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BY EMAIL (consumerpolicy@ontario.ca)

Consumer Protection Act Review
Manager, Consumer Policy Unit
Minister of Government and Consumer Services
56 Wellesley Street West, 6th 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”).

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.¹

¹ 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.

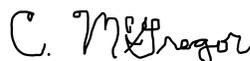
Yours truly,

ADVOCACY CENTRE FOR THE ELDERLY

Per:



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