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February 1, 2021

**BY EMAIL ([consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca))**

Consumer Protection Act Review  
Manager, Consumer Policy Unit  
Minister of Government and Consumer Services  
56 Wellesley Street West, 6<sup>th</sup> floor  
Toronto, ON M7A 1C1

Dear Sir/Madam:

**RE: Consumer Protection Act Review**

The Advocacy Centre for the Elderly ("ACE") welcomes the opportunity to provide feedback to the Ministry of Government and Consumer Services (the "Ministry") on the proposed changes to Ontario's *Consumer Protection Act* (the "CPA") as outlined in the consultation paper, "Improving Ontario's *Consumer Protection Act* – Strengthening Consumer Protection in Ontario" (the "consultation paper"). See Appendix "A" for reference.

### **A. Introduction to ACE**

ACE is a specialty legal clinic that was established to provide a range of legal services to low-income seniors in Ontario. Its mission is to uphold the rights of low-income seniors, and its purpose is to improve the quality of life of seniors by providing legal services which include direct client assistance, public legal education, law reform, community development and community organizing. ACE has been operating since 1984 and was the first legal clinic in Canada with a specific mandate to serve older adults and with expertise in elder-law issues.

On average, ACE receives more than 3,000 client intake inquiries a year. Most of the telephone inquiries come from the Greater Toronto Area with approximately 20% originating from other areas of the province. The individual client services provided are in areas of law that particularly impact on older adults. These include, but are not limited to, elder abuse, capacity, substitute decision-making and health care consent; consumer rights; supportive housing and retirement home tenancies; long-term care homes; and patients' rights while in hospital.

Older adults regularly seek our advice respecting their rights under the *CPA*. Specifically, ACE has received numerous calls regarding:

- Door-to-door salespeople taking advantage of particularly vulnerable homeowners who have issues with vision, hearing, cognition and/or literacy, and/or for whom English is not their primary language;
- Door-to-door salespeople representing themselves as official inspectors or government employees;
- Door-to-door salespeople incorrectly advising homeowners that their water and/or air quality is unsafe (and therefore that they require purification or filtration systems);
- Door-to-door salespeople advising homeowners to enter into multiple home service contracts in a short span of time (some of the same salespeople appear to work for different companies);
- Door-to-door salespeople misrepresenting the price of products or services;
- Door-to-door salespeople encouraging homeowners to take out loans for substantial sums in order to break pre-existing home service contracts (without any meaningful results);
- Home service contracts that contain cancellation fees and buyout costs that far exceed the value of the equipment or services;
- Calls from family members or social workers who discovered an incapable senior signed multiple home service agreements during a time the senior had no or diminished capacity;
- Calls from seniors or family members who want to sell their house and discovered that there were encumbrances on their property placed by home service companies, unbeknownst to them; and,
- Seniors who have entered into timeshare contracts with fifty-year terms, with no resale value and no cancellation provisions.

In addition to providing summary advice on the *CPA*, ACE has assisted many clients in negotiating directly with businesses, making complaints to the Ministry and bringing actions in Small Claims Court on behalf of consumers. Accordingly, we trust that the Ministry will find our submissions of assistance.

## **B. General**

ACE commends the Ministry on its initiative to provide increased clarity to the *CPA* and strengthen consumer rights and welcomes most of the changes outlined in the consultation paper.

As further detailed below, customers should be able to look at their consumer contracts and readily know the full lifetime cost of the product or service; whether an encumbrance

will be placed on their property; the name and address of the business they are dealing with, including the full name of the salesperson; their rights as consumers and how to complain if their rights are violated.

Rights, however, are meaningless without strong and effective remedies and enforcement of those remedies. Unfortunately, in ACE's experience, consumers face an uphill battle in exercising their rights under the *CPA*. Oftentimes, when ACE assists a consumer to make a complaint to the Ministry, we are told there is nothing the Ministry can do because the business does not want to participate in mediation. We have also been told that charges against a business could not be pursued on behalf of our client due to a lack of Ministry resources.

In addition, with respect to unfair practices (which constitutes the bulk of the complaints we receive) the one-year deadline from the time a contract is entered into to provide notice to a business prevents many claims from being pursued, as consumers are often unaware that they were the subject of unfair practices (due to the very deception at issue) or they have lost capacity and are unable to exercise their rights.

Commencing an action in Small Claims Court is often not a viable option for many low-income, highly vulnerable clients, as they require legal assistance to navigate the process, which they cannot afford. ACE has limited resources and we often have to decline representation and refer callers to the private bar. Accordingly, many of the people who contact ACE are unable to successfully pursue remedies under the *CPA*.

In addition to the changes recommended in the consultation paper, ACE would like to see a commitment from the government to ensure that sufficient, accessible resources are available to the Ministry to pursue all violations of the *CPA*. Without enforcement, there is little incentive for unscrupulous businesses to comply with the law.

### **C. Simpler and Stronger Contract Rules**

In the consultation paper, the Ministry outlined proposed changes to the *CPA* respecting (i) clearer, consistent rules for consumer contracts in general; (ii) stronger rules protecting against unilateral contract changes; and (iii) controlling price changes in contracts with termination costs.

#### Recommendations:

With respect to **Proposal #1**, ACE agrees with the Ministry that written contract disclosure rules for internet, remote and future performance agreements into a single set of core rules (except where there is a demonstrated need for more specific disclosure) is a good idea as long as the changes do not increase the consumer's obligations or reduce the business' obligations.

With respect to **Proposals #2(a)-(c)**, ACE is in general agreement with these proposals. In addition, all options available to the consumer (*i.e.* consent to changes, cancellation at any

time without termination costs) must be presented to the consumer in advance, clearly, and in plain language.

With respect to **Proposal #3**, in ACE's experience, consumers are not aware they have entered into contracts with price escalation clauses. In fact, these clauses are often buried in the contract in miniscule font. Even for sophisticated parties, it is often difficult to figure out the final lifetime cost to the consumer of the product or service at issue.

ACE recommends that all contracts must include the full price of the lifetime of a contract in bold on the signature page of the contract. This full price would include all interest, installation, rental/purchase and any other fees. In our experience, customers rarely understand how much they will be paying over the lifetime of a contract, and are often shocked to learn that it exceeds the purchase price of the equipment by three or more times.

#### **D. Improved Protection Against /Unfair Practices**

In the consultation paper, the Ministry acknowledges that there are weaknesses in the CPA's approach to addressing some unfair practices and wants to provide clearer stronger protections to consumers. Specifically, the Ministry proposes adding more examples of expressly forbidden misleading practices and protecting against contract breaking offers.

##### Recommendations:

With respect to **Proposal #4(a)**, ACE agrees that expanding the list of what constitutes a false, misleading or deceptive representation or an unconscionable representation would add clarity.

That said, ACE does not believe explicitly stating that falsely claiming to have government oversight, for example, will act as a deterrent to those engaging in misrepresentation – because it is clearly an unfair practice. This is not a gray area that needs clarification. Real deterrents would be stronger penalties and increased enforcement under the CPA. ACE would like to see increased Ministry investigation into unfair practice claims and increased charges of these types of complaints.

With respect to **Proposal #4(b)**, ACE agrees that certain practices, such as price gouging, should be explicitly banned.

With respect to price gouging due to the COVID-19 pandemic, CBC *Marketplace* reported that despite tens of thousands of consumer complaints made across the country (and 29,500 in Ontario), very little legal action was taken. As of November 20, 2020, CBC reported that only one business in Canada was charged with price gouging.<sup>1</sup>

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<sup>1</sup> CBC News, "Provinces promised crackdown on pandemic price gouging. In fact, there have been few repercussions", online: <https://www.cbc.ca/news/canada/pandemic-price-gouging-1.5806500> (20 Nov 2020)

Accordingly, ACE reiterates our recommendation that the Ministry bolster its investigation and enforcement of unfair-practice violations. Without meaningful consequences, there is no incentive for dishonest businesses to cease their unfair practices.

With respect to **Proposal #5**, ACE would like to see stronger regulation of companies that claim to break consumer contracts. In ACE's experience, it is the most vulnerable consumers who have entered into multiple home services contracts, not knowing or understanding the terms often due to unfair practices, who seek recourse with companies that claim to break contracts.

ACE has received calls from seniors who have been solicited door-to-door by these companies. The seniors cannot explain how the companies knew to contact them. While in the seniors' homes, the salespeople have facilitated the seniors in taking out loans for thousands of dollars (and even accompanied the seniors to the bank to withdraw funds) in order to pay upfront for their services. The seniors call ACE when these companies claim to require additional funds to cancel the home service contracts.

Accordingly, ACE agrees with the Ministry that these companies should be banned from accepting advance payment. In addition to Proposal #5, these companies should be banned from soliciting consumers door-to-door. ACE has serious concerns about how these companies first get into contact with consumers. We believe that it should be the consumer who solicits the companies, and not the other way around.

ACE recommends that the contract can be rescinded by the consumer if the business (i) required advance payment; (ii) solicited the customer; or (iii) if any of the business' employees or independent contractors have any ties (current or formerly) to any home service company that has a current contract with the consumer.

### **E. Better Rules for Specific Contracts**

The Ministry has proposed addressing concerns with purchase cost-plus leases, with the registration of notices of security interests and with timeshares.

#### Recommendations:

##### *Purchase-Cost-Plus Leases*

ACE agrees with the Ministry's **Proposal #6(a)** that all leases with total payments exceeding 90% of the item's retail value should include a 10-day cooling off period, regardless of whether the contract was entered in-home, in-store, online or otherwise. The customer needs to be provided with a complete copy of the contract before the cooling off period commences. As well, the customer must be made aware of the 10-day cooling off period, how to cancel the contract during the cooling off period, and that no equipment should be installed during the cooling off period.

ACE is also in agreement with **Proposal #6(b)**, that leases of this type make standardized and consistent first-page disclosure of critical contract information, including full cost of the lifetime of the lease and all buyout charges. This information must be in at least 12-point font, and the customer should have to initial all key provisions.

ACE agrees with **Proposals #6(c)-(e)**.

#### *Registration of Notices of Security Interests*

ACE is frequently told by callers that if they knew that a business was going to put a “lien” on their property, they would have never entered into the lease. In addition to **Proposals #7(a) and (b)**, which ACE supports, business must advise consumers that a notice may (or will) be registered on title to the consumer’s home before the contract is entered into.

In addition to clarifying the business’ 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*, there should be financial penalties for failing to do so.

While ACE agrees with **Proposal #7(b)**, ACE submits that the consumer should not have to bear the cost of retaining a Teraview licensee (typically lawyers) to register the Director’s statement on title to discharge the notice.

#### *Improving Timeshare Disclosure and Exit Rights*

ACE agrees with **Proposals #8(a) and (b)**. ACE further submits that in instances where a timeshare exit option is not included in a timeshare contract, such an exit option at no cost to the consumer should be read into the contract. This would encourage timeshare companies to include fair and clear exit clauses.

By way of example, ACE was contacted by a senior who had entered into a service contract timeshare for a fifty-year term when she was in her late-forties. She had diligently paid her annual fee for nearly twenty years, though she had only used the timeshare three times. The resort at issue had fallen into disrepair, there was no resale value for the timeshare, she was unable travel to the destination, and the annual fees posed a financial hardship. The package was aggressively marketed to her and her spouse, who had long since passed away.

She did not understand the length of the timeshare at the time of entering into the agreement and would not have signed had she understood that in order to enjoy the lifetime of this contract, she would be travelling to the resort into her late-nineties. Despite our best efforts, we were unable to negotiate an exit for her from the timeshare package, and her only options were to continue paying for a service she would not use or face collection proceedings for failure to pay.

Per **Proposal #8(c)**, the proposed exit option should apply to timeshares bought before the new provision comes in to force so that all people who hold time shares may access this important remedy.

## **F. Strengthened Basic Consumer Rights**

The Ministry has proposed clear limits on boilerplate terms in consumer contracts to address the increase in written contract terms from the expansion of online commerce.

### Recommendations:

#### *Protecting Consumers' Rights to Review Business Performance*

ACE agrees with **Proposal #9**. Fair reviews of businesses and their goods are important consumer tools and should be permitted.

#### *Prohibiting Contracts Misleading Consumers about Rights*

Many people who call ACE are unaware of the *CPA* and have no knowledge whatsoever of their rights therein and trust that the terms of the contracts they sign are in compliance with the law. ACE agrees with **Proposals #10(a) and (b)** as they help to address the knowledge imbalance between Ontario consumers and businesses by prohibiting the inclusion of waivers that are not permitted under the *CPA*. Further, ACE repeats that it is essential that all terms in contracts should be clear, in plain language, and understandable without the need for legal advice.

#### *Forbidding Dollar Limits on Implied Warranty Claims*

Consumers should be able to access proper awards in cases where there has been a breach of implied warranties and conditions. Accordingly, ACE agrees with **Proposal #11**, which would forbid contract terms that limit the dollar value of claims for breach of implied warranties and conditions.

#### *Preserving Consumer Rights When Contracts Change Hands*

ACE agrees with **Proposal #12(a)**, which would 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.

ACE submits that in the *CPA* should require that in the case of all such contract assignments, consumers should be notified in writing of the assignment and provided with accurate contract information for the new business including email and mailing address, telephone number, and the name of a customer representative. Consumers often do not realize that their contract has been assigned until they attempt to contact the original contracting business and are unable to reach them.

ACE agrees with **Proposal #12(b)**. ACE further submits that the cost of the discharge of the Notice of Security Interest in such instances should be borne by the business, not the consumer.

### **G. Stronger and Clearer Rights to Remedies**

The Ministry has proposed various amendments to clarify and improve access to remedies for consumers when businesses are in breach of the *CPA*.

#### Recommendations:

##### *Remedies for Unfair Practices during Ongoing Contracts*

ACE agrees in part with **Proposal #13**. While the amendments should expand access to remedies to cover unfair practices during the life a contract, ACE proposes that the limitation period for accessing these remedies should be in line with ss. 4-5 of the *Limitations Act, 2002*: two years after which the unfair practice was discovered. Unfair practices should be subject to the discoverability principle (*i.e.*, when did the consumer know, or ought to have known, that an unfair practice had taken place). As ACE sees many instances where companies use deceptive techniques on a highly vulnerable population, it is often years later that the consumer learns that they were deceived (often through the help of a third party, such as a lawyer, a social worker or a family member).

Further, ACE receives many calls from loved ones of seniors who have lost capacity (before or after entering into consumer contracts). The statutory limitation periods for bringing an unfair practice complaint should not run while a person lacks capacity. This is particularly so where the complaint is that the senior had no or diminished capacity when entering into the contract.

Without ensuring equal access to *CPA* remedies for persons with cognitive disabilities, ACE is concerned that the *CPA* operates in a discriminatory manner.

##### *Enhanced Recovery if Consumer Forced to Sue for a Remedy*

ACE strongly supports **Proposal #14**. The courts should be a last resort for consumers to access remedies under the *CPA*. Civil actions are costly, time consuming, and risky for all parties involved. Proposal #14 incentivizes fair and timely resolution of consumer complaints under the *CPA*. Businesses that do not meet their legal obligations under the *CPA* should incur greater risks if they do not honour the remedies that are available to consumers.

##### *Continuing to Improve Ministry Enforcement Powers*

ACE agrees with **Proposal #15** to ensure that intermediary businesses are not permitted to facilitate contraventions of the *CPA*. ACE strongly supports the use of administrative penalties as enforcement tools against businesses that are not in compliance with *CPA*.

## H. Looking Forward – Revising CPA Regulations

ACE welcomes the opportunity to provide the Ministry with further comment on any proposed changes to the regulations.

### **CONCLUSION**

Thank you for the opportunity to provide comments respecting the proposed changes to the CPA.

We urge the Ministry to consider our feedback and welcome the opportunity for any further discussion.

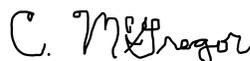
Yours truly,

ADVOCACY CENTRE FOR THE ELDERLY

Per:



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Executive Director  
Barrister & Solicitor



Clara McGregor  
Staff Litigation Lawyer  
Barrister & Solicitor



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# **IMPROVING ONTARIO'S CONSUMER PROTECTION ACT**

## **Strengthening Consumer Protection in Ontario**

**December 2020**

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## **About This Consultation**

The Ontario government is considering how to improve the Consumer Protection Act (CPA). The CPA is the law governing most personal and household transactions by consumers - from buying furniture in a store to shopping online to renovating your home.

The CPA's rules support a fair and competitive marketplace where consumers make their own choices without being subject to unfair business practices.

The CPA sets out basic rules for businesses to follow and remedies for consumers if businesses do not follow the rules.

It has been over 15 years since the government has undertaken a full review of the CPA. The CPA needs updating to work better in the new marketplace. Updating it will enhance consumer protection and reduce burden for the business community in general, while addressing specific problems more effectively than the current law.

The CPA protects individuals acting for personal, family or household purposes, not business purposes. It is intended to work with and support a competitive marketplace.

The CPA:

- Establishes and protects basic consumer rights with respect to consumer contracts;
- Bans unfair practices such as being deceived or misled by a business about a consumer contract; and
- Sets out which contracts must be in writing, what information must be provided, and what additional rules some contracts must follow.

## **Why This is Important Now**

Now, more than ever, consumers need the power to control their budgets and protect themselves against hidden costs and scams, particularly those exploiting economic hardships.

Businesses need laws to be clear and not to impose unnecessary burdens on entrepreneurs focused on recovery.

We want to ensure that the laws governing the marketplace are in tune with our times and build on the existing consumer protection framework.

## Your Comments are Important

The government wants to hear from Ontarians about the parts of the law that are working well and what areas may need to be improved. Your comments will help us create proposals to update the CPA.

We welcome your responses to the consultation questions and any additional comments or suggestions you wish to offer. Please provide examples or evidence to support your suggestions where possible.

You may download this paper and submit your completed responses by February 1, 2021. You can submit comments by email to [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca) or by mail to:

Consumer Protection Act Review  
Manager, Consumer Policy Unit  
Ministry of Government and Consumer Services  
56 Wellesley Street West – 6th Floor  
Toronto, ON, M7A 1C1

Please provide your name and contact information such as an email or mailing address.

Name/Organization

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Contact Information

---

Please also check a box to indicate whether you comment primarily as a:

- Business
  - Business Association
  - Consumer
  - Consumer Association
  - Academic
  - Other – You may enter your answer here
- 

Thank you for taking the time to review these proposals. If you have any questions about this consultation, please email [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca).

## Privacy Statement

Please note that unless agreed otherwise by the Ministry of Government and Consumer Services (the ministry), all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve releasing any response received to other interested parties. The ministry will consider an individual showing an affiliation with an organization to have given their response on behalf of that organization.

Responses from individuals who do not show an affiliation with an organization will not be considered public information. The ministry may use and disclose responses from individuals to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should the ministry use, disclose, or publish individual responses, the ministry will not disclose any personal information such as an individual's name and contact details without the individual's prior consent, unless required by law. The ministry may use your provided contact information to follow up with you to clarify your responses.

If you have any questions about the collection of this information, please contact the ministry by email - [consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca).

## Proposals for Your Review

The CPA and its regulations can be complex to read and apply. The CPA review aims to simplify the law and improve its clarity while also improving its effectiveness, both for consumers and businesses.

You do not need to read the current law to respond to these proposals. If interested, the paper includes references to specific sections of the act and regulations that relate to proposals.

This consultation focuses on proposals that the government would potentially develop into proposed legislation to replace the current CPA with a new law. This new law would not come into effect unless, and until, the Legislature passes a proposed bill and government develops, consults on and approves regulations. Until that time, the contents of this paper remain proposals.

We welcome your comments on as many of the consultation questions as you choose to answer, and any added comments or suggestions you wish to offer.

## **Matters Covered by Other Consultations and Laws**

This paper does not address matters covered by other consultations or by laws other than the CPA.

There are other consultations planned on alternative financial services (such as high-cost consumer loans). The government is considering how to better protect vulnerable consumers who use alternative financial services, some of which the CPA currently regulates.

In June 2020, the government announced the creation of a task force to improve provincial oversight of the towing industry. The task force is helping develop a regulatory model that will increase safety and enforcement, clarify protections for consumers, improve industry standards and consider tougher penalties for violators. The Task Force will consider the CPA's towing rules as part of its work. The CPA contains specific tow and storage services rules to help protect consumers who need a tow or roadside assistance in Ontario. The CPA is a major part of consumer protection law in Ontario. However, it is only one of many laws protecting consumers.

- Some laws protect significant purchases in specific sectors – such as a home or used car, travel that is planned with an agent, or funeral arrangements.
- Other laws protect consumers who may be more vulnerable due to their financial circumstances – this includes people using payday loans and people facing debt collection or repossession of their goods.

There are also specialized sets of legal rules governing professionals (e.g., lawyers, veterinarians, regulated health professionals, accountants). Federal law governs matters such as consumer product safety, copyright, bankruptcy, product labelling, banking and telecommunications.

The next sections of the paper explain the proposals for changes to the CPA that are the subject of this consultation.

## **Simpler and Stronger Contract Rules**

Communications technologies are continuing to change how businesses and consumers interact. The CPA currently uses contract categories such as “internet,” “remote,” meaning transactions completed by phone or mail, and “direct,” meaning transactions completed away from a place of business such as in a consumer's home. All of these contract categories are impacted by changes in the use of technology.

Consumers also increasingly enter into ongoing and long-term contracts through subscription services and memberships. In addition, leases of household appliances are

more common. With these trends, consumers may also find they have entered into contracts with automatic roll-overs, renewals or price increases in fine print. These are all things the CPA could better address.

## **1. Clearer, Consistent Rules for Consumer Contracts in General**

Businesses and consumers can be confused by the CPA's approach to requirements for written contracts. The CPA currently divides contracts into several categories when it imposes requirements that contracts must be in writing. Different categories include if the consumer and business are not in the same place when they enter into a contract or if either party is to do something in the future, such as make a payment or make a delivery.

In these situations, it is useful to make sure the consumer and business are clear about what each party is agreeing to do, and for the consumer to have a copy of the contract. As communications technology continues to create new ways to shop and blurs the lines between the ways we shop, it can be confusing to determine which category of rules under the CPA applies to a contract (e.g., internet or future performance). For example, a consumer stands in a store and orders something for future delivery using the store's computer.

The issue is that the CPA's current rules, based on different categories of contracts, is increasingly becoming more difficult for businesses to apply and for consumers to understand as business continues to innovate.

A more technology-neutral approach to consumer law would better serve Ontario in the future. Basic rights and obligations should not differ between different ways of shopping, unless evidence calls for more rules in specific areas, such as door-to-door sales.

The ministry is considering if the CPA should include one set of core requirements when contracts must be in writing to make it simpler for businesses and consumers. The three sets of existing rules (internet, remote and future performance) currently have similar contract requirements such as the need to include the name of the business, the goods or services and prices paid for them, payment terms, delivery dates and other critical information. They could be consolidated into a single set of rules without reducing consumer protections or increasing business obligations. This would mean that consumers and businesses would only have to check one list of rules to understand their rights and responsibilities in most cases.

There are rules for additional types of contracts in the CPA where there is a need for greater intervention such as cooling-off periods or added rules about disclosure or payment. These specific additional rules would continue in areas such as motor vehicle repair, water heaters, fitness clubs and timeshares.

Subject to the passage of a bill applying this approach to the CPA, the ministry would consult on regulations to create this core set of disclosure rules.

**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**

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## **2. Stronger Rules Protecting Against Unilateral Contract Changes**

Consumers are sometimes concerned about why they are still paying for a membership that they thought should have expired, or whether a charge on their credit card has increased from the price they agreed to pay when they first subscribed to a service.

Both consumers and businesses want certainty in contracts – knowing what they are promising and for how long, for example when billing will end. To promise a specific price or other terms, businesses may need a commitment for a specific time period. Consumers also want predictability and expect when they enter into contracts that they will get the promised good or service on the terms and price they agreed.

The current CPA allows for amendments to any contract if the consumer gives clear consent. This is the only way to amend most contracts governed by cooling-off periods. The majority of contracts can also be amended if a business gives notice to the consumer as long as the contract meets certain requirements, including a requirement to give the consumer either an option to end the contract or an option to keep it unchanged (or both) instead of accepting the amendment (see General Regulation, [sections 41 to 43](#)).

The current approach that allows amendment by notice has several challenges. Proving businesses sent notices or proving consumers received notices can both be difficult. Consumers do not always read a notice in time to use the choices provided (termination and/or leaving the contract unchanged). Finally, whether a termination option must be without cost is also unclear.

The ministry is considering whether a clearer set of rules that are easier to apply could balance the ability of a business to change a contract with the ability of a consumer to end it. Either the contract is one that both parties will stick with as written for the duration, or it is a contract that the business can change but that the consumer can walk away from whenever they wish.

**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**

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**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**

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**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**

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### 3. Controlling Price Changes in Contracts with Termination Costs

Consumers have raised concerns with not being able to rely on the prices that contracts appear to set out. A clear contract commits both parties to specific dollar amounts for a set amount of time. Even contracts lasting several years use this approach in some cases. For example, automobile leases usually last 36 to 48 months, but commit to fixed lease payment amounts for their entire term.

However, some contracts use price escalation clauses allowing businesses to increase charges every year. Consumers are often unaware of price escalation clauses as they are usually in the later pages of a contract, in smaller print along with more standard contract terms, such as those for late payments.

For example, consumers leasing a water heater under a contract on which the front page clearly shows a lease rate of \$34.99 a month might see that monthly cost increase every year, so that after five years they would in some cases be paying almost \$50 a month.

Price escalation clauses may set out a formula for increasing prices or provide for annual increases equal to or greater than the national measure of inflation calculated by Statistics Canada, the Canadian Price Index (CPI). A consumer reading the fine print in their contract might see a provision stating the “annual price increases CPI + 2%”, meaning that if inflation was 2.5% in a year, their price would go up 4.5% at year end. Such increases compound year over year, potentially making products and services more expensive over time.

Currently, the CPA allows such price escalation clauses where the price paid over the course of the contract can increase over time. The CPA could better ensure that consumers can rely on the prices set out in contracts.

The ministry is considering whether the CPA should ban changing the amount charged during the term of the contract, unless consumers are able to cancel cost-free at any time. This would mean that if the contract uses monthly or annual payments those amounts must be the same until the contract ends. Exceptions could allow a business to offer to waive initial payments as a signing bonus or defer payments for a consumer in difficulty.

Contracts that allow consumers to cancel without penalty at any time, for example with a month’s notice in a month-to-month contract, would be able to increase prices either through price escalation clauses or by notice.

**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**

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## **Improved Protection Against Unfair Practices**

The CPA does not allow businesses to make false, misleading, deceptive or unconscionable representations in connection with consumer contracts (see CPA [sections 14, 15, and 17](#)). These unfair practices contravene a consumer's right to make free and informed choices.

Over the past 15 years the ministry has seen new unfair practices emerge and has also found weaknesses in the CPA's approach to addressing some practices.

### **4. Clearer and Stronger Approach to Unfair Practices**

The CPA's approach to unfair practices needs to be strengthened. The list of examples to help understand and apply these prohibitions has not been updated in over 15 years and the prohibition against unconscionable conduct such as price gouging needs to be stronger.

The CPA both prohibits unfair practices and gives a list of examples of prohibited misleading practices to make the law easier for consumers and businesses to understand (see CPA [section 14](#)) — for example, misrepresenting whether goods are new or used or the reason for contacting a consumer, such as pretending to be calling about a contest when the real purpose is to sell them something.

The ministry is considering two ways that these rules could be improved. The first would be to add more examples of unfair practices to make them easier to understand and better address practices in the marketplace today, including in areas like aggressive door-to-door sales. Examples of new misleading practices could include:

- Falsely claiming to have a government license or approval; and

- Claiming a consumer has or will win a prize or get some similar benefit when there either is no prize or benefit or the consumer would have to pay to get it.

The second way the ministry is considering improving the CPA is to take a stronger approach to conduct such as price gouging and convincing consumers to enter excessively one-sided contracts. Even though these are unfair practices, the CPA does not ban actions such as price gouging or using undue pressure on consumers the same way it bans misleading practices. Instead, the current the Act states that, in determining whether a representation is “unconscionable,” it may be “taken into account” that the person “knows or ought to know” that they are engaging in such practices (CPA [section 15](#)).

It would be clearer and provide stronger protection for consumers if the law no longer used this multi-part approach. Instead it could set out examples of prohibited unconscionable conduct, clearly defined and readily understood, just as there is a list of examples of prohibited misleading practices.

Examples of unconscionable conduct this approach would address more strongly include price gouging, using improper pressure to obtain a consumer’s consent, entering into contracts where there is no reasonable probability of the consumer paying their obligation in full, or taking advantage of factors such as a consumer’s inability to read the language of a contract.

Recently, the Ontario government used this clearer approach in its emergency order on price gouging during the COVID-19 outbreak, which clearly banned the practice of charging grossly excessive prices for necessary goods.

**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**

**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**

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## **5. Protecting Against Contract Breaking Offers**

Over the last several years, consumers have raised concerns to the ministry that they have lost money by paying a company in advance for help to get out of contracts they have signed without receiving any benefit. Such contracts can involve ongoing payments for items such as timeshares, water heater leases or other installed home appliances (e.g., furnaces, water filtration systems or smart home systems).

Consumers may pay these companies thousands of dollars in advance for help to end a contract or to transfer their obligations, such as negotiating lower termination costs with a water heater rental company or finding a purchaser for their timeshare. The consumer then finds they either get no help or receive an offer that is not meaningfully better than the termination charges they already considered too harsh.

The CPA does allow for some advance payments. Certain businesses can only operate if they receive some payment in advance (for example, many home renovators need money in advance to pay for supplies).

However, the CPA bans advance payment for some services that were found in the past to be taking consumers' money without providing any real result. In those cases, the CPA prevents businesses from demanding payment just for "trying" to deliver the service. These bans cover services targeting consumers with credit problems, namely loan brokering and credit repair. In these cases, the CPA bans payment until the consumer receives the loan or the consumer's credit report is materially improved. The CPA also gives consumers a 10-day cooling off period in which they can cancel such agreements.

The ministry is considering whether the CPA should include new advance fee bans for contract breaking services in order to prohibit payment until the consumer gets a clearly agreed upon outcome, such as ending or transferring their contract obligations without greater cost than they expressly agreed.

Proposed new bans would be applied in a similar way to existing bans which define clear criteria for the business to meet before demanding or accepting payment. For example, if the consumer agreed that they are looking to end a contract for a total cost of no more than \$500, the service could take payment only once it delivered that result. Such costs would have to clearly include the termination or exit service's own fees.

**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**

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## **Better Rules for Specific Contracts**

The CPA has additional rules for contracts in sectors with a greater history of harming consumers. In each case, the CPA has specific rules to address the risk of harm. The ministry is considering two sectors where the CPA could be amended to better address consumer concerns.

### **6. Addressing Concerns with Purchase Cost Plus Leases**

The ministry has heard concerns over consumers entering into a lease or rental agreement under which the consumer would eventually pay more than they would to buy the item outright (referred to in this paper as “purchase cost plus leases”).

Consumers see an increasing variety of products, such as water heaters, furnaces and security systems, offered under leases, rather than as cash sales or financed purchases. Instead of purchasing an item and making monthly payments for it, the consumer gains the use of the item for similar monthly payments but does not become the owner at the end of the contract.

The ministry has heard concerns that some leases can be very costly to end, using what is called 'full cost termination', meaning that a consumer who wishes to end the lease early must to make all the remaining lease payments. For example, if the lease was expected to last ten years, and a consumer wishes to cancel after three years, they would have to make the remaining seven years of lease payments immediately. In situations where the lease's duration can be the product's whole useful life, a buy-out or termination cost can be two or three times the item's purchase value.

An additional concern is that key terms in a contract that result in such high termination costs are usually found amid mostly ordinary 'boilerplate' terms and conditions. As a result, consumers often do not realize the size of these termination costs until they face a need to end a lease early.

While the CPA currently limits the cost to end a loan by paying it off early (CPA [section 76](#)), it does not limit the cost to end a long-term lease, even if it is for the entire life of the product. Under a typical credit (loan) agreement, a consumer cannot owe more than their purchase's original cost to pay off their loan unlike what can happen in a full cost lease termination. This means a consumer who leases a water heater or furnace may face much higher termination costs than a consumer who finances the purchase of the same item.

The ministry is considering ways to improve sections of the CPA to define a category of lease where total payments, whether over the life of the lease or due to added termination costs, exceed 90% of the leased good's retail value. This would cover leases that are replacing financed purchases of the product.

Most of these transactions are entered into in consumers' homes, making them 'direct agreements' with a 10-day cooling-off period. If made online, as may be the case in future, under the current CPA such contracts would no longer have the benefit of a cooling-off period.

Given the circumstances often surrounding the formation, duration, cost implications and complexity of these contracts, a cooling-off period may be appropriate whether or not they are direct agreements (e.g., the same way in which timeshare and fitness club contracts have cooling-off periods regardless of how they are entered).

In addition, the ministry is considering whether leases in this category could then be subject to several rules.

- A 10-day cooling-off period, regardless of how the consumer enters into the contract.
- Clear, standard format, first page disclosure obligations to ensure consumers have a better understanding of key lease costs and terms.
- Limits on termination costs similar to the limits on prepayment charges for loans, meaning that costs would decline from the retail value of leased items over time.

Under such reforms, leases would continue to be subject to full cost disclosure rules and need to show their implicit interest rate, as a Lease Annual Percentage Rate (APR). The lease APR discloses the interest rate a lease is using to calculate payments. Just like loans, all long-term leases have interest rates. The Lease APR allows a consumer to compare the cost of leasing to the cost of financing the same product since loans also disclose an APR.

Under the proposed approach, a consumer who ended such a lease early would only owe a portion of the cost leased item, considering their payments to date. The calculation of the maximum permitted cost would parallel maximum loan prepayment costs, treating lease payments as if they were loan payments and using the Lease APR to calculate the interest rate. A consumer would thus never owe more than the product's retail price, including installation and other fees shown as part of the purchase price. Many businesses leasing such items to consumers already use a declining payout schedule of this sort.

Applying the same principles to purchase cost plus leases as those applied to credit agreements would also mean that any services provided in connection with such a lease would have to be either:

- considered part of the lease and included in the lease costs and Lease APR, continuing or ending with the lease; or
- considered separate service contracts, in which case they would be optional services subject to termination by the consumer at any time without penalty.

Consumers who buy new homes often enter into leases as part of the real estate transaction. The CPA does not cover these leases as it does not govern new home sales. However, through new regulations under the *New Home Construction Licensing Act*, the law could require that home builders give consumers a copy of a CPA-compliant lease, sale or service contract if one is part of a new home purchase (e.g., as a schedule to the agreement of purchase and sale). This would ensure information needed to calculate lease termination costs is set out. The proposed termination rights could then also apply to these leases.

Termination rights would continue despite a lease changing hands through home resales, with a new home owner taking over the declining schedule of termination costs.

The ministry would also consider steps to promote better disclosure of lease terms and termination rights to purchasers of resale homes to help ensure that they are aware of the implications of any on-going contracts associated with their home purchase.

**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

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**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

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**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**

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**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**

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**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**

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### **7. Addressing Issues with Registration of Notices of Security Interests**

In addition to concerns about termination costs related to purchase cost plus leases, the ministry has received complaints about registered notices on title to consumers' homes for leased goods that become attached or "affixed" to the property (e.g., water heaters or HVAC equipment). These notices are most commonly registered in the Land Registry System (LRS) as 'Notice of Security Interests' (NOSIs), but other forms such as 'Notice of Lease Chattel' or 'Notice of Lodgement Title Documents' are also used. Such notices are commonly described as liens as they are registered on the title of property and businesses may require payment in full for the equipment or lease value before they will remove the notice from title.

Registering in the LRS provides the business or financing company who leases or finances the fixture the best priority position under the Personal Property Security Act (PPSA). For example, in the case of a consumer agreement that allows the company to register a security interest in a fixture such as a gas furnace, the HVAC company may register a notice of security interest in the LRS to ensure their interest in the fixture has priority over any subsequent interests in the real property, such as a new mortgage arising from the sale of the home or refinancing.

While registered notices in the LRS have become standard practice in the leased goods industry, these registrations on a consumer's real estate title can cause significant issues for consumers when they try to obtain financing, sell their home or end their agreement. Lenders and buyers will often want the notice cleared (paid off) in these high-pressure, time-sensitive circumstances. This can result in complications and added stress and costs for consumers. Improving consumer awareness of these registrations through standardized disclosure, see Proposal #6(b), is something the government would continue to consider in regulation development.

In other circumstances, consumers find that despite the fact they have cancelled or terminated a contract in accordance with the CPA, and PPSA requirements, businesses may not discharge the notice. Consumers have also found multiple registrations on title when the contract is assigned and the subsequent party (typically a financing company) registers a new notice, but the previous business does not discharge their notice. The fact that the consumer must seek an order from the Superior Court to have the registration

discharged when a business does not meet their obligations to do so worsens the impact of these issues.

When a contract is cancelled under the CPA, the act states that the contract and all related agreements including all guarantees and security, such as registered notices, are cancelled as if they never existed. The CPA does not explicitly require businesses to take any action to ensure that notices are discharged, compliance orders are not currently issued to address this issue, and the CPA director has no existing authority to assist in the removal of registered notices.

The ministry is considering, in addition to preventing duplicate registrations, see Proposal #12(b), whether the CPA could better clarify a business's obligation to discharge notices relating to cancelled contracts, whether under the CPA or under other contract termination provisions (where they exist). Where the business fails to do so, the Director under the CPA could issue a compliance order. Once the compliance order was confirmed (e.g., 15 days pass without appeal or the order is appealed and upheld), the CPA director could have the authority to issue a statement to discharge the notice that the consumer could be able to register on title in the LRS.

**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**

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**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**

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## **8. Improving Timeshare Disclosure and Exit Rights**

Timeshares are complex arrangements that are often marketed aggressively. Consumers may only later realize the arrangement is not as attractive as it seemed during the sales presentation. For this reason, all timeshare contracts are subject to disclosure requirements and a 10-day cooling-off period.

However, there are potentially more fundamental concerns that can appear in such a long-term commitment. The ongoing costs associated with timeshares, which may not have seemed like a concern at first, can become a concern over time. A consumer's travel and financial capabilities and preferences may change, making the continued cost of a timeshare less and less affordable.

Timeshares can take several different legal forms. Some are pure service contracts while others are differing forms of ownership interests in real estate. Consumers do not always understand the difference between these formats and the risks of buying a real estate timeshare.

A real estate ownership type of timeshare can only come to an end for a consumer if someone else takes ownership of the property. Like all real estate purchases, it is "in perpetuity". Unlike real estate in general, a real estate timeshare is more likely to depreciate from its original sale value.

This results in consumers locked into timeshare arrangements, particularly when the resale market gives their timeshare no value or even a negative one, and a timeshare operator is unwilling to offer a buy-back or take-back program.

The CPA currently does not address these more fundamental and ongoing concerns with timeshares.

The ministry intends to consider ways to improve disclosures such as ensuring consumers understand clearly if they are buying real estate interests, during the development of regulations in the future.

The ministry is considering whether a new CPA should also provide that timeshare contracts must include an “exit option”. At a minimum, this approach would allow any timeshare owner who has held their interest for at least 10 years to give notice that they are exiting their timeshare. A 10-year period before the statutory exit right can be exercised is intended to give timeshare developers time to recover their start-up costs.

In addition, the ministry is considering a maximum cost to exit of no more than one and a half times the annual fees. This is the nature of the exit fee recently found reasonable by a court approving the winding up of an Ontario timeshare.

Such a rule could apply to all timeshares, meaning service-club type timeshares, lease-based timeshares and any form of real estate interest timeshares.

In the case of an ongoing service timeshare or service contracts related to timeshares, such as memberships in points exchanges, the law could provide that those types of contracts would end if the consumer surrenders their timeshare interest.

In the case of a real estate interest timeshare, the contract would have to set out a buy-back or similar provision the consumer can invoke to surrender their ownership interests.

When laws governing contracts change, new rules usually apply only to contracts entered into after the changes come into force. However, the permanent nature of some timeshares means that consumers who bought prior to the new law will always be at risk of finding themselves unable to exit their timeshare contract. This risk could be addressed by making the exit/mandatory buy back right apply to existing timeshares.

**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

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**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

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**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

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## **Strengthened Basic Consumer Rights**

The expansion of commerce online means consumers are more often subject to written contract terms. Purchases that once generated no more paper than a receipt at the cash register come with a set of contractual terms and conditions when done online. This makes it more important for the CPA to have clear limits on what businesses can do with

the 'boilerplate' contract terms in consumer contracts. Most of these rules are in Part II of the CPA (Consumer Rights and Warranties).

## **9. Protecting Consumers' Right to Review Business Performance**

The ministry has received complaints that a small number of businesses try to control what consumers say about them with 'anti-disparagement' clauses in contracts that try to stop a consumer from publishing negative reviews. Some contracts go further and state that the business can bill the consumer if it considers the consumer to have disparaged them. In doing so, they try to remove the need to prove anything in a court by claiming the business is the sole judge of the dispute.

Online media are creating many new opportunities for businesses and consumers to interact. In addition to being able to shop online, this includes new ways for consumers to share their opinions online. This not only promotes competition but helps consumers make informed decisions and avoid problems.

The CPA's provisions forbidding or nullifying some unfair contract terms do not currently address with this issue.

The ministry is considering whether a new CPA should protect against contract terms that limit consumers' rights to make fair comments. Consumers have never been free to libel or spread malicious information to harm a business, and reforms would not protect consumers if they libel a business. However, a reformed CPA could protect consumers' rights to make fair comments.

**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**

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## **10. Prohibiting Contracts Misleading Consumers About Rights**

Consumers are not always aware of all their rights which means they can be misled by vague waiver clauses telling them that the business makes no guarantees or has no liability if a product fails.

The CPA currently nullifies certain waivers and other contract terms as being overly one-sided. For example, a business cannot sell a consumer a good or service and at the same time disclaim any responsibility for its quality. The CPA guarantees consumers the benefits of implied warranties and conditions in all sales or leases of goods and services, such as a warranty that goods are fit for their intended purpose.

This protects the application of basic promises consumers are entitled to assume are part of all contracts even if a business does not expressly make them. Key examples are in CPA [sections 7, 8 and 9](#) For example, a consumer also has the right to go to an Ontario court to enforce their rights under the CPA, despite any contractual term forcing arbitration of disputes or claiming another jurisdiction must hear disputes. A consumer also can start or be part of a class action, despite any contractual term to the contrary.

These provisions do not prevent consumers from agreeing to settle a dispute instead of suing the business. Nor are consumers prevented from agreeing to use arbitration to settle a dispute after it arises, when the consumer knows what they are agreeing to arbitrate or settle.

The existence of these protections is not obvious to consumers, who may rely on businesses as their first source of information. A consumer may believe clauses saying, “all disputes must be arbitrated” would apply to them. Contracts may try to make waivers technically correct by using language such as “except where prohibited by law” or “to the extent permitted by law”. If consumers are not familiar with the law, they may assume that the waiver applies to their contract.

To address this concern, the ministry is considering amendments to the CPA that could clearly prohibit terms that appear to waive important consumer rights. A waiver inapplicable in Ontario could have to clearly indicate it does not apply in Ontario or Canada.

Business should only address such issues in contracts in a way that is comprehensible and clear to consumers. A consumer should be able to understand any “boilerplate” contract term without having to get legal advice.

**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**

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**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**

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## **11. Forbidding Dollar Limits on Implied Warranty Claims**

Another kind of contract term the ministry has seen used is one which tries to limit a business's monetary liability under implied warranties such as the warranty that services are of a reasonable acceptable quality.

The CPA guarantees consumers certain warranties and conditions when they buy or lease goods or services. The Act "deems" these warranties and conditions into all contracts, even if the business does not expressly promise them. However, the CPA does not address the use of monetary limits of liability for breach of these warranties or conditions.

A business breaching an implied warranty may create a serious problem for a consumer that costs them more than the price of the contract, for example, defective work that results in a flooded basement or unexpected home repair costs.

Courts have demonstrated a willingness to uphold consumer claims against businesses in such cases but also uphold contractual limits on consumer claims against businesses for

damages caused by failures to meet implied warranties, such as leaks that damage a basement.

The ministry is considering amendments to the CPA to strengthen its implied warranty provisions by ensuring that they cannot be subject to dollar limits on claims over them.

This proposal is not about exposing businesses to increased or unlimited liability. It is intended to only invalidate contractual limits and ensure courts can consider proper awards in cases where there has been a breach of implied warranties and conditions.

**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**

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## **12. Preserving Consumer Rights When Contracts Change Hands**

The CPA protection for consumers' rights and remedies when contracts change hands, through assignment or otherwise, is limited in scope – the protection only applies to loans and not to other types of contracts which may be assigned.

If a lender assigns a consumer's debt to another business, the second business has no greater rights and is subject to the same obligations, liabilities and duties as the original lender. This is set out in [section 83 of the CPA](#). Part of the rule's intent is to ensure that assignments do not weaken CPA rights, such as cooling-off periods and remedies for non-disclosure or unfair practices.

The assignment of credit contracts is routine in many business operations. However, assignment of other types of consumer contracts, such as leases of goods or extended warranties, also takes place. In a time of economic stress when businesses may be reorganizing or changing hands, it is important to emphasize that such transfers do not diminish consumer rights.

The ministry is considering if the CPA should explicitly extend the current assignment protection for credit contracts to all consumer contracts. This would better protect consumers in any ongoing contract, such as a lease or an extended warranty.

Similarly, the law could require parties to any credit or similar arrangement that is assigned to take steps to ensure there is no duplicate reporting of debts or obligations, such as to credit reporting agencies or in registry systems (e.g., Notices of Security Interests in the Land Registry System).

**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**

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**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:**

**You may enter any additional comments here**

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## Stronger and Clearer Rights to Remedies

### 13. Remedies for Unfair Practices During Ongoing Contracts

The CPA's consumer remedy against unfair practices such as misleading consumers is not as useful in long-term contracts such as leases and subscriptions as it is in simple sales. As more consumers are entering into longer-term contracts, this weakness becomes more important to address.

The CPA prohibits using unfair practices to convince consumers to enter agreements and prohibits using such practices during a contract, such as misleading a consumer about their termination rights during the life of a contract.

However, the CPA remedy for consumers must be used by giving notice to the business within one year of entering the contract. This may be of no help to a consumer if the unfair practice does not take place until after the first year of the contract. For example, a consumer has no access to a CPA remedy if a business misrepresents termination rights 18 months into a three-year contract unless a court decides to disregard the requirement for the consumer to provide notice within one-year of entering into the contract.

The ministry is considering amendments to the CPA that could expand access to the remedy to cover unfair practices such as misrepresentation during the life of a contract. The remedy would then be available until the later of one year after entering the contract or one year after the unfair practice took place (subject to a court's ability to disregard the notice requirement).

**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**

## **14. Enhanced Recovery if Consumers Forced to Sue for a Remedy**

The ministry finds that businesses do not always comply when consumers use their remedies under the CPA. For some smaller claims, a business may be counting on the consumer being unlikely to pursue civil remedies.

The CPA gives the consumer a right to sue when businesses do not honour rescission and recovery claims, statutory cancellations such as for cooling-off periods, or demands for refunds of money in respect of unsolicited goods and services or other charges prohibited by the CPA.

In all these cases, the business must issue a refund within 15 days of the consumer giving notice. If they disagree with the applicability of the consumer's rights, then the ministry or the courts may have to be involved.

The ministry is considering amendments to the CPA that could promote business compliance with remedies and make remedies pursued by consumers through civil action more useful. This would be accomplished if businesses were to incur greater risks in the form of increased damages if they do not honour requested remedies. The CPA could increase the amount of the consumer's claim if they are forced to sue to enforce payment to three times the refund the business failed to make.

**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

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## **15. Continuing to Improve Ministry Enforcement Powers**

The CPA's enforcement tools have not kept up with changes in the marketplace. Other tools are potentially available to assist the ministry in enforcement and bring actors who contravene the law into compliance.

The CPA currently provides the ministry with a range of tools to promote compliance with the law. It also mandates a public record of enforcement actions. These powers and responsibilities are set out in Parts X and XI of the CPA and its general regulation.

The government has moved to improve enforcement tools in the CPA through the *Rebuilding Consumer Confidence Act, 2020* (Schedule 3 of Bill 159).

- Amendments (not yet in force) added the ability to use Administrative Penalties to promote compliance with the CPA.
- Amendments now in force also clarified that Orders and Undertakings can specify the amount of a refund a business must provide under the CPA.

The details of Administrative Penalties would be set out in regulations under the CPA. The government has conducted initial consultations on the use of such penalties but has decided to wait to implement this new tool as part of the overall reform of the CPA. One goal in reforming the CPA is to make it clearer and more appropriate for the use of such penalties.

The ministry is considering other reforms to further improve enforcement tools. Currently, compliance orders can only order persons who are contravening the CPA to come into compliance. Modern businesses carry out many activities using other businesses as intermediaries, for example online platforms and billing services. Particularly in cases where a business contravening the law is hard to find or is in another jurisdiction, it may be useful if compliance orders could also apply to such intermediaries. For example, by permitting the ministry to order a billing service to stop delivering bills on behalf of a business whose billing practices are in contravention of the CPA.

The intent would not be to make an intermediary responsible for another business's misconduct but to put the intermediary on notice that they must stop facilitating the misconduct. As with such orders in general, subject businesses would have appeal rights.

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

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

## Explanation and Additional Comments:

You may enter any additional comments here

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## Looking Forward – Revising CPA Regulations

An improved CPA would, if developed and passed, continue to use regulations to set out more specific obligations and provisions needed to implement the Act.

Proposals such as those under theme #1, Clearer Consistent Rules for Consumer Contracts, would require further consultation on reforming the current regulations to achieve the intended outcomes and result in significant consolidation of the current rules.

Other issues that regulation reform could examine include:

- **Improved door-to-door sales rules.**

Consumers continue to experience problems with door-to-door selling and contracts they enter in their homes. The CPA lists goods and services which cannot be the subject of contracts entered at a consumer's home unless the consumer invited the business to attend their home for that purpose. Regulatory reform could consider the best way to make this ban effective.

- **Improved disclosure and other rules governing specific contracts, such as those for timeshares, personal development services and motor vehicle repair.**

- **Use of administrative penalties.**

The CPA includes authority (not yet in force) to impose administrative penalties for contravention of designated provisions of the Act or regulations. Regulations would set out which provisions are subject to such penalties and the amounts.

Regulation development under an improved CPA would include proposing the use of this enforcement tool for a broad range of requirements (beyond those proposed as part of the government's initial consultation earlier this year).

## Do you have suggestions for reform to CPA regulations?

Yes

**No**

**Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any additional comments here**

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## **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**

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Thank you for your time and we look forward to your response.