislation as well and would be a big help, I think, to the government and consumers across the province.

One of the things that was mentioned—

The Chair (Ms. Goldie Ghamari): One minute.

Mr. Tom Rakocevic: Okay. It was a little confusing before, that the minister had mentioned—within this legislation, they talk about gouging, and the way it's really defined is that within a particular sector or product, they're going to look at different costs and make comparisons between different businesses. But then when asked and pushed further on that, the minister had basically said, “Well, I guess this is more for the Competition Bureau at the federal level.” Do you agree that there needs to be more done to protect against industry-wide patterns of gouging, like in the areas of auto insurance and other ways? You're probably not going to have a lot of time, so I'll get back to

you on that. But do you believe more should be done to protect against gouging on an industry-wide level here in Ontario?

Ms. Laura Tamblyn Watts: I think it would be very hard to say that people are against gouging. Naturally, we want to make sure that we have fair and appropriate circumstances, including cost overview. So certainly, when we're looking at what we need, particularly for vulnerable people like seniors, we need to make sure that the amounts are fair, equitable and that there is appropriate oversight to make sure that they stay that way.

The Chair (Ms. Goldie Ghamari): That's all the time we have.

We'll now turn to the independent member. MPP Blais, you may begin.

Mr. Stephen Blais: Thank you, everyone, for your presentations.

I'd like to ask the representatives of CanAge—we heard from an earlier delegation about dark patterns. They specifically referenced some examples that I think are more prevalent, perhaps, with younger people and video gaming—an example with Fortnite, in particular. I'm wondering if you have a real-world example of dark patterns as it relates to older Canadians and how they might get trapped with something. A very specific, real-world example?

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Ms. Laura Tamblyn Watts: Sadly, the answer is yes, I can give you many, many, examples from our members and from other Ontarians across the way.

Imagine you get an email. It's an outreach email; maybe you weren't supposed to get it anyway, but you got it. You click on it with good faith. Somehow then you're automatically registered. It is then almost impossible to get yourself unregistered. You try to click through it. In doing so, you oddly, somehow, get signed up for even more things. Some of that information is then being cross-sold through other ads or companies. You try very hard, but you can't see how you can get through the frequent pop-ups or the blocked ads that are in front of it. At that point, the incredibly small settings are such that no reasonable human being, and certainly no person over the age of 80, would ever be able to see it.

We see this time and time again and it leads not to unsubscribing, but rather our members find that they're signed up for more things and getting targeted and exploited as a result.

Mr. Stephen Blais: Thank you. I don't think you have to be over 80 to get caught in a trap like that. I think I've probably been caught in one or two of those over the years.

My mother-in-law is someone who is over 80 and doesn't have email, doesn't want email, doesn't want to talk about email, so my wife and I live with the paper billing issue and trying to get her bills for her without having to pay a couple of bucks every month for the privilege of paying for services she's already paying for.

I appreciate you highlighting that for us and all of your advocacy. I have to slip out to get to the Legislature, so I won't be here for the next round, but I appreciate all of your presentations today and your continued advocacy for these important issues.

The Chair (Ms. Goldie Ghamari): We'll now turn to the government. MPP Coe, you may begin.

Mr. Lorne Coe: My question is for CanAge, please. You'll know that the government is now consulting on legislative and operational options to help address harm caused by the registration of inappropriate notices of security interest. We're going to be accepting public and stakeholder comments until December 1, 2023. Through you: What additional approaches should the government consider to address the consumer harms that may arise from the inappropriate use of notices of security interest? Thank you.

Ms. Laura Tamblyn Watts: Thank you for the question. We have seen so many of members, so many older Ontarians, get caught up with unscrupulous practices, particularly when there are liens on personal property security or where there are threats, as our colleague spoke about, by using credit statements or other types of secured statements really as unscrupulous ways to extract money from people who either don't understand or can't possibly fight back against it.

We really appreciate this government's efforts in ensuring that some of those technical oversight issues are being dealt with at a structural and systemic level, because everyday people can't do that. The more vulnerable you are and the more challenged you are in seeing, understanding or even grasping the range of those impacts, the way that you can fight back becomes increasingly limited.

We feel that the restrictions on the notices of personal property security and the credit aspects are important, and we look forward to making some detailed submissions on it for the technical answers to your questions.

Mr. Lorne Coe: Thank you very much for that response.

Chair, through you to one of my colleagues, who I know will have questions as well. I also need to attend the Legislature.

The Chair (Ms. Goldie Ghamari): MPP Bailey?

Mr. Robert Bailey: My question is to Mr. Cross from TransUnion. In reflection upon the importance of consumers being able to access credit in this day and age to look after their well-being and to look after their needs and consumer protection, I think what the ministry is trying to do with this bill is aim to address consumer harms that can impact an Ontarian's credit. This is relevant in cases of identity theft and other things that could happen. Will empowering consumers with better access and the ability to share context on credit reports result in greater protections for Ontarians overall?

Mr. Clarke Cross: I mean, I think the short answer to that question is yes. This measure of implementing a security freeze in Ontario, as per my remarks, is a very powerful tool. It will, once it's implemented, stop the adjudication of new credit or the increasing of existing credit—or the lease of goods, is the other provision I believe is in there—so that if a fraudster were to attempt to try to apply for credit on an account where a security freeze exists, that would be immediately flagged by the creditor to stop and block that transaction from occurring. It's a powerful tool.

We've just seen it implemented in Quebec within the past year, and we think this is an opportunity that is right for Ontario to seize, to better protect consumers and ensure that if they suspect that they are a victim of fraud or they've already been a victim of identity fraud, this is something that they can do to control future occurrences of fraud.

Mr. Robert Bailey: Of the proposed changes in Bill 142, what do you feel are the most important for consumers and third parties?

Mr. Clarke Cross: Sorry. Just through you, Madam Chair: I didn't hear your question, Mr. Bailey.

Mr. Robert Bailey: Sorry?

The Chair (Ms. Goldie Ghamari): Can you repeat the question?

Mr. Robert Bailey: Oh, you didn't hear it? Sorry. I thought I spoke up. Of all the changes in Bill 142, what do you feel are the most important?

Mr. Clarke Cross: Well, I think there's the security provision. I'd actually welcome my colleague's thoughts on this too, because she may have a unique perspective, as well. But obviously, the security provision is important.

I also think there's the financial literacy piece, as well, too. In order for Ontarians to understand how lenders are perceiving them as a lending risk or their creditworthiness, providing consumers with free access to their consumer score, I think, really enhances the wealth and the richness of information that we're providing them, in addition to the consumer disclosure, which contains information about all of the accounts they hold, all of the notices and inquiries that have been made on the account.

So there are the two components, right? There's the security provision, and then there's increasing consumers' understanding of how their behaviours are affecting how lenders view them.

And I don't want to monopolize all the time. I see my colleague nodding through the monitor, but I'm sure she's got some thoughts on this too.

Ms. Johanna FitzPatrick: Yes, thank you. Again, this is Johanna FitzPatrick with TransUnion. I do feel the security-freeze provisions are extremely important for Ontarians. Additionally, the work that went in for consultations by the government to ensure that they apply to the appropriate use-cases, as opposed to a blanket application, shows the insight into the purpose of this.

There are other measures currently available to Ontarians through fraud alerts; however, this ability for a consumer to stop access to their information in the face of an application for credit is the first tool that would be available to Ontarians to stop transactions that would perpetrate financial fraud both on the financial institutions, but more importantly on Ontarians.

Mr. Robert Bailey: Madam Chair, I'll yield to one of my colleagues.

The Chair (Ms. Goldie Ghamari): Okay. Does anyone have any questions?

Ms. Christine Hogarth: We just want to double check: a minute left?

The Chair (Ms. Goldie Ghamari): It's just about 50 seconds. Do you want to wait until the next round?

Ms. Christine Hogarth: We'll just wait until the next round.

The Chair (Ms. Goldie Ghamari): Sounds good.

We'll go back to the opposition for seven and a half minutes. You may begin.

Mr. Tom Rakocevic: I'm going to go to the Bar Association. It was interesting because the presentation had modifications, like, "We support this, but we would modify it." I'm assuming you have some more submissions or whatnot that you're going to do, but you had mentioned that you wanted section 54 removed, and you thought that it would be okay and covered elsewhere. Can you give examples as to why this would be an improvement? It's in your notes.

Mr. Mohsen Seddigh: I'll pass it over to my colleague Mr. Edmondstone, who will address that question.

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Mr. Dan Edmondstone: So we think that section 54, which provides a cancellation right, is unneeded because the provisions in section 14 will make the impugned provisions—the mandatory arbitration, class action prohibition and those provisions are already in effect in the current act. Section 14 will continue that. Granting a cancellation right is a remedy that, in our submission, is too far. It undermines the entirety of the agreement at the option of the consumer, which oversteps a remedy that is required for the harm that is caused by these things. They can't force you to not have a class action now, they can't force you into arbitration now—so undermining the entirety of the agreement.

Many of these agreements are multi-jurisdictional and multinational, and so if there's an arbitration clause and it's not enforceable in Ontario, in our view, it doesn't cause a problem now. Allowing Ontario residents to cancel that agreement just creates contractual uncertainty in a way that undermines the economy, we think.

Mr. Tom Rakocevic: I see. But do you recognize that there are, in fact, barriers that many people are facing. We've heard it from many different presenters, where you have a set of laws that are provided by the ministry here in Ontario and if you want justice, you've got to go fight your day in court. For some people, especially who are vulnerable, this is a significant barrier.

You believe, in all cases, that cancelling a contract would be so much more harmful to the seller that it would basically require the consumer to have to now go to court, fight, perhaps against a large corporation, on something that we think should never have been changed—as an example—in service. Why apply it to everything?

Mr. Dan Edmondstone: Our submission is that section 54 would apply a cancellation right just for those certain types of impugned clauses. Cancellation is a right that exists in the current statute now and in the 2023 act, that will continue. That will be a standard remedy for many of the consumer rights.

But it's also important to remember that, ultimately, cancellation depends on going to court, as well. If the mer-

chant will not abide by your cancellation, your remedy is in court now, whether that's in Small Claims Court or in a class action or whatever. Ultimately, all of these rights are decided and enforced in the courts.

Mr. Tom Rakocevic: So, I want to touch on the next thing because, again, it's incumbent in the system for people to have to react to when they've been taken advantage of. There's not a lot of proactive punishment or penalties that exist here in the system protecting consumers from, let's say, industry-wide bad practices or in individual cases.

In the European Union, they are considered in many ways the gold standard of consumer protection. There are a number of jurisdictions around the world that are considered to have far better consumer protection than here, even after we are debating legislation that is an improvement in many different areas. But I've heard so many presenters say it simply doesn't go far enough.

I have a bill, as the official opposition, that would call for the establishment of a consumer watchdog here in Ontario. This would run parallel to the legislation and it would essentially create someone similar to the Auditor General who could weigh in on practices across industries that affect consumers. They could advise governments on changes to laws, and I think they would be a lot quicker to respond to changes in the system itself. We are going to see all sorts of changes that come with the advent of artificial intelligence, the fact that the economy moves to the digital side.

Would you, in principle, support the creation of a consumer watchdog here in Ontario similar to some of the gold standard jurisdictions across the world?

Mr. Dan Edmondstone: I think I'm going to bounce this over to my colleague Mr. Seddigh for an answer.

Mr. Mohsen Seddigh: Thanks very much, Dan. That's a very good question. What we do at the Ontario Bar Association is we receive submissions or consultation papers and we engage the membership, which is very diverse, of multiple practice areas and across the regions in Ontario. We receive feedback and then we generally work on a consensus basis and then provide that to the Legislature.

In the case of the question you posited, we'll be very happy to receive it running through our processes and provide you with feedback on it. I just don't think on this particular consultation we're well positioned to provide you with the organization's position.

Mr. Tom Rakocevic: Of course. That's prudent, and I'm really glad that you will look into that. I'm happy if you'd like to reach out and have any more questions, because there are many who are stating that this would improve consumer protection here in Ontario.

How much time do I have, Chair?

The Chair (Ms. Goldie Ghamari): You have a minute 20.

Mr. Tom Rakocevic: Okay. We talked about—there are unconscionable practices, but one of the practices that many are complaining about is gouging. I had asked this earlier of many different presenters. The way that this legislation is being drafted would identify gouging, again,

where it comes to one particular bad actor selling a product compared to others selling a similar product. Do you believe that this legislation is equipped to deal with industry-wide bad practices when it comes to gouging or other things as well? Or is the onus really on the individual to have to go and take someone to court?

Mr. Mohsen Seddigh: That's a very good question, and maybe I can answer it better through concrete examples that we have made submissions on and you have been very interested in. There were previous questions on it, the prime example being notices of security interest. My legal practice consists of probably talking to people every day who have suffered those consequences. I'm sure, over the course of these hearings, you've heard a lot about the harm that those do.

One example in our submissions where we touch on that point is the section 93 submission. I would say to you this: I think the instinct is right; you cannot just off-load this on the courts—

The Chair (Ms. Goldie Ghamari): That's all the time that we have. We'll now turn to the government for the final round. MPP Saunderson, you may begin.

Mr. Brian Saunderson: Thank you to all the presenters for your time and effort in this important feedback that we're getting today. My question is for the Ontario Bar Association.

We've had a number of presentations this afternoon that have been encouraging this legislation to be broader and to cover real estate transactions generally. We already have delegated authority with Tarion, which is the independent not-for-profit corporation responsible for administering the Ontario New Home Warranties Plan Act. There is security for deposits in a condominium corporation as well as on some new homes and provisions talking about delayed closing and occupancy and seven-year graduated warranties. Then, there's also the HCRA, which requires all builders to be licensed and monitors the construction end of it.

So my question to you is, do you feel that with those two regimes and independent parties, it's necessary broaden the context of this legislation to include purchases for homebuyers?

Mr. Mohsen Seddigh: Thanks for the question. Unless one of my colleagues corrects me, I do not believe we commented on that. It's a very good question, and I acknowledge the issue. Unless one of my colleagues, again, speaks up and directs me to part of the submission, we will be more than happy to run that question through our processes and provide you with a unanimous or consensus-based submission that looks at all aspects of the ups and potential downfalls of a decision on those lines.

Mr. Brian Saunderson: If you could do that, that would be very much appreciated. I think we're all acknowledging here that consumer protection is the end goal here. We want to make sure that consumers are protected from a transaction that's as little as a Tim Hortons cup of coffee to something that's much more significant, but we've got multi-layers here of jurisdiction and overlap. Previously, it has been kept out of this legislation because of the statute of frauds and other impacts of those types of contracts.

I'd be interested in your thoughts on that, understanding that, really, this legislation is trying to build a fence around issues so both consumers and vendors or service providers understand their obligations and their rights so that we can make sure that we've got a smooth consumer protection regime where we're making sure we're covering all ends of it. So if you were able to look into that for us, that would be very much appreciated.

The Chair (Ms. Goldie Ghamari): MPP Hogarth.

Ms. Christine Hogarth: Thank you to all our presenters today. It has been an interesting day; we've learned a lot. But something that wasn't stated—when I hear people talking about consumer protection, that's what this is all about. We want to make sure that people are aware that there is a mandate for the Consumer Protection Ontario, which is an awareness program, and it's administered by the Ministry of Public and Business Service Delivery and other organizations with administrative authorities to promote consumer rights and public safety.

There is a place where you can file a complaint against a company or an individual. You can either do that with a phone number—and I have the phone number here for Consumer Protection Ontario. It's 1-800-889-9768. People can learn about steps that they can take to file complaints with the ministry, and there is also a website.

I don't want people to think that there isn't an oversight to make sure that consumers are protected, because we have to make sure that not just our vulnerable but everybody is protected, especially in this new age of technology. We just don't want people who are listening to think there's nothing out there. The government certainly is doing something about that. Please make sure, if you don't have those numbers, that you can pass them along to your groups.

My question is really for CanAge—just about vulnerable seniors. When we talk about senior citizens and the new age of technology, when we talk about NOSIs, when we talk about people who have different literacy skills: Can you just elaborate a little bit on what you're hearing from your network of people on this legislation? Will it help them? Is it going far enough? What are they hearing when they talk to their friends about consumer protection?

Ms. Laura Tamblyn Watts: Thank you for the question. Older adults in Ontario are incredibly seized of this issue. There's not a lot that we see that has been done in consumer protection and we feel that this bill is a giant leap forward. It doesn't mean it's perfect, but it is very good in moving that needle.

Many older people are just, frankly, baffled by some of the stuff that we see in the dark patterns, and they're unable to become the consumers that they would like to be. They

feel like they can't trust the people who are trying to sell services and that is a fair point, because the sophistication of frauds and scams now is so profound that we need to be active in ensuring that we have all of those levels of oversights.

We know that people are very frustrated with consumer and credit scores, that they don't know how they're supposed to afford, every single month, to pay two companies to oversee their credit scores. It seems to make no financial sense and no good sense either.

They're concerned that they can't freeze things, that they don't have the ability to do so, and they don't know really where to start. They're extremely interested in making sure that people, particularly those who are easily influenced or specifically vulnerable—and, boy, did we see a 250% increase in this, of undue influence and elder financial abuse, during the pandemic—that those have some frames around them, and the notion of unconscionability and unconscionable acts are something that's extremely welcomed.

Ms. Christine Hogarth: I thank you for that, and hopefully—I know your organization and others will share these phone numbers and emails for them. Not everybody is comfortable on email so, for sure. The telephone number is important, so they know that there is help there to help them.

But also, the fact that there are penalties—high penalties. It says a fine of not more than \$50,000 for an individual and not more than \$250,000 for a corporation, or a term of imprisonment.

The Chair (Ms. Goldie Ghamari): One minute.

Ms. Christine Hogarth: So, we are taking these issues seriously. Obviously, there's more to do, and that's what we—when we heard from the minister this morning about what's more to do, and that's in this bill. And this will continue to be an ongoing conversation.

I just want to thank everybody for being here today and adding to the conversation on how we can protect our consumers of whatever age—because we all are getting up there in age, and we need to protect everybody. Thank you very much.

The Chair (Ms. Goldie Ghamari): Thank you very much. That concludes our public hearings on Bill 142 for today.

As a reminder, the deadline to send in a written submission will be 7 p.m. on Wednesday, November 22, 2023.

Seeing that there is no other business, the committee is now adjourned until 9 a.m. on Wednesday, November 22, 2023. Thank you, everyone.

The committee adjourned at 1754.

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