

**Consultation on Improving Ontario's Consumer Protection
Act - Strengthening Consumer Protection in Ontario**

Proposal Number: 20-MGCS023

**Submission of the
Public Interest Advocacy Centre**



**PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC**

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Introduction

The Public Interest Advocacy Centre (“PIAC”) is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. PIAC has been active in the field of consumer protection for over 40 years.

PIAC welcomes this opportunity to comment on the Ministry of Government and Consumer Services (ministry) consultation on improving Ontario’s Consumer Protection Act (CPA).¹ A full review of the CPA was long overdue. There is a clear need to revise and adapt the consumer protection legislation to adequately address the new challenges presented by today’s digitally oriented society and many prevailing and unaddressed challenges from before.

We seek to provide a consumer advocate perspective on the various issues raised by this consultation and hope that our comments will assist the ministry in its process for strengthening consumer protection in Ontario. At the outset, we indicate our support for most of the proposals presented by the ministry, which should greatly enhance the protections available to consumers.

¹ Ontario's Regulatory Registry, “Consumer Protection Act, 2002 Review Consultation Paper,” (December 1, 2020), online: <https://www.ontariocanada.com/registry/view.do?language=en&postingId=35387>>. Also see: Government and Consumer Services, “Ontario Launches Consultations to Update Consumer Protection Act,” News release, (12 March 2020), online: <https://news.ontario.ca/en/release/56273/ontario-launches-consultations-to-update-consumer-protection-act-1>>.

PIAC's Responses

Proposal #1: Combine written contract disclosure rules for internet, remote and future performance agreements into a single set of core rules to apply except where there is a demonstrated need for more specific disclosure requirements.

Agree

Disagree

Other – Please Explain Below

The details of such a core set of disclosure rules would be part of a consultation on regulations, should the proposed changes be made. You are welcome to make suggestions before that consultation.

Explanation and Additional Comments:

You may enter any additional comments here

1. We agree with the proposed measure to combine the written contract disclosure rules for internet, remote and future performance agreements into a single set of core rules. This would enable uniform protections for consumers with more clarity and certainty for both consumers and businesses. That said, any exceptions to these disclosure requirements should only result in more disclosure and transparency for consumers, rather than in any way permit the limiting or circumventing of the current protections, simply to move to the proposed single set of core rules.
2. A more technology-neutral approach would be more appropriate as noted by the consultation paper, with basic rights and obligations not differing based on the method of shopping, unless there is a need for more specific rules for matters such as door-to-door sales.² PIAC has often raised concerns regarding door-to-door sales, particularly, in relation to door-to-door sales of telecommunications services,³ and argues that more stringent disclosure requirements should be introduced for door-to-door sales, as these deals often involve consumers being pressured or duped into purchasing products and/or services that they do not need.

² Ontario's Regulatory Registry, "Consumer Protection Act, 2002 Review Consultation Paper," (December 1, 2020) at p.7.

³ Erica Johnson, Luke Denne, and Jenny Cowley, "CBC hidden camera investigation captures misleading sales tactics for Bell," *CBC News Business- Marketplace*, (2 March 2018), online: <<https://www.cbc.ca/news/business/hidden-camera-reveals-misleading-sales-tactics-for-bell-1.4556536>>, and CBC News, "Some door-to-door sales no longer allowed in Ontario," *CBC News* (1 March 2018), online: <<https://www.cbc.ca/news/canada/sudbury/ontario-door-to-door-sales-banned-1.4557846>>.

3. We suggest that the ministry should also consider the challenges that might arise in applying this rule in relation to businesses that use more than one medium for completing business transactions, as they could be doing business at their stores, providing in-person business services as well as online.⁴ It is not clear from the consultation paper that how the proposed measure would apply or be affected in case overlapping and different mediums are used for conducting business. We argue that the ministry should clarify this and ensure that same standards of written disclosure apply regardless of the mode of transaction and communication used by the business, to the extent possible.
4. Moreover, the onus should be placed on businesses to ensure that consumers receive full disclosure as proposed and before the contract and/or change is signed by the consumer, irrespective of the method of business or communication means used.
5. As for the specific content, the ministry should consider prescribing the precise format requirements for all consumer contracts. In this regard, the ministry could consider adopting model disclosure forms and/or clauses. For example, it could prescribe the main issues that must be clearly covered, the presentation of these issues with the specific format to be used, and in particular require that all the main issues and changes are written in bold and/or in a reasonably large font. Also, all types of consumer contracts must be required to comply with this requirement. In case such a format is not prescribed, there is a chance of non-uniform versions of contracts, which could lead to unclear presentation of the protections offered by the new regime.
6. That said, some contracts might require additional details and disclosure depending on the nature of transaction; such contracts should provide these additional details, while also complying with all the main formatting requirements.

⁴ For instance, the Staff Working Document of the European Commission (2017) that provides a comprehensive overview of the findings and data gathered relating to the possible impacts of fully harmonised rules on consumer contracts for the online and offline sale of goods, found that: “Recent data show that in 2015, 1.32 million retailers (37 % of all retailers in EU-28) sold both face-to face and at a distance and, according to industry data, their number is expected to increase further, as many offline-only retailers will have to adapt to the online market trend and to competition pressure exerted by retailers selling online or both online and offline. According to most recent data, the share of companies selling both face to face and at a distance has increased in 2015 from 36 % to 39 % and at the same time the incidence of those selling only face-to-face has dropped from 56 % to 53 %, compared to 2014. The recent Commission ecommerce sector enquiry shows that the average proportion of sales via independent distributors selling only offline is already decreasing steadily (from nearly 58 % in 2005 to around 34 % in 2015). This increase in online sales and omni-channel retailing follows the growing consumer demand and consumers’ expectations of being able to switch back and forth between online and physical shops before making their purchase, while opening up new business opportunities and creating a market expansion effect (i.e. a total sales increase).” [Emphasis added, footnotes omitted].

Source: European Commission, “Commission Staff Working Document on the Impacts of fully harmonised rules on contracts for the sales of goods supplementing the impact assessment accompanying the proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods...,” Brussels, 31.10.2017, SWD(2017) 354 final, online: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2017:0354:FIN:EN:PDF>> at p.18-19.

7. We emphasize on the need to ensure that the specific disclosure requirements are drafted in simple, plain and clear language, enabling an average consumer to easily understand their rights and protections offered. Unlike certain disclosure requirements in the current CPA, which may not, at times, provide clear information and guidance on the applicable disclosure obligations.⁵ The ministry should also provide short and succinct guides on these disclosure requirements so that consumers can know what to expect. Such guides should be made available on the ministry's website and be made available in other alternate formats and languages for ease of access and use and, ideally, distributed by retailers and other businesses.

Proposal #2(a): The only way to change a consumer contract should be if:

- **The consumer expressly consents, in writing if the initial contract needed written consent; or**
- **The business sends advance notice of the change and:**
 - **The contract is one which the consumer can cancel at any time and without termination costs; or**
 - **The change(s) do not increase the consumer's obligations or reduce the business's obligations (e.g., disclosing changes in business contact information).**

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

8. We concur with the need to strengthen consumer rights when it comes to amendments to contracts, as unilateral changes to the contract are not only unfair but often leave consumers with no choice and say in these matters.

⁵ Stephany Mandin, "Canada: A Guide To Disclosure Requirements Under The Ontario Consumer Protection Act," Goldman Hine LLP, Mondaq (14 July 2017), online: <<https://www.mondaq.com/canada/dodd-frank-consumer-protection-act/554032/a-guide-to-disclosure-requirements-under-the-ontario-consumers-protection-act>>. (Broadly, the author notes that the Ontario Consumer Protection Act, SO 2002, c 30, Sched A, provides the financial disclosure obligations in relation to often complex credit agreements with little guidance or case law to interpret CPA's extensive regulations).

9. We generally agree with the proposed provision to only allow a consumer contract to be changed if the consumer expressly consents in writing if the initial contract needed written consent or the business sends advance notice of the change with an option for the consumer to cancel at any time without termination costs or that the change does not increase the consumer's obligations or reduce what is owed to them under the contract.
10. That said, we submit that the provision on advance notice should be made more specific with defined time constraints and limits that must be complied with, otherwise different businesses could be setting their own time frame, which may not be adequate in giving consumers sufficient time to make the required decision i.e., whether to accept the changes or terminate the contract. In this regard, we suggest that a minimum of 30 days' notice should be given by each business. In addition, the ministry may wish to make explicit in the Act how such a prohibition on unilateral contracting will impact common law contractual rules such as novation and if this is prohibited, to clearly so state.

Communicating Changes:

11. In our view, there is also a need to set the specific procedure and manner in which this notification is given to consumers as non-uniform communication practices can lead to several consumers not being aware of any changes until much later. We note that often such changes are sent over email include details in legalese and/or in fine print. Therefore, the ministry should consider including minimum standards on how businesses communicate these changes. The law should set practices that are clear and easy to understand and follow. We believe that in today's digital society, this has become even more necessary as due to the high volume of marketing emails and other materials sent online, such notifications and changes can be easily missed by consumers. The legislation could therefore set out a standard form for consumer consent to changes.
12. Additionally, there could be some consideration on requiring these notices to be sent through multiple platforms and/or means. By this we mean, that there should be personal notice, through mail or email and also an online account- if applicable, and also through a public notice, which could be an update on the business' website and announcements on their social media platforms.
13. Earlier, we raised similar concerns regarding the delivery of notices, and asked for vendors to be responsible for the delivery of legally required notices and binding communications.⁶ We stated that "at a minimum, Ontario's consumer protection laws should put the onus on vendors to ensure that binding communications sent by them to consumers have actually been received by the consumer." We reiterate the need to

⁶ Philippa Lawson, Angie Barrados, Ontario Consumer Protection Law Reform, Public Interest Advocacy Centre, online: <<https://www.piac.ca/our-specialities/ontario-consumer-protection-law-reform/>>.

similarly make vendors responsible for the delivery of such notices and all other changes to the contract.

Scope of the Changes:

14. While we support the proposed measure from the ministry, we would like to draw its attention to one specific issue that should be addressed in this context, which is the scope of the changes that are made. We understand that the proposal, broadly calls for consumers' explicit consent to the changes or the right to terminate the contract with no costs, but sometimes it might not be clear to consumers that what are they actually consenting to with the change drafted in broad and vague terms. Such broad changes could leave a lot of discretion and room for adjustments with the businesses that they can use to their advantage at the costs of consumers' interests. For instance, an academic article, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," provides some examples about such wide clauses.⁷

"[W]hile consumers value information about changes to their contracts, self-interested firms may employ sneak in contracts that allow them wide discretion and maximum flexibility with minimal transparency requirements. In this fashion, sneak in contracts might allow the modification to occur at the sole discretion of the business and at any time. In line with that concern, under sneak in contracts, contractual changes might come into effect automatically, or even retroactively. That is, obtaining the consumers' active, direct or explicit assent might not be a prerequisite for implementing the changes."⁸

15. We presume the ministry will suggest a ban on circumvention of the consumer consent rule. We also urge the ministry to consider requiring businesses to give explicit notice of the specific changes that are being made, which should be clearly stated, enabling consumers to provide a well-informed consent.

16. The article cited above studied 500 sign-in-wrap contracts (in which the user agrees to the terms and conditions as part of the sign-up process) of the most popular sites in the US,⁹ and also compiled the various elements of sneak in contracts in a diagram (see below), providing a useful overview on unilateral changes to contracts.¹⁰ The results presented by this study demonstrate the clear need for implementing the measure proposed by the ministry.

⁷ Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (Date written: 25 January 2020), 55 Georgia Law Review (2020 Forthcoming) available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3525212.

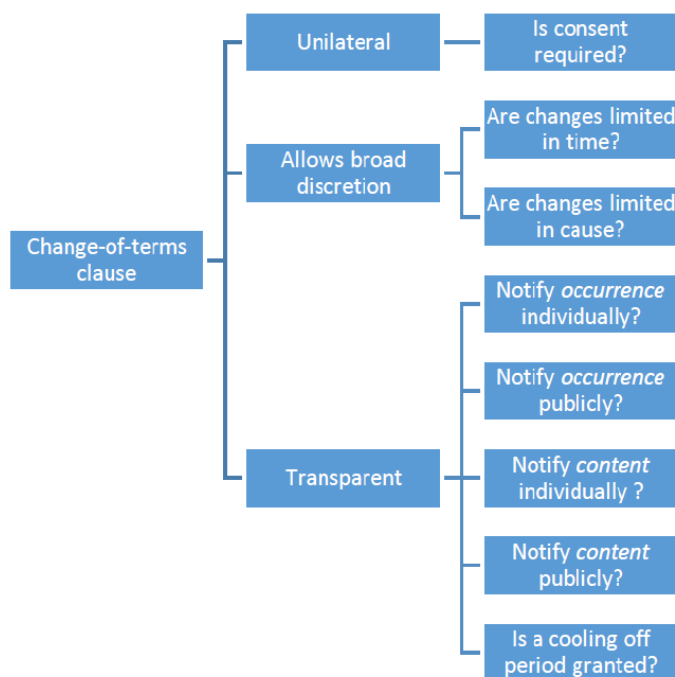
⁸ Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020) at p.9.

⁹ Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020).

¹⁰ Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020) at p.17.

17. Broadly speaking, the article found that most change-of-terms clauses allow firms to unilaterally change the contract, as 98.54% (n=472) out of 479 change-of-terms clauses examined do not require consumers' active assent as a prerequisite for the change to come into force and allows the change to come into effect automatically.¹¹ It also found that the change-of-terms clause in the vast majority of contracts in its sample was broad, which gave firms wide discretion to modify the contract.¹² Furthermore, the vast majority of modification clauses allowed firms to make hidden modifications as it lacked features to ensure reasonable levels of transparency with most clauses in its sample failing to require firms to effectively notify consumers about any changes to the contract, with no general requirement to notify consumers about the change through a publicly accessible platform, no obligation to provide details as to the substance of contractual modifications with no clarity as to what is to be informed, and no cooling-off periods in general with only a small minority of clauses providing consumers with a cooling-off period and that also varied in length with some clauses providing a 30 day cooling-off period and some providing 14 days or other timeframes.¹³

Diagram 1. The elements of sneak in contracts



Source: Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020).

18. Another related issue that should be noted is the inconsistencies arising with respect to the type of business imposing or bringing about the change. For example, the study

¹¹ Shmuel I. Becher & Uri Benoliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020) at p.20-23.

¹² *Ibid.*

¹³ *Ibid.*

undertaken by the article noted above, shows that those websites with lower traffic could possibly be less transparent than those with a higher traffic.¹⁴ This is important to note as it indicates the potential transparency and compliance issues that could arise.

[P]otentially, websites with lower traffic may be likely to have less transparent modification mechanisms than sites with higher traffic. First, the probability that consumers will detect hidden contract changes, and fiercely resent them, is lower when fewer consumers visit and monitor the website's activities.⁴¹ Second and closely related, websites with low traffic, as opposed to highly popular firms such as Google, Amazon, eBay, Airbnb, Instagram and Facebook, may be less closely watched and covered by online and mass media.¹⁵

Problematic Changes and Consumer concerns:

19. Another issue that merits attention is types of changes to contracts that consumers would prefer not to consent to. In our view, one problematic change is an abrupt end to the consumer contracts, which could be for business reasons, non-payment, an unresolved dispute or otherwise. Consumers getting "fired" by businesses, particularly for an essential service or because of an unresolved dispute is immensely unfair and problematic because it gives inequitable control and discretion to the businesses and leaves consumers in a potentially vulnerable position. This is especially true in light of COVID-19, where consumers' choice of providers may be quite restricted in their area.
20. We believe that if businesses are allowed to retain this control, they should at least be required to follow a set procedure, such as give reasonable advance notice of the termination of contract and provide reasons to the concerned consumer. The ministry should also reserve the right to reinstate the consumer contract if the consumer had no practical way to replace the service and the service were sufficiently essential. This would give consumers some time to plan and look for alternatives or to try to make amends on their end to keep the contract in effect, including but not limited to, making the necessary payments or coming up with an installment plan. We encourage the ministry to look into these issues while drafting the revised legal and regulatory framework to allow for more fair and equitable practices.

¹⁴ Shmuel I. Becher & Uri Benliel, "Sneak in Contracts: An Empirical and Legal Analysis of Unilateral Modification Clauses in Consumer Contracts," (2020) at p.11.

¹⁵ *Ibid.*

Proposal #2(b): Automatic contract renewal should only be possible if the consumer then has an ongoing ability to cancel at no cost from that time onward.

Contract renewal could be either by express consent, in writing if the initial contract needed written consent, or by a renewal process that includes advance notice to the consumer and renews the contract into an indefinite term (e.g., month-to-month or a shorter period) with no termination costs.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

21. We agree with the proposed provision that automatic renewal should only occur if the consumer has an ongoing ability to cancel at no cost later. That said, if the renewal is allowed to be based on a renewal process that includes advance notice to the consumer, then there should be consideration on identifying a specific time frame in the regulatory framework, otherwise as noted earlier, each business could be following their own time frame, resulting in inconsistent practices and protections.

22. We caution the ministry that it must specify with crystal clarity whether the customer is entitled to a pro-rated invoice up to the date of cancellation (or a pro-rated refund for pre-paid months of service or goods) – which we support – or if the billing may run to the end of the service period in which the consumer cancelled – which we would oppose.

Proposal #2(c): If adopted, these rules would apply to all contracts entered into after the rules come into force and to existing contracts one year after the in-force date (e.g., a subscription to a service entered into before the law is changed could not be amended or renewed without either clear consent or adopting a cost-free termination right after one year following the in force date of the new law).

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

23. The proposal to cover existing contracts after one year seems reasonable for contracts in general. That said, there are some issues that we think require consideration. Many contracts consist of onerous terms, for instance, the penalty for cancelling a contract early. This will continue to hurt consumers with older contracts who would not be able to avail the protections offered by the law for another year. The ministry therefore should consider how to deal with long-term contracts that may extend back past the one year period.

Proposal #3: Allow price changes under contracts only if the consumer explicitly consents to them as amendments to the contract (in writing if the initial contract needed written consent) or if the contract also gives the consumer a right to cancel cost-free at any time.

Agree

Disagree

Other – Please Explain Below

If you believe price increase or escalation clauses are necessary in contracts where consumers cannot cancel without penalty, please tell us why.

Explanation and Additional Comments:

You may enter any additional comments here

24. The proposal on allowing price changes to only occur with the consumer's explicit consent to the contract or with the consumer's right to cancel cost-free at any time is an important measure and much-needed.

25. However, we believe there is a need to add a specific provision that requires businesses to give advance notice of price changes to provide more clarity and certainty as to when and how consumers are to be informed about price changes. In the absence of such a provision, it is possible that many consumers might not know about it until the payment is due. A notice provision would not only better facilitate consumers' ability to consent to the change or decide otherwise, but also allow them to prepare for the increased price, as applicable. We suggest a 30 day notice period for price increases of 5% or more.

26. We also note that considering the jurisdictional issues in relation to telecommunications services, the compliance of this provision by telecommunications service providers may be a challenge and we suggest that the ministry should look into this aspect and liaise with federal authorities to better understand its application in relation to these services.

Proposal #4(a): Add more examples of expressly forbidden misleading practices such as false claims of government oversight or other licensing and false prize claims as unfair practices.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

27. We are pleased to see the ministry’s initiative to address this serious issue by adding more examples of forbidden misleading practices, such as false claims of government oversight or other licensing and false prize claims. We support such a measure and would encourage the ministry to regularly review it and remain receptive to adding more examples in the near future to adequately address any other consumer issues. We emphasize on the need to better publicize this list for better consumer awareness and transparency.

Proposal #4(b): Strengthen the banning of unconscionable practices by explicitly prohibiting certain specific practices such as price gouging.

Agree

Disagree

Other – Please Explain Below

If you have suggestions for other practices to be defined as misleading or unconscionable, please include them below.

Explanation and Additional Comments:

You may enter any additional comments here

28. Likewise, we support the proposal of banning unconscionable practices by explicitly prohibiting certain practices. That said, there are some aspects of this proposal that need clarifications and details. For instance, it is not clear from this proposal how would the phrase “unconscionable practices” be defined and whether this is meant to be a closed-

or open-ended category. We presume this list, open or closed, could be kept current by regulation.

29. There are benefits and challenges with both open and closed lists. For instance: A closed ended approach might not cover all business tactics used to entice customers; however, it might provide certainty and clarity on what the law/rule does protect against. Whereas an open ended approach might create uncertainty but may also allow the application of law to those unconscionable practices that are not covered.
30. The ministry should consider these details in determining the most appropriate way to tackle this, and also determine if there is a need for any threshold to be met for a conduct to be deemed as unconscionable for the purposes of this proposed measure.
31. We also reiterate the need to better publicize this list and related resources. This is to ensure that consumers can easily have access to these resources. The ministry should consider making these resources available in more than one language and in different formats to cater to the special needs of consumers.
32. Finally, regarding price gouging, we believe that such a rule, as an unconscionable practice, will be difficult to implement in normal times. During a pandemic under emergency legislation, this is possible; however, under a capitalist system, the ministry could expect serious pushback on attempting to regulate the “price” of non-essential goods.

Proposal #5: Ban advance payment for contract breaking and exit offers such as timeshare exit and home fixture lease breakers. Payment should only occur after the consumer receives at least the minimum outcome the law requires for an agreed cost.

Agree

Disagree

Other – Please Explain Below

If you have suggestions for other businesses that should not take payment in advance, please include them below.

Explanation and Additional Comments:

You may enter any additional comments here

33. We strongly support this measure on banning advance payment for contract breaking and exit offers, including timeshare exit and home fixture lease breakers, with payment to be only required after the consumer receives at least the minimum outcome the law requires for an agreed cost.

34. The risk of consumers getting hurt from advance payment could be quite high. As the proposal notes that the consumer may pay companies thousands of dollars in advance to help end a contract or transfer their obligation but later the consumer gets no help or an offer that is not meaningfully better than the harsh termination charges.¹⁶ Thus, we believe the ministry should also consider only allowing advance payment provisions to apply to some businesses. This could include businesses like the home renovators who need money in advance to pay for supplies, as noted in the proposal.¹⁷
35. Notably, the COVID-19 pandemic has given rise to several issues relating to refunds for services either not performed at all or partially performed. The ministry should consider whether the revised law should include specific provisions to deal with similar situations in the future where the services could not be performed as required under the contract. We submit that the new law should require businesses to not ask for advance payments for a service they know that they will be unable to provide.¹⁸ This could be based on whether the business reasonably or actually knows about their inability to perform a service. There could be some deliberation on the specific standard to apply in this context, that said, we emphasize on the need to prioritize protecting consumer interest in such transactions.

Proposal #6(a): Make all leases with total payments exceeding 90% of the item's retail value include a 10-day cooling-off period, regardless of whether the contract was entered in-home, in-store, online or otherwise.

- Agree**
- Disagree**
- Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

36. The purchase-cost plus leases present many challenges for consumers, particularly when they seek to end it early, which not only triggers the obligation to buy out the leased product immediately, but in many situations leads to paying much more than the item's purchase value. Thus, we certainly support having a cooling-off period of such leases, regardless of how and where they were entered into.

¹⁶ Ontario's Regulatory Registry, "Consumer Protection Act, 2002 Review Consultation Paper," (December 1, 2020) at p.14.

¹⁷ *Ibid.*

¹⁸ See: Debbie Heywood, "Do you need to offer consumers refunds for COVID-19 related cancellations?" Taylor Wessing (18 May 2020), online: <<https://www.taylorwessing.com/en/insights-and-events/insights/2020/05/radar-may-2020---do-you-need-to-offer-consumers-refunds-for-covid-19-related-cancellations>>.

37. That said, we would encourage the ministry to review the duration of this cooling-off period in at least two years after its implementation to ensure that a 10-day period is an adequate time for consumers to cancel this type of lease.
38. We highlight a related issue in this context that should be considered. It is the registration of liens in respect of these leased items against the consumer's property, whose actual retail cost is much less than the registered lien. A media story shares the difficulties faced by a consumer, Howard Regan whose elderly father had signed three contracts with a company who had registered \$25,000 in liens for their equipment on his father's house, whereas the furnace, air conditioner, water softener and water filter's actual value was thousands of dollars less than the liens registered on the house.¹⁹
39. We note from the proposal that the ministry is considering defining a category of leases where the total payments whether over its lifetime or due to added termination costs exceeds 90% of the retail value.²⁰ We would suggest that the ministry also consider a category of the types of leases that place liens on consumers' property and reflect a charge which is much higher than the retail value of the product. Although we would prefer that no liens could be placed on consumer items for the household at all, we would support a rule limiting liens to 90% of the retail value of the product at the time of initial leasing.

Proposal #6(b): Require leases of this type to make standardized and consistent first page disclosure of critical contract information including their full cost and buyout charges.

If you have suggestions for critical disclosure requirements, please include them below. Please note that such a requirement would be in regulations, subject to the passage of a proposed bill. There would be further consultation in developing the disclosure requirements. Your suggestions now would help inform proposals for that consultation should this proposal move forward.

- Agree**
- Disagree**
- Other – Please Explain Below**

Explanation and Additional Comments:

You may enter any additional comments here

¹⁹ Nicole Brockbank, "Man still paying off 'predatory' contracts his father signed with HVAC company funded by big financial lender," *CBC News* (25 March 2019), online: <<https://www.cbc.ca/news/canada/toronto/home-trust-hvac-rental-contracts-1.5067957>>.

²⁰ Ontario's Regulatory Registry, "Consumer Protection Act, 2002 Review Consultation Paper," (December 1, 2020) at p.16.

40. We strongly support the provision requiring leases of this type to make standardized and consistent first page disclosure of critical information that includes their full costs and buyout charges. There have been several news reports indicating consumers' difficulties in relation to ending these leases early with extremely high termination costs. For instance, one consumer Tracy Spence, told CBC news that after paying more than \$7,000 total in monthly rental fees since 2016, she was told she would have to pay another \$32,406 to buy out her contract, giving her ownership of the appliances.²¹ Furthermore, according to her contract, the furnace and air conditioner had a combined "cash selling price" of \$10,798.²² These predatory practices remain outright unfair and inevitably result in significant consumer distress. Many of these instances could be avoided with better disclosure practices.

41. The critical disclosure requirements should certainly include the full costs of the lease, buyout charges, the termination costs and the duration of these lease (to inform consumers for how long they have to pay). Importantly, such information should be presented upfront and before signing of the lease.

Proposal #6(c): Limit termination costs of such leases in a similar way to limits on loan prepayment costs. Maximum termination costs would decrease over time in keeping with a disclosed schedule, based on the implicit finance rate in the lease, just as loan prepayment costs decline over time.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

42. We support this measure that limits the termination costs of such leases in a similar way as loan prepayment costs with the maximum termination costs decreasing over time. Importantly, this should be disclosed upfront to the consumers as well and in a simplified form so that consumers are not only aware of the limits placed on the termination costs but also know how these are being calculated to enable consumers to make well-informed decisions.

²¹ Sophia Harris, "I was livid!: Single mom hit with \$32,000 bill to break furnace, air conditioner rental contract," *CBC News Business* (26 January 2020), online: <<https://www.cbc.ca/news/business/home-energy-appliance-rental-crown-crest-furnace-1.5439572>>.

²² *Ibid.* Also see: Adam Carter, "Ontario man says he's out \$20K after nightmare deal with water heater, furnace company," *CBC News Hamilton* (14 February 2018), online: <<https://www.cbc.ca/news/canada/hamilton/water-heater-green-planet-1.4535170>>.

Proposal #6(d): Require service contracts connected with such leases to be optional services subject to termination by the consumer at any time, unless service is included in the lease and its costs covered by the lease cost disclosures. As optional services, this would mean the business could raise the price of such services from time to time under Proposal #3, since the consumer may cancel without cost.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

43. Yes, the service contracts connected to such leases should be made optional and the fact that they are optional should be clearly disclosed to the consumers before they sign any document, unless the service is a part of the lease and its costs are covered by the lease cost disclosures.

44. That said, for the price changes of these services, we suggest that the CPA mandate a clear requirement to inform consumers about these changes at least 30 days in advance to allow consumers time to cancel these services and look for alternatives as need be.

Proposal #6(e): Apply these prepayment rights to such leases entered as part of new home sales and continue them when homes are resold.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

45. We agree with the proposal to apply these prepayment rights to leases that are entered as part of new home sales and they should continue when homes are resold. This is to ensure that the previous and new owners of the home are able to access the protections provided by this provision. Moreover, these new owners should be informed about these prepayment rights with all material details disclosed upfront. We oppose balloon

payments triggered on items in the home where these excessive charges are secured by liens and are effectively taken out of the seller's purchase proceeds on a house sale.

Proposal #7(a): The CPA should clarify a business's obligation to discharge notices related to leased consumer goods registered in the Land Registry System when the contract for the leased good is cancelled or terminated in accordance with the CPA.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

Proposal 7(b): Where the Director under the CPA has issued a compliance order after a business fails to discharge the registered notice and the order is confirmed, the CPA should empower the Director to issue a statement which the consumer could have registered on title to discharge the notice. The consumer would work through a Teraview licensee (typically lawyers) to complete the registration.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

46. We support these provisions related to addressing issues with attached notices of security interests that become a barrier for consumers when they want to sell their home or end their agreement. The proposed provisions would clarify businesses' obligations regarding discharging these notices and also simplify the redress mechanisms available to consumers in case these notices are not discharged.

47. Removal of these clouds upon title will remove the ability of such businesses to "hold hostage" consumers who are attempting to sell a house with an inaccurate entry on the land titles system. We trust significant fines will attach to businesses refusing to remove these claims on title and strongly support the ability of the Director to remove such encumbrances directly, or by providing a notice to consumers to use with their counsel.

Proposal #8(a): Require timeshare contracts to make improved disclosures about future obligations and financial risks involved in real estate interest-based timeshares.

If you have suggestions for improved disclosure, please include them below. Such improvements would be in regulations, about which there would be further consultation. Your suggestions would help inform proposals for that consultation.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

48. We support the proposed measure for improved disclosure about future obligations and financial risks involved in real estate interest- based timeshares. Timeshares remain a major issue for consumers and are extremely difficult get out of.²³ Thus, it is integral that the ministry sets clear disclosure standards, which enable consumers to have access to as much information as possible and facilitate well-informed decision making.

49. In this regard, it is essential that the ministry takes into account all the details currently provided by businesses and review gaps in these examples. Some information that should certainly be included is the duration of these timeshares or the fact that some of these are perpetual (such as real estate purchases), ongoing costs, its depreciation value, and availability of the buy-back or take-back option.

50. Also, all such information should be presented upfront and before the purchase. It should also be written in clear and reasonably large font to ensure that consumers do not miss out important details and make a fully informed decision.

²³ Barbara Peterson, "Trouble in Timeshare Paradise," *Consumer Reports* (19 December 2019), online: <<https://www.consumerreports.org/vacations/trouble-in-paradise-timeshares/>>. Also see: Federal Trade Commission, Consumer Information, "Timeshares and Vacation Plans," online: <<https://www.consumer.ftc.gov/articles/0073-timeshares-and-vacation-plans>>, and Christopher Elliott, "Trapped in a timeshare? Here's how to escape," *USA Today* (26 December 2018), online: <<https://www.usatoday.com/story/travel/advice/2018/12/26/timeshare-troubles-extricate-unwanted-unit/2375107002/>>.

Proposal #8(b): Require timeshare contracts to include an exit option that consumers can use once they have owned a timeshare or been in a timeshare contract for at least 10 years. The largest exit cost allowed would be one-and-a-half times the timeshare annual fee.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

51. We strongly support having an exit option in these timeshare contracts that consumers can use once they have owned a timeshare or been in such a contract for at least 10 years with the largest cost as proposed i.e., a one and half times the timeshare annual fee. That said, we would encourage the ministry to review the time set for this exit option and the proposed amount in the coming years to see whether these provisions are able to adequately protect consumers or not.

Question #8(c): If adopted, should the rule allowing consumers to surrender their timeshare at a limited cost apply to timeshares bought before the new provision comes into force (e.g., if the provision comes into force in 2022, timeshare owners who bought earlier than 2012 could use the remedy)?

Yes

No

Other – Please Explain Below

52. Yes, the rule allowing consumers to surrender their timeshare at a limited cost should apply to timeshares before the new provision comes into force. As noted above, these timeshares are extremely difficult to get out of, and not extending the protections offered by the proposed measure to consumers who have had a timeshare before this provision takes effect would be unfair and would seriously limit the overall efficacy of this regime.

Proposal #9: Forbid contract terms that prohibit consumers from publishing fair reviews of the business or its goods or services or impose charges on consumers for the contents of such reviews.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

53. We agree with the proposed measure. It is extremely important in today's digital society to protect consumers' right to publish fair reviews where it is common for most consumers to refer to online reviews to decide whether to purchase a good and/or service.²⁴

54. Contract terms that prohibit consumers from publishing fair reviews of the business's goods and services or impose costs for the content of these reviews can be a substantial impediment on consumers' ability to share information and/or opinions. Such terms also unfairly limits consumers' access to true and reliable reviews and should be strictly prohibited.

55. Notably, these reviews play an important role in not only influencing consumer decisions but can be useful for reinforcing a company's credibility in the market.²⁵ These reviews help develop customer trust and could translate into more interaction and business from consumers.²⁶ A 2019 research from Trustpilot indicated that consumers would lose trust in a brand not only if they saw negative reviews—but also if the brand deleted them.²⁷

56. Considering the importance of honest review in today's times, we would suggest that the ministry consider imposing penalties for the violation of this provision. In this regard, we refer to the Consumer Review Fairness Act (CRFA), a US federal consumer protection statute that protects people's ability to share their honest opinions about a business's products, services or conduct in any form- including social media.²⁸ This statute provides

²⁴ Jill Anderson, "Why Are Customer Reviews So Important?" *Medium* (27 November 2018), online: <<https://medium.com/revain/why-are-customer-reviews-so-important-185b915d4e5d>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Rimma Kats, "Consumer Trust Relies Heavily on Reviews and Brand Honesty," *Inside Intelligence* (4 September 2019), online: <<https://www.emarketer.com/content/consumer-trust-relies-heavily-on-reviews-and-brand-honesty>>.

²⁸ Federal Trade Commission, Consumer Review Fairness Act: What Businesses Need to Know, online: <<https://www.ftc.gov/tips-advice/business-center/guidance/consumer-review-fairness-act-what-businesses-need-know>>.

enforcement authority to the Federal Trade Commission and the state Attorney Generals and states that a violation of CRFA will be treated just as violating an FTC rule defining an unfair, or deceptive act or practice and makes companies subject to financial penalties.²⁹ Our suggestion to include penalties in relation to this provision is not to penalize any business but rather, to discourage non-compliance.

Proposal #10(a): Prohibit contract terms that suggest a consumer has waived any CPA legal rights, such as the right to join a class action and the right to bring a court action under the CPA.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

57. We strongly support prohibiting contract terms that suggest a consumer has waived any CPA legal rights, such as the right to join a class action and the right to enforce one's rights in court. These provisions are generally sneaked into contracts by businesses to protect themselves against liability by placing an unfair limit on consumers' ability to enforce their rights. Such provisions should not be allowed to be placed in a contract, whether enforceable or not, as businesses may knowingly or negligently assert that these clauses have effect to consumers and thereby discourage such consumers from seeking just redress.

58. Class action waivers substantially limit consumers from seeking collective redress to issues. It is important to preserve consumers' access to class actions, which is a significant legal mechanism to address and rectify business misconduct.

59. Thus, we support the inclusion of the proposed measure that will provide much needed clarity to the law and ensure that consumers are able to commence any necessary action without being discouraged and held back by these waiver provisions.

60. Additionally, we suggest that the ministry should look into issues relating to laws that are in conflict with the CPA's waiver provisions such as the Occupier's Liability Act, and consider provisions to better protect consumer rights in case of such conflicts.

²⁹ *Ibid.*

Proposal #10(b): Require waivers that are not applicable in Ontario to clearly exclude Ontario or Canada on their face to avoid consumers being misled.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

61. Yes, waivers not applicable in Ontario should clearly exclude Ontario or Canada on their face to provide clarity to consumers. This is for the same reason as disallowing disavowels of the CPA; that is, unscrupulous or ignorant businesses may wrongly assert to customers that such a clause is valid, even if it is clearly invalid on the face of the legislation, as few consumers will know the exact scope and remedies under the CPA.

Proposal #11: Forbid contract terms that limit the dollar value of claims for breach of implied warranties and conditions.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

62. We strongly support this proposal to forbid contract terms that limit the dollar value of claims for breach of implied warranties and conditions. Businesses often seek to circumvent and limit their liability by relying on broadly worded provisions in the contracts and in the absence of any set standards, this can vary considerably from one business to another.

63. As aptly noted in the consultation paper that this provision is intended to invalidate contractual limits and ensure courts can consider proper awards in cases dealing with

breach of implied warranties and conditions.³⁰ Courts are often inclined to uphold contracts due to the public policy of freedom to contract, which in many cases affects consumers because of their limited to no bargaining power when it comes to accepting these contractual terms. The inclusion of this measure would provide an importance balance for consumers and businesses and provide courts with the flexibility to provide fair and reasonable amounts.

Proposal #12(a): Make explicit in the CPA that consumer rights and business obligations to consumers are unchanged by assignment of contracts of any kind, or consumer rights under them.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

64. We support this measure on protecting consumer rights and business obligations to consumers even if there is an assignment of any contract or consumer rights covered by them. For mass-market consumer goods and services, there is really no argument that the contract is tied to a particular consumer. We additionally suggest that the CPA should mandate clear and upfront disclosure of this requirement in all consumer contracts to ensure consumers are aware of their rights in case any assignment happens and/or when the contract changes hands. This also will encourage an appropriate second-hand (secondary) market, which provides benefits such as lower price options and more control for consumers who would otherwise be required always to enter new and expensive contracts.

Proposal #12(b): Require the discharge of any related Notice of Security Interest in the Land Registry System when a contract is assigned, to prevent duplicate reporting of assigned obligations.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

³⁰ Ontario's Regulatory Registry, "Consumer Protection Act, 2002 Review Consultation Paper," (December 1, 2020) at p.28.

You may enter any additional comments here

65. In our view, requiring the discharge of any related notice of security interest in the land registry system when a contract is assigned, to avoid duplicate registrations is a fair requirement and should be included in the CPA. However, the ministry must attempt to protect innocent buyers who purchase without notice of the security interest. We are unsure of the mechanism to do so, however, with resale of vehicles in Ontario, the ONVIP service highlights such security charges and must be provided to the buyer. This may make sense for some other high value consumer transactions.

Proposal #13: The CPA remedy for unfair practices should be applicable in respect of unfair practices that occur after entering a contract. It should be available until the later of one year after entering the contract and one year after the unfair practice took place.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

66. We support extending the CPA remedy for unfair practices that occur after entering a contract, and yes it should be available until the later of one year after entering the contract and one year after the unfair practice ensued. This will provide a strong redress mechanism to consumers and constitute a much needed deterrent for businesses. Also, the inclusion of one year after the unfair practice took place will give consumers the time and flexibility to complete any required steps to access the CPA remedy. It is akin to a limited “discoverability” right so that consumers can have time to uncover violations and vindicate themselves.

Proposal #14: The CPA would provide that if a consumer is required to sue a business for its failure to refund money as required under the CPA, the amount that the consumer can claim in such an action would be three times the amount of the required refund that the consumer has not received.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

67. We agree with the proposed measure that would allow consumers to claim three times the amount of money that was owed to them but not paid by the businesses. This would discourage businesses from non-compliance and also encourage more consumers to enforce their rights by filing civil claims. Treble damages are routinely applied in contexts where a party willfully resists satisfying a clear legal obligation so this would be appropriate here. Given the cost of pursuing satisfaction of redress, this incentive will help level the playing field between consumers and retailers.
68. Along with this measure, we would encourage the ministry to consider including other provisions that require businesses to simplify the process for applying for refunds. Several businesses require consumers to fill out requests to get a refund,³¹ which is often not paid automatically. While some businesses even fail to offer any refund options to consumers.³² This results in many consumers not receiving a refund because they were not presented with an option or did not know that they were either required to apply for it. Whereas in some cases, consumers may be denied refunds because they did not apply for it in the time allocated by processes set by businesses. Considering the many challenges consumers face in getting refunds, we strongly urge the ministry to consider including provisions in the CPA that clarifies businesses' obligations in relation to refunds and simplifies the existing process for getting refunds.
69. The CPA should also provide rules for better disclosure of the time frame within which consumers have to be paid as this will ensure consumers know when they are required to receive their refund.

Proposal #15: Extend the Director's order-making power to cover any business facilitating another business's contravention of the CPA.

³¹ Colin Butler, "Boler Mountain cancels 2021 ski season passes, group lessons, promising full refunds," *CBC News* (25 January 2021), online: <<https://www.cbc.ca/news/canada/london/boler-mountain-2021-ski-season-pass-group-lesson-1.5886422>>. (The report notes: "In order to receive the refund, customers are asked to fill out an online form. Boler Mountain said Monday that while it plans to refund the affected customers as soon as possible, it may take some time.")

³² Pat Foran, "Ontario woman seeks refund for Elton John concert rescheduled for 2022," *CTV News*, online: <<https://toronto.ctvnews.ca/ontario-woman-seeks-refund-for-elton-john-concert-rescheduled-for-2022-1.5158790>>. (The report shares challenges faced by consumers in getting refunds for cancelled concert tickets. Notably: "Elton John fans were told to get their money back they had until Oct. 23, 2020 to request a refund and if they did not choose this option the tickets would remain valid for the rescheduled date...Smith said she's been trying to get her money back for a month, by phone, email and live chat but she can't get anyone to respond." Also see: *CBC News*, Gatineau Park user urging NCC to refund ski passes, *CBC News* (5 January 2021), online: <<https://www.cbc.ca/news/canada/ottawa/ncc-refunds-gatineau-park-1.5861820>>.

Agree

Disagree

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

70. We support the proposed measure as extending the Director's order-making power to cover any business facilitating another business's contravention of the CPA would promote compliance, enhance accountability and deter non-compliance. That said, more details regarding these orders-making powers are needed to know their scope and impact on consumer protection.

71. We note from the proposal that the ministry also seeks to apply compliance orders to other businesses acting as intermediaries such as online platforms or those providing billing services, by notifying the intermediaries that they must stop facilitating misconduct, rather, than hold these intermediaries liable.³³ We support this measure and submit that it must be included in the CPA as it will serve a useful purpose in regulating misconduct in today's evolving market where many online businesses are often hard to reach. However, this notification process by itself may not be as effective, unless the ministry considers incorporating procedures to monitor that intermediaries comply with this notice.

72. In our view, the CPA should contain a consistent and strong set of enforcement provisions. Notably, PIAC commented on the ministry's initial consultation concerning increased enforcement powers in the CPA under the *Rebuilding Consumer Confidence Act*, 2020 (Bill 159), which specifically dealt with the use of administrative penalties.³⁴ We encourage the ministry to consider our earlier recommendations on enforcement mechanisms and procedures. Broadly, we argued that a wide range of enforcement options should be provided by the regime to ensure that the regulator and the Director has requisite procedures to their disposal for ensuring compliance. We also noted that the enforcement of administrative penalties remains integral to their efficiency and effectiveness, therefore, it is essential to ensure that the regulation reflects this aspect and provides for broad enforcement options.

Do you have suggestions for reform to CPA regulations?

³³ Ontario's Regulatory Registry, "Consumer Protection Act, 2002 Review Consultation Paper," (December 1, 2020) at p.32.

³⁴ Ontario's Regulatory Registry, "Proposal to implement administrative penalties under the Consumer Protection Act, 2002," (March 9, 2020), online: <https://www.ontariocanada.com/registry/view.do?postingId=31887&language=en>.

Yes

No

Other – Please Explain Below

Explanation and Additional Comments:

You may enter any additional comments here

73. As more consumers move to using online retail platforms, the need to adapt regulatory practices to better protect consumers becomes more imminent. In this regard, we refer to one specific issue i.e., online cancellation practices. The online cancellation policies set by businesses are not always straight forward with businesses often prompting users to not cancel and/or reconsider their decisions. This is meant to influence consumers' decisions with multiple pages and options.

74. One example is the cumbersome cancellation process for Amazon Prime. Notably, consumer groups in Europe and the United States are urging regulators to take action against Amazon in relation to the Amazon Prime cancellation process. The groups claim that the prime design feature, manipulates users into sticking with paid memberships with constant warning messages shown when they attempt to cancel their subscription.³⁵ This is just one example of an unfair business tactic, which pressurizes consumers to stay with the brand, there are numerous new tactics and issues presented by the digital marketplace that should be reviewed.

Other Suggestions

The government welcomes any suggestions you wish to make concerning consumer protection reform. Please feel free to comment on any additional areas that you feel need specific rules or an existing rule that you believe is either outdated or not strong enough.

Explanation and Additional Comments:

You may enter any additional comments here

75. We suggest some other areas that should be considered for reform to strengthen the protections available to consumers, these include payday loans, door-to-door sales, and debt collection matters. Many payday loan users in particular still remain unaware of their rights and the high costs associated with these loans. We would encourage the

³⁵ Isabella Kwai, "Consumer Groups Target Amazon Prime's Cancellation Process," *The New York Times* (14 January 2021), online: <<https://www.nytimes.com/2021/01/14/world/europe/amazon-prime-cancellation-complaint.html>>.

ministry to consult on these matters to better understand and address the prevailing challenges for consumers.

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