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Wednesday 23 October 2013

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Mercredi 23 octobre 2013

Standing Committee on the Legislative Assembly

Comité permanent de l'Assemblée législative

Stronger Protection for Ontario Consumers Act, 2013

Loi de 2013 renforçant la protection du consommateur ontarien

Chair: Garfield Dunlop
Clerk: Trevor Day

Président : Garfield Dunlop
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Wednesday 23 October 2013

Mercredi 23 octobre 2013

The committee met at 1202 in committee room 1.

STRONGER PROTECTION FOR ONTARIO CONSUMERS ACT, 2013

LOI DE 2013 RENFORÇANT LA PROTECTION DU CONSOMMATEUR ONTARIEN

Consideration of the following bill:

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

The Chair (Mr. Garfield Dunlop): Welcome, everybody. We'll call the meeting to order. We've got our quorum here now.

I just want to notify everybody in the audience that we are working over the lunch hour, so some of the committee members might be grabbing a sandwich or something here and eating while you're making your deputations.

Just so you know, we're here between now and 3 o'clock—it's part of a programming motion—and we will have 15 minutes for each presenter. That, actually, gives us a minute to spare. We have five minutes for your presentation and three minutes for each of the caucus members, and I will be watching this like it's an overtime playoff game.

ONTARIO ASSOCIATION OF CREDIT COUNSELLING SERVICES

The Chair (Mr. Garfield Dunlop): With that, I'd like to welcome our first presenter, and that's Ontario Association of Credit Counselling Services, and Henrietta Ross, the executive director. Henrietta, it's your turn to start. You've got five minutes. Thank you very much.

Ms. Henrietta Ross: All right. Thank you very much, Mr. Chair, and good afternoon, everyone.

I'm here today representing not-for-profit credit counselling and our credit counselling member agencies in Ontario. We are all registered charities. Our members are community-based social service agencies, who provide consumers with confidential financial counselling services.

Specializing in helping people to deal with and overcome serious debt challenges is our core competency. Helping people to once again flourish financially is difficult but critically important, and there's no quick fix. It takes time and expertise to improve and sustain financial health.

We started our association with our membership in credit counselling in the 1960s. Some of you may remember that's when the Chargex card was born. That's the time that people started to receive access to instant financial credit—personal credit. In those early days, consumers were give a $300 credit limit, for the most part. Look at us today: Credit limits, on average, are between $5,000 and $10,000, and for a lot of people today, putting gas in their car and paying their cellphone bill and Internet is higher than $300 a month.

Our association and our members have been around, helping consumers to successfully deal with their debt, for a really long time: 44 years. We know a lot about helping consumers to manage their debt. Over the last 10 years alone, we've helped 1,437,500 people in Ontario.

In recent years, our counsellors have heard hundreds of complaints from consumers about debt settlement companies—and heart-wrenching stories.

Look at what happened to Tom. Tom lost what he paid in fees to a debt settlement company of over $2,500. The company cancelled his program with them without his knowledge, and did not acknowledge his messages when he received legal notice from his creditors. The original amount of his debt was $11,789. From the supposed settlement amount that never happened, it was to be about $4,700. He sought assistance from one of our member agencies, who helped him get back on track. But only after Tom was featured on Global TV, telling his story, did the debt settlement company try to make amends for the services he never got from them.

Or look at what happened to Susan. Susan's situation was with another debt settlement company. She was originally paying into an official consumer proposal with the bankruptcy trustee when she was solicited by the debt settlement company, who told her that they could do a better settlement for her, so she switched and she annulled her consumer proposal. She started to pay the debt settlement company $596 a month, until she received a garnishment on her pay from the Kingston Community

Credit Union and was served legal documents from the Bank of Montreal. When this happened, she became frantic and called our member agency in Kingston for assistance.

And last, here's what happened to Donna: Donna had a $7,500 debt and paid $1,600 in fees to a debt settlement company. She saw no headway as her creditors were not being paid, and she continued to receive calls from them. The debt settlement company told her that the funds she paid them were for their fees. Her monthly payments were $200 a month, and the fees to the company were $150. She contacted us as well because she wasn't getting anywhere.

These are all people like you and me, people who try to do the right thing, but sadly, people who are hoodwinked into thinking that a debt settlement company could somehow live up to empty promises of eliminating 80% or 90% of your debt and then not communicating with your creditors. We know that these kinds of promises don't deliver relief; instead, they deliver heartache.

Bill 55 will help to defend against companies who give the allure of misleading and empty promises, of easy insolvency relief for consumers. These companies cloud and tarnish the integrity and reputation of the personal financial counselling industry through their disingenuous credibility and lack of legitimate qualifications or experience, delivering little, if any, relief for consumers.

We, our association, our members and you, this committee, share the common objective and motivation of strengthening protection for consumers in Ontario. Bill 55 will help do just that, by providing that protection for people who are struggling with their debt and trying to achieve sustainable financial health.

We strongly support Bill 55 as it's written. We're delighted to work with you and work with you in the future toward building regulations that can help with the implementation of the bill. I've brought with me today for you a package that gives you more information and a package of our research.

Credit counselling services outperform average Canadians—individuals who receive our counselling through one of our agencies and a certified counsellor without doubt demonstrate better performance than the average Canadian. So you see, it's not just about paying the money back; it's about the education that people receive in the process. Thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much, Henrietta. Now we'll go to the official opposition. Mr. McDonell, do you have questions?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): You have three minutes for this round of questions.

Mr. Jim McDonell: Do you have any issues with the bill the way it's written?

Ms. Henrietta Ross: No, we do not.

Mr. Jim McDonell: You do not? How do your members get paid, generally?

Ms. Henrietta Ross: I'm sorry?

Mr. Jim McDonell: Is it simply through funds from the debtor, or do you receive from both ends?

Ms. Henrietta Ross: You mean, how do credit counselling agencies get paid?

Mr. Jim McDonell: Yes.

Ms. Henrietta Ross: They get paid partly through creditor donations, but they also get paid through funders like the United Way, because all of our agencies are social services. They are not for profit. They're registered charities and so they look for funding across a variety of avenues.

Our agencies used to be funded by the Ontario government. Back in the 1990s that funding was eliminated, so our agencies lost 60% of their funding. From that time forward, they've needed to rely on alternative funding methods. Creditors are part of the funding formula, but only a portion.

Mr. Jim McDonell: Do you receive any funds from the debtors themselves or the people lending money?

Ms. Henrietta Ross: Yes. Debtors do pay fees; they're very nominal. If the debtor cannot afford to pay a fee, the fee is always waived.

Mr. Jim McDonell: Okay.

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

Mr. Toby Barrett: Maybe just further to that, could you briefly explain the contrast, then—you've just explained how your organization's people are paid compared to how the debt people are paid.

Ms. Henrietta Ross: Absolutely. I think one of the fundamental differences is that the motivation around how we're paid is very different. Because our organizations are not-for-profit charities, their entire motivation is not to make profit from the vulnerable consumer, and so fees are paid by the consumer in a very, very minimal way. The debt settlement company is paid totally by the consumer, and that's why some of these fees are just absolutely extraordinarily high.

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The business model for a debt settlement company relies on the consumer. Those monies are gathered upfront. The consumer is advised, "Don't deal with your creditors," so no communication takes place, and after a certain length of time, some money is pooled together. It's at that time, three or four years down the road, that the debt settlement supposedly tries to achieve a settlement on behalf of the consumer, and very often that doesn't happen. So the fees are gone, no service is rendered, and the consumer is now actually way further behind. They've got the original debt they started with, plus they have now paid all this extra fee money for which they have no return.

The Chair (Mr. Garfield Dunlop): Okay, and that's your time. We'll now go to the third party. Mr. Singh, you've got three minutes.

Mr. Jagmeet Singh: Sure, thank you. What percentage do creditors fund your organization?

Ms. Henrietta Ross: Creditors don't fund the association at all. They do fund our member agencies, and the amount of money funded really does vary depending on the year. It could be in the neighbourhood of 50% or 60%.

Mr. Jagmeet Singh: So 50% or 60% of your member agencies are funded by creditors.

Ms. Henrietta Ross: They could be. It depends on the mix of debt settlement programs that the agency has and the type of service it provides.

Mr. Jagmeet Singh: And these creditors include banks and credit card companies?

Ms. Henrietta Ross: Actually, it includes all credit granters.

Mr. Jagmeet Singh: Okay. And do you disclose this anywhere, the amount that your member agencies are being funded by—

Ms. Henrietta Ross: Oh, absolutely. It's very openly disclosed with consumers.

Mr. Jagmeet Singh: Okay. Would you have an issue with increased disclosure of that so that people are aware of what they're getting into?

Ms. Henrietta Ross: Absolutely not. In fact, we relish transparency.

Mr. Jagmeet Singh: What percentage of the debts do you normally settle? To make that clearer, if a debt is $100, what percentage of that debt do you normally settle?

Ms. Henrietta Ross: One hundred dollars. In fact, if I just may say, our services are not settlement company services. There's a very, very big difference. The debt that a consumer brings to bear with a counsellor—let's say it's $1,000. The counsellor works with the debtor, the client, and the credit community to arrive at other kinds of arrangements to repay that full debt.

Mr. Jagmeet Singh: Okay. So basically, the credit counselling is to pay back the full amount. You're not—

Ms. Henrietta Ross: It's the full amount, and it's a totally voluntary program. It's different than a debt settlement company. There is no contract, so it's totally voluntary, and it's also a voluntary process between the credit-granting community and the consumer.

Mr. Jagmeet Singh: And how are you regulated currently?

Ms. Henrietta Ross: The Ontario association has its own bill with the Ontario government, called "an act respecting the Ontario association of credit counselling services." We're the only credit counselling organization in the country that has such a piece of legislation.

Mr. Jagmeet Singh: Okay. And where could one find the amount that creditors are funding these organizations?

Ms. Henrietta Ross: I can send it to you.

Mr. Jagmeet Singh: Okay. Would you be able to table that with this committee?

Ms. Henrietta Ross: Certainly. As I said, our services are totally transparent. We provide whatever information you need, and we also are completely transparent with the customers that our agencies help. We don't believe in not communicating with anyone. We want everyone to know and have full disclosure over what the process is, and I think that's one of the major differences.

Mr. Jagmeet Singh: And just my last question—we're running out of time. Thank you. In terms of your—

The Chair (Mr. Garfield Dunlop): Make it quick, here.

Mr. Jagmeet Singh: Yes—your bias, have you ever been approached on the fact that you're paid by or you're funded by creditors but you're providing services to consumers and how that affects your ability to provide unbiased advice?

Ms. Henrietta Ross: Well, in fact, that has been brought up before, and I find it very surprising, because our counsellors and our whole organization are completely objective. The fact that creditors fund through donations is actually a red herring. We provide services whether creditors provide funding or not. You'd be surprised to know that we repay debt through the programs of an agency, and there are many creditors who don't pay anything, even though they're getting the service.

The Chair (Mr. Garfield Dunlop): Okay. We now have to go to the government members, Henrietta.

Ms. Henrietta Ross: Okay.

The Chair (Mr. Garfield Dunlop): Now to the government members. Thank you. Mr. Dhillon?

Mr. Vic Dhillon: Thank you very much. Thank you for appearing before the committee today.

Ms. Henrietta Ross: You're welcome.

Mr. Vic Dhillon: Can you describe a typical client and, if possible, the steps that are taken once that client comes through your door, from the beginning to the end?

Ms. Henrietta Ross: Sure; absolutely. The first thing that happens is, the client comes to the credit counsellor, and the credit counsellor sits down the client to understand what their circumstance is. There's full disclosure from the client to the counsellor about what they're faced with: full disclosure around the amount of debt that they have, the kind of income they have, the kind of deficiency toward paying their debt that's there. The entire household circumstance is revealed to the counsellor.

The counsellor, with the client, then looks at what their budget is and what their possibility of repayment could be. Then they set about, with the client's permission, to review a number of options that could help that client. An example would be that the client may be able, after talking to the counsellor, to learn how to reorganize their finances to pay back what they owe on their own, or they could ask the counsellor to help them with a debt repayment plan, which the counsellor will do. Perhaps it's a case where insolvency looms, and there just aren't the resources to repay the debt, in which case the individual will be advised of options under the bankruptcy act—

Mr. Vic Dhillon: How would you charge this client?

Ms. Henrietta Ross: At that point, there is no fee. The fees come into play if there happens to be a debt management repayment plan, and that happens 10% or 12% of the time.

If there's a debt repayment plan and the counsellor is facilitating a program with the credit granters, that's when money would be paid by the credit granter.

Mr. Vic Dhillon: Your members: Can you give a little bit more detail? I know you've been asked this before

about the source of funding for your members. Do you proactively make that clear in your offices?

Ms. Henrietta Ross: Absolutely, we do.

The Chair (Mr. Garfield Dunlop): You have about 20 seconds left in this round.

Ms. Henrietta Ross: Okay.

Mr. Vic Dhillon: How would you do that?

Ms. Henrietta Ross: It's done through discussion; it's done through written documentation. Our clients are very clear in terms of the amount of creditor support that's received. It's important, from a co-operation point of view. A voluntary repayment program won't work unless all of the credit granters will assist in the process to help the consumer.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much, to the government members. Henrietta, thank you very much for your time this afternoon.

Ms. Henrietta Ross: You're welcome.

OCCA CONSUMER DEBT RELIEF

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation, OCCA Consumer Debt Relief. We have Ed Portelli, the owner, here. Mr. Portelli, welcome to Queen's Park.

Mr. Ed Portelli: Thank you.

The Chair (Mr. Garfield Dunlop): You have five minutes for your presentation.

Mr. Ed Portelli: Okay. I thought I had a few more minutes, so I'm going to try to cut it down.

The Chair (Mr. Garfield Dunlop): Okay. We'll let you know when there's a minute left, okay?

Mr. Ed Portelli: Okay.

I've actually provided everyone with a copy of the response submission to the ministry, and this relates to that.

OCCA is the first and longest-standing debt relief firm in Ontario, as far as for-profit companies, being fully licensed since November 2001. Since inception, we have continually spoken out against firms in this industry which employ processes that are not in the best interest of the consumer.

The proposed regulations of Bill 55 as they pertain to debt settlement contract guidelines, full disclosure, refund and cancellation policies, penalties for false advertising and especially the elimination of joint bank accounts are long overdue and are supported by OCCA and our members.

It's of the utmost importance to our members that any new legislation serves the purpose of eliminating bad practices in the industry while making certain that consumers are not stripped of any rights. As such, I'd like to emphasize a concern with section 16.6 of the proposal. To paraphrase, section 16.6(1) says that no firm that provides debt settlement services shall accept payment in advance of providing services.

It's important to ensure that this committee provides the Ministry of Consumer Services with a more clear definition of what constitutes the provision of services. To provide the committee with greater clarity in this area, and to help avoid any potential legal or constitutional injustice to consumers, such as the ones instituted in Alberta and Manitoba, I'd like to refer to section 2 of the current proposal from the Ministry of Consumer Services in its debt settlement consultation.

Section 2, as proposed, will eliminate certain bad practices in this industry. However, it will also relieve consumers of their constitutional right to choose a representative they feel best suits their needs.

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To clearly illustrate this, I will split the section into two, and I'll read you the section. Debt settlement services operators would only be paid for actual results rather than efforts to obtain results. The intention of this part is clearly to prevent upfront fees from debt settlement firms that offer guaranteed future results. These firms use a practice known as debt pooling. There is a very good description in the handout that I gave you of the difference between our firm, as an example, and debt pooling.

We've seen more and more of this show up; Canadian and American firms are using it. Limited—if, actually, any—work is done, as has been stated by our friend here from non-profit credit counselling. The debt-pooling model includes all three of the techniques which are the major causes for concern in this industry.

It is our submission that the debt-pooling model is the major, if not entire, cause of complaints in Ontario. Fees must be fully paid up front, prior to entering a savings plan and prior to any negotiations taking place with a creditor. Consumer savings are deposited into joint accounts; only the debt-pooling firm has access to those. Fees are determined based on a guaranteed settlement prior to any negotiations taking place.

This section would put a stop to the debt-pooling model, but doesn't take into account other models that offer valuable efforts and services. Our process, as an example, with OCCA is called the OCCA Informal Consumer Proposal. It has been used successfully for consumers, co-operatively with creditors, and has been virtually complaint-free for almost 12 years.

The process begins immediately. They have a budget created. There is financial education and planning. We formulate a debt-relief strategy. We handle all calls and letters from creditors. There is ongoing protection in case of hardship, so in the case of non-profit, where if you don't have enough money to maintain they offer you bankruptcy as a solution, we will still offer you protection to give you the opportunity to make an arrangement down the road. It gives you a lot more opportunity.

We also have licensed paralegals who are included with our service. All court costs—everything—is included in a one-time arranged fee. The fee is paid over the course of the contract.

The Chair (Mr. Garfield Dunlop): One minute. You have a minute left.

Mr. Ed Portelli: One minute?

The Chair (Mr. Garfield Dunlop): Yes.

Mr. Ed Portelli: All right. Let me skip to the other part that I have.

Just to put that in layman's terms, just as a lawyer or a paralegal routinely charges fees for service with no guarantee of a specific result, fees can be charged and collected so long as the payment arrangements are clearly defined and services are provided as agreed. That's what we believe as far as what an upfront fee shouldn't involve. If a firm promises a specific result, such as an injury attorney or many of these debt-pooling firms, then yes, the fees should only be collected when the work is done.

The other problem I have with section 2, part 2, is that the proposed rule will not allow any fees until a specific settlement offer is accepted by the debtor and their creditor. At first glance, this appears reasonable. On closer review, it will unduly and unfairly empower creditors over consumers. The rule as it is currently written would demand that the creditor must be satisfied with a payment arrangement prior to any firm being able to charge a fee.

So, at this point, this section would eliminate the ability for people to choose their own firm, because essentially what happens is that if the creditor doesn't accept even a fair or reasonable offer, we would not be able to provide a service for a fee; hence, there are no rules, there are no regulations for what would be a reasonable offer, so all it would take is for creditors en masse to make the decision that they are not going to accept offers from a firm, and that firm would have to close. That unduly empowers these creditors in these civil matters.

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

Mr. Jagmeet Singh: Sure; thank you. So, as I take it, your issue is that there are some bad performers or bad actors as opposed to an entirely flawed system. Is that correct?

Mr. Ed Portelli: There are some bad actors, but the majority of them come from the bad process, which is debt pooling, as credit counselling has identified.

Mr. Jagmeet Singh: That was my next question. So the key issue is a flawed model, I guess, and the specific flawed model is debt pooling. Is that what you're saying?

Mr. Ed Portelli: And that model is the only model that is addressed in the legislation forthcoming from the ministry. It is assumed that that is the only alternative out there to credit counselling, and we are concerned that there will be a blanket statement made against any firm, entirely, that charges people a fee.

Mr. Jagmeet Singh: So, how could we protect those services which are providing a benefit to consumers while capturing those services which are providing a problem for consumers?

Mr. Ed Portelli: I think the legislation covers a lot of it as far as disclosure, as far as reasonable payment plans, as far as advising what you're going to do. It's just like any other service. You pay for the service, you pay for your lawyer to do his best and, as long as he's doing his best and as long as he has outlined the fees that you can collect, there's nothing unfair about that.

The issue that's really outstanding is that upfront fees based on the debt settlement/debt pooling model are—

Interjections.

Mr. Ed Portelli: Sorry—on the debt pooling model are based on future attempts, future efforts, future promises that are guaranteed up front. Fees are collected up front. Once the fees are collected and all the savings are completed, then potential work begins on this supposed guaranteed settlement. That's the major problem that we found from consumers who come to us and say that that's the model that they don't want.

Mr. Jagmeet Singh: Two questions, then—I'm probably running out of time. One, can you table a list of recommendations that would protect the other models that exist? Can you give us some recommendations that would protect this, so that this law wouldn't unduly limit those services?

Mr. Ed Portelli: Yes. I can probably—today's speech was a little longer. I thought I had 15 minutes. I can forward that. But there's a lot of information in what I've handed you as far as more clearly defining what we believe are the issues, where the issues lie. If you eliminate joint bank accounts at this point, you will eliminate 90% of the issues immediately, because people's money is not held hostage first.

In our case, as an example, when you're providing services—just like your lawyer; you start to get upset with your lawyer, you start to feel like they're not doing something. You're still making payments that you could stop. You still have complaints that can be made. You're not waiting until it's all paid, until somebody decides, "Let's have a look at what we're doing here."

Mr. Jagmeet Singh: Okay.

The Chair (Mr. Garfield Dunlop): Thirty seconds for a quick question, Mr. Singh.

Mr. Jagmeet Singh: Can you provide proof or evidence that your type of model is complaint-free? That would help us in making a decision.

Mr. Ed Portelli: It's virtually complaint—we've received no complaints from the ministry in writing.

Mr. Jagmeet Singh: Can you table some evidence to that effect?

Mr. Ed Portelli: Sure.

Mr. Jagmeet Singh: Okay.

Mr. Ed Portelli: Yes. We've been licensed for 12 years and we've never had a major complaint of any sort.

Mr. Jagmeet Singh: That's good. Okay.

The Chair (Mr. Garfield Dunlop): Thank you very much. I'll now go to the government members. Mr. Balkissoon, you have three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Thank you for being here. I have one question, and it's almost a follow-up to the previous questioner. If a client comes to you and pays the fee up front and they expect certain work to be done and they're unhappy, what's their recourse?

Mr. Ed Portelli: They can get a refund. Their fees are not paid up front. They're determined up front based on the situation, just as you would get an estimate from—because we include paralegal services, because we do a lot of work, we estimate the amount of work. We prorate it over the term of the contract generally and based on their budget. So we're talking monthly payments for the most part.

Mr. Bas Balkissoon: Okay. So if at any point in time they're unhappy, what do they do?

Mr. Ed Portelli: Then (a) they won't have to keep paying, and (b) we will review the situation. If we feel that we have done our best and that we have completed a lot of work, then we'll negotiate what's fair as far as a refund.

Mr. Bas Balkissoon: But suppose they're still unhappy. Where do they go?

Mr. Ed Portelli: If they file a complaint, we can respond to their complaint, if they complain to us directly. There is no governing body other than the Ministry of Consumer Services, and they are the governing body that can intervene. They don't have a whole lot of power, if that's what you're looking for, but they do lots—

Mr. Bas Balkissoon: So you're saying that their last recourse is file a complaint with the Ministry of Consumer Services against your firm?

Mr. Ed Portelli: As with any industry, yes.

Mr. Bas Balkissoon: Okay. Thank you.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon.

Mr. Vic Dhillon: You start collecting the fees. When do you actually start doing the work?

Mr. Ed Portelli: The work is started from day one. Creditors are notified immediately that they are to contact us and us only in writing. Obviously our customers are free to contact the creditors, but we advise them not to because we're looking at making a decision based on all of the creditors and having them not have to go through the stress of feeling guilty. We make it a business matter for them. We are representing them as a business to another business so we don't have to get emotional about it and they don't have to be emotional about it.

We start from day one. We put together their finances. We make a proposal, a repayment offer, and in the meantime creditors can accept or decline or change it or, in a lot of cases, they can decide to sue for it. We have paralegals on staff who have been very good at getting arrangements for these individuals that are much less than 100%, in general; 100% is not our average. Credit counselling can work for some people, but there are a lot of people who will get kicked off that program or be unhelpable because creditors have a minimum that they're willing to take to still co-operate with non-profit.

We hold a more advocacy-oriented environment where we just simply advocate, but we don't have any relationships as far as financial with creditors, but we do have courteous relationships.

Mr. Vic Dhillon: So—

The Chair (Mr. Garfield Dunlop): Okay. That concludes your time. We now go to the official opposition. You have three minutes for questions.

Mr. Jim McDonell: Do you receive any funds from the creditors at all?

Mr. Ed Portelli: Absolutely not. We'd find that to be a conflict.

Mr. Jim McDonell: Okay. You talk about your fees starting immediately. Typically, how long do you collect your fees to pay for your services?

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Mr. Ed Portelli: The average would be about eight months. We go up to 12 months. We've had some that are 18 months. We try to base it around the individual's finances and the amount of work that we feel is forthcoming, if they have assets that we need to help protect. The fee is generally a combination of a lot of different things.

Mr. Jim McDonell: Generally, what type of settlement percentage do you make—typical?

Mr. Ed Portelli: Well, a typical settlement—in our case, we are happy if the individual is protected up through the statute of limitations, if that's in their best interests. To give you a number would include a lot of zeroes. That number would be down around 15%. But I guess, the average settlement—and again, this is more of a sample guess—would be about 60%. We don't advertise that. We don't suggest that. We don't let people know that. We simply do our best, and we have a track record.

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

Mr. Toby Barrett: The upfront fee, how is that calculated? Is it based on the size of the debt?

Mr. Ed Portelli: The size of the debt tends to give us an indicator of how much work is going to be involved. That does come into play, but so do their finances. These fees are not upfront, and that's what I wanted to emphasize today. They are not upfront. It is a determined amount originally based on all their information. They receive a full membership, which is lifetime. We do not disappear even if there's creditors calling them back in a couple of years. That's what I wanted to distinguish. Upfront fees, in terms that really need to be addressed, are ones where the fees are paid in full, and then attempts begin once the fee is collected in full. In the case of debt pooling, not only do you have to collect the fees in full, you also have to put the savings in full, and then work will begin. There is no contact with creditors; there's no legal defences. That's the upfront fee I think that we in this industry want dealt with. To say an upfront fee is any fee for any reason no matter how many services you provide is going to eliminate a lot of viable options for consumers.

The Chair (Mr. Garfield Dunlop): Anyone else? Mr. McDonnell, you've got about 25 seconds.

Mr. Jim McDonell: Sure. How long does your typical file last?

Mr. Ed Portelli: They're all so varied. There's a lot of people on hardship programs that are just here. They've been calling us for five, six or seven years just to get advice on day-to-day things. There is no average; there really isn't.

Mr. Jim McDonell: So your active file: How long is it active, that you're actually working on it?

Mr. Ed Portelli: Well, let's face it: After two years, there's really not much to be done. After they get past two years, the statute of limitations allows them to not be legally challenged for the debt any longer. But in a typical—most of the people, the arrangements that we make are probably in and around a three-year deal.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much, Mr. Portelli, for your submission.

Mr. Ed Portelli: Thank you.

MR. JEFF MOLE

The Chair (Mr. Garfield Dunlop): We'll now go to our next deputation, which is Jeff Mole. Mr. Mole, you have five minutes for your presentation.

Mr. Jeff Mole: Good afternoon, Mr. Chair and members. Thank you very much. My submission mostly relates to fixing up administrative stuff.

Many of you will recognize me as a champion for community enterprise in the energy sector. However, you may not realize that, prior to this, I enjoyed a lengthy career in the collection agency business. Over my 20 years in the business, I became very knowledgeable about collection agencies and credit reporting agencies, and how they work together. I no longer have a financial interest in the industry; therefore, I feel I am well positioned to represent the interests of Ontarians with proposed amendments to the bill at hand.

I am here today to request amendments to the bill that would ensure fairness and reduce the burden for consumers who want to correct their credit report. Most consumers of credit products in Ontario have an automated credit report. These reports are stored in a database which gathers and distributes information about the credit history of Ontario consumers.

Collection agencies routinely access consumer credit reports, and this is noted on the report as an inquiry. These inquiries can negatively impact the consumer's credit score. It is my submission that this access is being abused by collection agencies, and credit reporting agencies are unwilling to stop the abuse.

Credit reporting companies have policies that an inquiry made by a creditor will automatically purge three years from the date of the inquiry in the system and that the system will keep a minimum of five regardless of age. I am concerned that these policies are unregulated and unfair to consumers, since inquiries are often misleading and difficult to correct.

I am also concerned that some credit reporting agencies' standard policies are a bit heavy-handed and, one might argue, out of date. One might also argue that these policies impact some of the most disadvantaged members of our society and should be reviewed and regulated if necessary.

I submit that the bill should be amended to require that inquiries be expunged if they relate to a debt that is barred under the Limitations Act and/or if they are made by collection agencies and others that are not, by definition, creditors.

Furthermore, I submit that the bill should be amended to require that, if a matter would be barred by the two-year limitation provided under the Limitations Act, it shall not be reported on a consumer credit report.

The Limitations Act, 2002, established a basic limitation period that, unless the act provided otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

It is my submission that credit reporting agencies routinely report debts that are barred by the Limitations Act. I submit the bill should include measures that align the outdated Consumer Reporting Act with the Limitations Act.

Section 9 of the Consumer Reporting Act, procedures of agencies, states—and I've outlined it here, but basically that consumer reporting agencies shall adopt procedures that are reasonable in ensuring the accuracy. It also states that a consumer credit report shall not be included if more than seven years have elapsed since the date of last payment on the debt collection. So I guess they're looking at seven years as the limitation period, when in fact the limitation period is two years.

Notwithstanding that section 9 permits the reporting of debts for up to seven years, one could argue that this is heavy-handed and that reporting companies should cease and desist reporting items that are knowingly barred by the two-year statute under the Limitations Act.

It appears that the Consumer Reporting Act was originally intended to align with the Limitations Act. However, it also appears that the act has not kept up with the modernized Limitations Act. I would argue that the industry knew or ought to have known this was the case and should have voluntarily taken steps to change the way they report older debts.

I've always felt it's better to work directly with the industry for voluntary improvement rather than going by way of regulation. Therefore, in January of this year, I raised—

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

Mr. Jeff Mole: Yes—this concern with the vice-president, legal counsel and chief privacy officer at one of Ontario's largest credit reporting companies. However, to date, there has been no reply to my concerns.

Accordingly, I'm seeking a regulatory change to bring provincial credit reporting policies in line with the Limitations Act. I would ask that this bill be amended as such to provide stronger protection for Ontario consumers.

Thank you very much, Mr. Chair.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Mole. That's great. We'll now go to the government members. You have three minutes. Mr. Dhillon?

Mr. Vic Dhillon: Thank you for appearing today. We have no questions.

The Chair (Mr. Garfield Dunlop): You have no questions? Now to the official opposition. Do you have any questions?

Mr. Jim McDonell: Do you have any ties to any of the credit companies or—

Mr. Jeff Mole: No. No, I'm just doing this on behalf of Ontarians. I identified that this was a known issue and I just felt I should raise it because I think it's important for the members to understand that while we have this act open for amendments, we should actually correct some of the things that are also wrong with it.

Mr. Jim McDonell: Okay. I really have no other questions. Thank you.

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

Mr. Jagmeet Singh: Can we take all the other time that's left over too?

The Chair (Mr. Garfield Dunlop): No. I'm already behind today.

Mr. Jagmeet Singh: Can you describe the impact to the consumer if it's not brought in line? Right now, as it stands, the two acts are not in line. The Limitations Act provides a two-year limitation. What's the impact on the consumer?

Mr. Jeff Mole: From time to time you might get collection agencies using the fact that the credit report is going to be impacted to strong-arm consumers and, where the debt is perhaps barred, they still proceed to put it on the credit report, and that's hard to get changed for a consumer. Once the consumer wants to fix and clean up their credit history, they can't do it because it's up to the collection agencies' good heart or whatever. Trying to navigate through some of these rather large companies to get to the right person—I don't think it's in the consumers' interests to have to go through that ornery process. I think it should be corrected voluntarily. It's a known issue. They should be doing it without having to be told to do it.

Mr. Jagmeet Singh: Just to put it into a concrete example, if a consumer has a debt that's five years old and that debt is to a particular creditor, that debt would be barred by the Limitations Act because it's more than two years. They're insulated because of that, but a creditor wants to recoup losses from that, and they threaten to put that onto credit reporting.

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Mr. Jeff Mole: They're not stopping collection activities just because it's barred, and so they do inquire on credit reports. They do report outstanding items to the credit agencies. I think it's just a misalignment between the two acts, and I think there's an opportunity here to align the two acts. It's perhaps just an oversight when the modernization happened.

Mr. Jagmeet Singh: Okay. I have no further questions, unless my colleague has a question.

Ms. Cindy Forster: No.

The Chair (Mr. Garfield Dunlop): Thank you very much to the third party. Mr. Mole, thank you very much for your time today.

DIRECT SELLERS ASSOCIATION OF CANADA

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation, the Direct Sellers Association of Canada, represented by Ross Creber, the president, and Mr. Eamonn Flaherty. Please have a seat and make your presentation. You have five minutes, sir.

Mr. Ross Creber: Thank you very much, Mr. Chairman. On behalf of the Direct Sellers Association, I want to thank the committee for providing the DSA with an opportunity to comment on Bill 55 and its impact on the direct selling industry in Ontario, with particular attention to schedule 2, the cooling-off period.

Since 1954, the Direct Sellers Association of Canada has established and upheld rigorous standards, ethics and good business practices as the recognized voice of our industry. We're a family of competitors using our combined strength to ensure fairness in regulations and gain credibility and respect at all levels of government.

As an industry that connects more than 900,000 Canadians to entrepreneurial opportunity and enrichment—340,000 of whom are in the province of Ontario—we provide assurance of member company integrity and a foundation of trust and independence for the direct sellers and the consumers.

Direct selling is the marketing of consumer products and services directly to consumers, in a face-to-face manner, away from permanent retail locations, by an independent salesperson who represents a direct selling company. These sales are generally conducted in a home or workplace in the context of group presentations, known as "party plan," or on a personal consultation basis.

The DSA currently represents 45 direct-selling member companies. However, membership in our association is not automatic. All companies are required to undergo a rigorous review of their business and marketing materials by independent legal counsel to ensure compliance with all federal and provincial requirements and with the DSA's codes of ethics and business practices.

The codes are the cornerstone of our association to which all companies must adhere to prior to acceptance for membership, and it's a commitment that must be reaffirmed on an annual basis. The codes provide enhanced protection for both the consumer and the direct seller, and they exceed what is required by both federal and provincial legislation or regulations. The codes also include a complaint resolution procedure and are overseen by an independent code administrator who has no connection with a member company.

The DSA is also a member of the World Federation of Direct Selling Associations, which consists of 66 national DSAs around the world whose aggregate global retail sales in 2012 were $154 billion US through the activities of 91.5 million independent direct sellers.

Direct selling in Canada is a $2.2-billion industry—in Ontario, about $720 million—that generates over $1.36 billion of income for Canadians, injects $4.6 billion of sales into the marketplace, contributes $815 million in

tax revenue and, additionally, direct selling companies contribute more than $8 million to charitable organizations across Canada.

Direct selling is a mature and trusted channel of distribution with 42% of Canadians having purchased from at least one direct selling company, with 28% of our business conducted in rural areas, 36% in both suburban and urban markets.

Direct selling in Canada is regulated at both the provincial and federal levels of government. At the provincial level, the industry is regulated by consumer protection legislation that was developed as a result of a formal agreement of the Consumer Measures Committee in 1996, which harmonized the key components of direct selling transactions across the provinces, including, but not limited to, the cooling-off period, written contracts, a written contract requirements rescission clause.

The federal Competition Act regulates the industry under the multi-level marketing and pyramid schemes selling provisions of the act with respect to inventory loading, buy-back guarantee, required purchases and unsubstantiated earnings claims.

The DSA supports the Ontario government's plan to ensure Ontario consumers are protected from the high-pressure, must-buy-now sales tactics some businesses encourage, like home improvement services and home furnace and water heater sales.

Our 45 member companies include such well-known names as Avon, Mary Kay, Amway, The Pampered Chef, lia sophia, Vector, USANA, Arbonne, Princess House, Partylite gifts and Creative Memories. However, the DSA does not represent companies engaged in the rental or sale of water heaters or other home improvement equipment services, which are at a much higher price point than those being offered by our member companies.

The DSA can report that over the years, we've received relatively few complaints by consumers or independent consultants that were not remedied by member companies in mutually agreeable terms. The DSA is concerned that the proposed changes could negatively impact our sector through an act of unintended consequences. The harmonized regulations that were developed by the federal-provincial task force in the 1990s have been mutually beneficial to all stakeholders, consumers, government, direct-selling companies and independent contractors.

Increasing the cooling-off period would have relatively no measurable increase in consumer protection. The problem is not the cooling-off period; it is the alleged unethical business practices engaged in by certain companies regulated within the direct-selling sector. The DSA does not support a change to the 10-day cooling-off period as it applies to direct sellers.

Thank you for the opportunity to provide our comments. We're prepared to take your questions.

The Chair (Mr. Garfield Dunlop): Thank you very much, sir. Now we'll go to the official opposition. You have three minutes for questions.

Mr. Jim McDonell: Obviously, there are have been a number of complaints, and they generally deal with the bad players at the door. Do you have any comments on how we might fix that problem without doing some of the things in this bill?

Mr. Ross Creber: In the door-to-door?

Mr. Jim McDonell: In the door-to-door.

Mr. Ross Creber: Specific to the real concerns that are iterated in this bill?

Mr. Jim McDonell: Yes. The bill really was generated from the complaints the ministry has received.

Mr. Ross Creber: On water heater sales.

Mr. Jim McDonell: Yes.

Mr. Ross Creber: Okay. Our recommendation would be, obviously, to stay with the 10-day cooling-off period, but initiate some kind of a prohibition on the installation of the equipment until the consumer has had a more reasonable time to review the contract.

Mr. Jim McDonell: Any other recommendations you have on the bill, other than—

Mr. Ross Creber: No, sir.

The Chair (Mr. Garfield Dunlop): Any other questions?

Mr. Jim McDonell: No.

The Chair (Mr. Garfield Dunlop): We'll now go the third party. You have three minutes, Mr. Singh.

Mr. Jagmeet Singh: Thank you. As it stands, do you have any other concerns with the bill?

Mr. Ross Creber: No, sir.

Mr. Jagmeet Singh: Would you be in a position to table an amendment that would satisfy your concern?

Mr. Ross Creber: Yes, we would.

Mr. Jagmeet Singh: Okay. Loosely, what would the amendment look like? How would it be achieved, given the bill we have right now?

Mr. Ross Creber: As I stated before, the amendment would be to stay with the 10-day cooling-off period, but find some agreeable time frame that would give the consumer an opportunity to not have the water heater installed within that time frame.

Mr. Jagmeet Singh: Not to have the water heater installed.

Mr. Ross Creber: Not to have it installed. There would be a 20-day or 30-day cooling-off period before the installation of the water heater could take place.

Mr. Jagmeet Singh: Okay. How would that benefit the consumer?

Mr. Ross Creber: I think it would definitely give the consumer more opportunity to consult with whomever they want to consult with in terms of understanding their rights in the contract that is presented to them at the door.

Mr. Jagmeet Singh: And was there anything else that you wanted to add that you weren't able to add, given the limited time that you had to present?

Mr. Ross Creber: No. Obviously, there's more information that we could provide about the direct-selling industry and the impact that it has on Canadians, and the fact that we do make a difference in people's lives in terms of providing income-earning opportunities for close to 900,000 people from coast to coast to coast. It's

a reasonable economic opportunity for people to afford to get into.

Mr. Eamonn Flaherty: I might just add to that. The 10-day cooling-off period does apply across the country in all of the provinces and territories, and it does stand. There hasn't been any shift by any province or territory to move it to a larger period, a longer period, so the 10-day cooling-off period is a harmonized agreement across the whole country. It seems to be serving consumers, certainly of direct-selling company members' services and products, very well.

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Mr. Jagmeet Singh: How would increasing that cooling-off period negatively impact your industry?

Mr. Ross Creber: Well, if it increased just in the province of Ontario, then that would basically negate the harmonized agreement that was agreed to by the Consumer Measures Committee back in the 1990s.

I was a member of that federal-provincial task force that put that arrangement together, and there was a lot of work and a lot of consultation that went into that particular agreement. For our particular industry at that particular time, member companies had to have, I think, about seven different customer sales invoices to meet the various provincial requirements across the country. That harmonized agreement brought that down to where we're working with two or, probably, usually three customer sales invoices: one English, one bilingual—

Mr. Jagmeet Singh: A last quick question—

Mr. Ross Creber: —and one specifically in French.

Mr. Jagmeet Singh: Sorry to interrupt. Last quick question: What's the number one complaint that you receive in terms of the feedback that you receive?

Mr. Ross Creber: In our association?

Mr. Jagmeet Singh: Yes, from consumers.

Mr. Ross Creber: I've had two this year.

Mr. Jagmeet Singh: But what's the main concern?

Mr. Ross Creber: Some of it is having difficulty, possibly, contacting a direct seller, which shouldn't be a problem, because if they have their customer invoice, the name and contact information of the direct seller is on the invoice.

We also get occasional complaints between an independent sales contractor, that represents a direct-selling company, and the individual. Part of it is maybe not understanding the contract that they signed.

But I can almost state categorically that the direct-selling companies will resolve those issues to the best interests of the consumer or the independent direct seller.

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

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

Mr. Vic Dhillon: Thank you very much. Can you tell us what your organization's thoughts are on how consumers can be better protected in regard to, especially, door-to-door sales?

Mr. Ross Creber: I think I personally answered that question with respect to the proposed amendment, but I think there's a lot more education that industry can partner with government on, in terms of information bulletins and messages out to the consumers from the various segments.

A number of years ago, we worked with the Ontario government and a couple of other stakeholders in producing an educational component for junior-high-school-level students, along with the Ministry of Education and the consumer ministry. It was a module on how to protect yourself in today's environment. Now, that goes back to the late 1990s, but still, that type of information is one of the ways in which we reached out to this particular community.

We make available copies of our codes of ethics and business practices to consumers or to the government agencies. We also have information on our website in terms of what to look for if you're looking to select a direct-selling company, or what you should expect to obtain from these companies.

We do have a fairly good consumer outreach, and we also have, through our Direct Selling Education Foundation, more work that we do with the academic community and with consumer groups. As a matter of fact, we worked on a fraud prevention conference two or three years ago, with a wide range of partners from the business community and the federal government. That was a huge success. I think over 300 international people attended this conference.

Those are some of the things that we do as an association to reach out to communities.

Mr. Vic Dhillon: Okay. Thank you.

The Chair (Mr. Garfield Dunlop): No further questions?

Mr. Vic Dhillon: No.

Mr. Garfield Dunlop: Well, thank you very much, Mr. Dhillon.

Thank you very much, sir, for your presentation this afternoon.

WOMEN'S PARALEGAL ASSOCIATION OF ONTARIO

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter. I understand it's the Women's Paralegal Association of Ontario. Are you prepared to make the—

Mr. Mark Keeler: Yes. Andrea doesn't seem to have been able to make it, but I can speak on the bill.

The Chair (Mr. Garfield Dunlop): Are you prepared to do that now?

Mr. Mark Keeler: Yes.

The Chair (Mr. Garfield Dunlop): Okay, because we're running a couple of minutes ahead of time now.

Mr. Mark Keeler: That's what I thought. I was sitting here, going, "Oh, I'm going to have to do this, aren't I?"

The Chair (Mr. Garfield Dunlop): Okay. You're fine, then?

Mr. Mark Keeler: Yes.

The Chair (Mr. Garfield Dunlop): All right. Mr. Keeler, you have five minutes for the presentation, then.

Mr. Mark Keeler: Thank you.

Mr. Toby Barrett: Who's this?

The Chair (Mr. Garfield Dunlop): This is the next deputation, the Women's Paralegal Association of Ontario.

Mr. Mark Keeler: Thank you, Chair and committee. Thank you for having us today. My name is Mark Keeler. I'm a licensed paralegal. I'm also associated with the Women's Paralegal Association of Ontario.

I won't get into too much background on the association. I can save time and do what we're trying to get to, except to say that they represent women paralegals in Ontario. There are now roughly 4,500 paralegals licensed under the Law Society of Upper Canada. We operate primarily in Small Claims Court, tribunals and the lower courts.

The concern that we're bringing is, if this bill goes into effect, some of the tools that we have at our disposal, such as demand letters and the ability to make phone calls, are going to be drastically curtailed. That's one of the key tools that we need to—we make a few emails, calls, letters and so on. We are not debt settlement companies and we are not collection agencies. Very similar to the provision provided for lawyers, we require that exemption so that we can do our job as well.

As far as our own methodologies in the regulation, because we are regulated—

Interjections.

Mr. Mark Keeler: Speaking of which, take it. Go ahead.

Ms. Andrea Sesum: Thank you. Good afternoon. How are you?

Mr. Mark Keeler: I'll let up. I love that switch. Andrea can take it.

Ms. Andrea Sesum: My apologies. I thought I had five minutes. So good afternoon. How are you today?

The Chair (Mr. Garfield Dunlop): Feel free to go ahead.

Ms. Andrea Sesum: Thank you. Thank you for your time and your consideration today. I would like to begin by introducing myself as Andrea Sesum. I am the president of the Women's Paralegal Association of Ontario.

Our submissions today shall seek amendment to section 2 of the Collection Agencies Act to include paralegals under the exemptions of the act. We do have written submissions for you as well, and they will include our presentation today.

I will give you a little bit of a background. In 2006, the government of Ontario took an initiative, through the Access to Justice Act, to regulate paralegals under the Law Society of Upper Canada. As of 2012, there were an estimated 4,300 paralegals licensed in the province of Ontario. Out of those 4,300, 40 were self-employed and 43% focus on civil litigation which is before a Small Claims Court of Ontario.

As licensed and regulated providers of legal services in Ontario, paralegals are frequently the advocates of those less advantaged and have become an indispensable pillar in providing access to justice. However, absolute and discriminatory barriers to practice in the form of restrictive or exclusionary provisions vitiate our ability to advocate for consumers. The Morris report that was done in 2012 to the Attorney General regarding the progress of paralegal regulation identified this problem and recommended a series of legislative reforms that will remove and amend discriminatory provisions.

Advocating on behalf of consumers, working with debtors to avoid litigation and providing legal services to those who often are least able to afford it are some of the critical functions that paralegals perform within their everyday mandate and before a Small Claims Court.

Despite the successful establishment of paralegal regulation, there is a collection of statutes that predate this regulatory framework and, as a result, contain provisions that make references to "barrister," "solicitor" or "member of the bar," resulting in logically inconsistent and contradictory codes that undermine not only paralegal regulation but the mere access to justice.

In the case of the Collection Agencies Act, the effect of exempting only lawyers denies the right of low- to middle-income consumers to affordable legal representation of their choice, ultimately denying access to justice, and it represents an unjust barrier for us paralegals.

Firstly, if a paralegal cannot issue a demand letter or make follow-up calls, it makes it all but impossible to engage the party to reach a settlement and possibly avoid unnecessary litigation, which increases the burden upon the courts, and it increases the cost to the consumer. A key cornerstone of the Access to Justice Act was the reduction of cost. Not amending the Collection Agencies Act would have the effect of doing just the opposite.

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Secondly, paralegals are vetted in the same manner as lawyers. We're licensed; we're sworn under oath. We're required to carry liability insurance, which is very well in excess of the required bond under the Collection Agencies Act.

We urge your honourable Chair and members of the committee to amend section 2 of the Collection Agencies Act by striking out "barrister" and "solicitor," in accordance with Dr. Morris's report and recommendation number 3, and replacing it with either "licensee" or alternatively an additional subsection. We actually drafted two options of this subsection, and it says, "(a) to a licensee under the Law Society Act in the regular practice of law or the provision of legal services or to his or her employees;" or "(a) Persons licensed under the Law Society Act to practise law in Ontario;" and "(b) Persons licensed under the Law Society Act to provide legal services in Ontario;"—

The Chair (Mr. Garfield Dunlop): You've just got a few seconds left. Sorry, go ahead.

Ms. Andrea Sesum: Thank you.

Paralegals across the province have dedicated themselves for years to protecting consumers through the courts and have been strident advocates for affordable

legal services. However, we cannot fulfill our professional responsibilities without the full arsenal of legal options at our disposal. Honourable members, this requires the elimination of the discriminatory provision, to ensure a consistent legislative framework. In my humble submissions to you today, the exclusionary language of section 2 no longer has a place in that framework.

The Chair (Mr. Garfield Dunlop): Thanks very much.

Ms. Andrea Sesum: Thank you.

The Chair (Mr. Garfield Dunlop): We'll now go to the third party. You have three minutes, Mr. Singh.

Mr. Jagmeet Singh: Sure. Thank you so much for attending today and for your deputation.

My first question is—well, I have a couple of questions. You indicated three proposed amendments. Do you favour one over the other, and is there any advantage over any particular definition of the amendments that you proposed?

Ms. Andrea Sesum: Absolutely. Thank you for that question.

These amendments were done—they were actually derived directly from the recent amendment that was done to the Commissioners for taking Affidavits Act. We just wanted to keep it consistent. That is why we proposed these options.

There's no favourite.

Mr. Jagmeet Singh: Oh, there's no favourite of the three?

Ms. Andrea Sesum: There's no favourite.

Mr. Jagmeet Singh: Okay. That's fine.

I really appreciate the fact that you've given us the actual amendment and the wording of it so that we can consider it. It's easier for us to perhaps bring forward an amendment with that.

Ms. Andrea Sesum: Thank you.

Mr. Jagmeet Singh: In terms of the access to justice piece, just to understand the demand letter, it would be my understanding that you could use it for if there was an action against one plaintiff to another—defendant, I guess—and those persons being two individuals and there's a contract disagreement. You could submit a demand letter in that circumstance?

Ms. Andrea Sesum: That's correct.

Mr. Jagmeet Singh: Also, for if you want payment from a company or a larger corporation. Would it also assist you in recovering fees if you want to be paid, I guess, as well, and sometimes in cases where someone hasn't paid you? Is that also a scenario where you would—

Ms. Andrea Sesum: Absolutely, and thank you for bringing that up.

Mr. Jagmeet Singh: Because it's something that lawyers often do, and I think that would be fair to offer that as a recourse for a paralegal as well.

Ms. Andrea Sesum: Yes.

Mr. Jagmeet Singh: Are there any other circumstances or other areas where demand letters are necessary or can provide an assistance to either the consumer or to yourself?

Ms. Andrea Sesum: No. It would be before the Small Claims Court of Ontario, so civil litigation.

Mr. Jagmeet Singh: Okay.

Yes? You have a question?

The Chair (Mr. Garfield Dunlop): Ms. Forster? Go ahead.

Ms. Cindy Forster: Thank you. I heard that there are 4,300 paralegals and that only 40 of them are kind of an independent practice.

Ms. Andrea Sesum: Yes, as of 2012. The numbers are close to 6,000 right now, but it was 40% that were—

Ms. Cindy Forster: Forty per cent?

Ms. Andrea Sesum: Yes.

Ms. Cindy Forster: And so, if this amendment isn't passed, what impact does that actually have on that 40% who practise independently? And, I guess, with respect to collections, what percentage of the work that paralegals do is around the Consumer Protection Act?

Ms. Andrea Sesum: Yes. It's 43% of—40% of paralegals who are self-employed focus on civil litigation.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much to the third party.

We'll now go to the government members for questions. Ms. Mangat?

Mrs. Amrit Mangat: Thank you for your presentation. My question is, as a paralegal, how can you enhance consumer protection? Can you throw a light on it?

Ms. Andrea Sesum: To enhance consumer protection—it's giving them affordable access to justice. Again, we are members of the law society. We have rules of professional conduct. By allowing us to do our work properly—because 80% of litigants that appear before Small Claims Court are usually not represented, and they deserve a voice.

In most of the instances of sending out a demand letter and making a follow-up call, we would be able to assist those 80% who could now afford for a paralegal to draft a demand letter and perhaps recoup the monies, without having to go to litigation.

Mrs. Amrit Mangat: So when you are providing those services, you don't charge fees?

Ms. Andrea Sesum: We do charge fees.

Mrs. Amrit Mangat: You do charge fees.

Ms. Andrea Sesum: Yes.

Mrs. Amrit Mangat: So how do you differentiate yourself from lawyers? Lawyers also charge fees.

Ms. Andrea Sesum: Yes, they do. Paralegals are an affordable alternative to lawyers. Our fees are usually about 50% less than what a lawyer would charge.

Mrs. Amrit Mangat: What is the proof? How can we prove it?

Ms. Andrea Sesum: The law society actually sets out a schedule as to what paralegals are allowed to charge. A paralegal's hourly rate starts at $75 an hour. I don't believe that there is a lawyer out there whose rate starts at $75 an hour.

Mrs. Amrit Mangat: But if anybody goes through legal aid, I think the rate is pretty much the same. How do you differentiate yourself from the legal aid lawyers?

Ms. Andrea Sesum: Well, legal aid doesn't necessarily assist people for matters before Small Claims Court, so that is why we have such a high percentage of litigants that are not represented. They cannot afford a $300-an-hour lawyer, and they do not necessarily qualify for legal aid.

Mrs. Amrit Mangat: So what you are saying is—in your statement, you said that "paralegals are frequently the advocates of those less advantaged."

Ms. Andrea Sesum: Yes.

Mrs. Amrit Mangat: That is what the legal aid agency claims, that they also represent the less advantaged people.

Ms. Andrea Sesum: Yes, less but not least advantaged. Again, 80% of litigants cannot afford to have representation, and most of them don't qualify for legal aid.

Mrs. Amrit Mangat: Thank you. My colleague has a question.

The Chair (Mr. Garfield Dunlop): You've got about 30 seconds. Mr. Dhillon?

Mr. Vic Dhillon: What types of services do paralegals provide for debt settlement providers?

Ms. Andrea Sesum: Currently, paralegals are allowed to perform work before the Small Claims Court of Ontario. Those are debts that are up to $25,000.

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

Mr. Jim McDonell: Thank you for coming out today. A typical file on settlement—what would a paralegal spend, time-wise?

Ms. Andrea Sesum: Is that prior to commencement of litigation, or research?

Mr. Jim McDonell: Well, right through the whole process.

Ms. Andrea Sesum: It really depends on the complexity of a case, but from the commencement of litigation to the end of the trial, paralegal fees would be probably anywhere from $600 to $1,500. This includes drafting of the claim, mediation, as well as the trial.

Mr. Jim McDonell: Are you typically only involved in the litigation part of it, or are you involved with trying a settlement before, typically?

Ms. Andrea Sesum: Yes. So it would include the work of drafting—settlement—as well as the trial. The cost could be anywhere from $600 to $1,500.

Mr. Jim McDonell: Okay. Any other questions?

Mr. Toby Barrett: No.

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

Interjection.

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The Chair (Mr. Garfield Dunlop): That concludes our time, then. I sincerely thank you very much. I apologize, Mr. Keeler, for allowing you to start there—

Ms. Andrea Sesum: He did good work, I hope.

The Chair (Mr. Garfield Dunlop): You had a good pinch-hitter there for you. My apologies; I jumped the gun with it. We're trying to stay on time here. Thank you so much for your time and trouble here today.

HOMEOWNER PROTECTION CENTRE

The Chair (Mr. Garfield Dunlop): Our next deputation is the Homeowner Protection Centre. Michael Lio is here; thank you very much, Mr. Lio. You have five minutes.

Mr. Michael Lio: Thank you, Chair, Mr. Dunlop, and members for allowing me this opportunity to make this deputation. My name is Michael Lio. I am the executive director of the Homeowner Protection Centre. The Homeowner Protection Centre is a not-for-profit that was established to advocate for homeowners and their important issues. It's a network of homeowners and product and service suppliers who are committed to improving housing and housing-related services across Canada.

Simply put, the Homeowner Protection Centre wants Bill 55 to pass so Ontario consumers will benefit by having more time to consider their purchase, so they won't be stung with high cancellation fees or double-billing ordeals and so they won't have people installing these water heaters within a few days of the homeowner contract signing, before the cooling-off period has passed.

While we support the doubling of the cooling-off period for consumers to 20 days, we also support additional consumer protection features of the bill. We support banning delivery and installation of water heaters during the 20-day cooling-off period and providing penalties when the rules aren't followed.

Mr. Chairman, the issue before you is unique to Ontario, where six out of 10 homeowners rent their water heaters. In other parts of Canada, water heater ownership is the norm. Recent polling by the Homeowner Protection Centre by Oraclepoll Research on this topic found that one in three Ontario families have had a negative experience with door-to-door water heater salespeople. So we know that the issue is real and it's before us.

The Homeowner Protection Centre contends that until Bill 55 is passed, the intensity and frequency of bad practices that victimize ever more Ontarians, including seniors, new Canadians and those on a fixed income, may continue unabated. Tactics used by some of these salespeople at the door are aggressive, manipulative and, some would say, predatory.

The Homeowner Protection Centre would like to see this bill go forward to third reading and be passed into law as soon as possible. Ontario consumers need to be properly protected from unscrupulous door-to-door salespeople.

I've got a binder here, Mr. Chairman. I understand that the Clerk is going to make its contents available to every member in electronic form. I'm going to leave this with you. It contains supporting information that we think is

important and persuasive. I'm not going to go into the contents in detail; I know that your time is valuable. But let me give you a quick overview of what's in the binder.

It contains a 2013 report by the Homeowner Protection Centre that was funded by Industry Canada. The report is called Domestic Hot Water Tanks and Other Equipment: A Consumer Perspective. The report contains public opinion polling as well as media clippings that detail the breadth and depth of the problem in most parts of Ontario.

Some of the more important recommendations from the report have already been dealt with in the bill. Others, we understand, may be addressed through regulation. Let me give you a few examples of how you might enhance the bill and how you might deal with some of these enhancements, perhaps through regulation.

Members, please consider regulating door-to-door sales practices for other products beyond water heaters. Please consider regulating contract disclosure by prescribing standardized plain-language cover sheets. Please consider unreasonable exit fees that often force double-billing because people can't afford those cancellation fees. Please consider regulating them or banning them outright. Mr. Chairman, I'd like your members to please consider regulating verification calls from the current supplier to the homeowner, so the homeowner understands what they're getting into.

We also recognize that we need some improvements to facilitate choice in the marketplace so that unreasonable barriers to competition are eliminated. We understand that that's beyond the scope of this particular bill.

I'd remind the committee that as of 2012, the Ministry of Consumer Services had more than 3,200 written complaints and inquiries about door-to-door salespeople, making it the second-most-frequent complaint received by the ministry. We've provided the clippings that you need to illustrate the extent of the problem that you have the power to remedy.

I have no doubt that Ontario consumers will benefit immediately and directly from your efforts to ensure the passage of this bill. Thank you.

Mr. Chairman, I'm prepared to answer any questions.

The Chair (Mr. Garfield Dunlop): Thank you so much. We'll go now to the government members. You have about three minutes. Mr. Dhillon?

Mr. Vic Dhillon: Thank you very much. Do you feel that there are other goods and services or other industries for which the 20-day cooling-off period should be applied to?

Mr. Michael Lio: I think that any service or product that can be misrepresented at the door is liable to be dealt with in an unscrupulous fashion. I've been at this as a consumer advocate for a lot of years, and we saw how these same salespeople misrepresented energy contracts when the retail market opened up for electricity. We've seen it before. The OEB stepped in and shut it down. We've seen them migrate over to water heaters. We know that it's a problem. We know that it's out there. I don't know where they're going to go next, but I'd like the committee to turn their mind to how some of these salespeople move from one industry to another.

For the water heater business, consumers are particularly vulnerable because they've never had to seek out information because it has always been a monopoly. It was provided by the gas companies; they didn't need information. You get somebody knocking on the door saying, "I'm from Enbridge. Your water heater is defective. I need to replace it." They don't know. They've never had to deal with information to make choices. And all of a sudden, the marketplace is opened up. We have a problem, gentlemen.

Mr. Vic Dhillon: What kind of complaints are homeowners hearing?

Mr. Michael Lio: We've gotten a raft of different complaints, from salespeople sticking their foot in the door, forcing themselves in; telling people that their equipment was unsafe, that they were from TSSA and that they needed to look at it and it needed to be replaced; that they were offering incentives on this new, efficient water heater and they had to take out the old one—all sorts of stories. You name it; it's out there.

Mr. Vic Dhillon: Thank you. Mr. Balkissoon?

The Chair (Mr. Garfield Dunlop): Do you have questions? Mr. Balkissoon?

Mr. Bas Balkissoon: I just have one. Thank you for your presentation. I would have to agree with a lot of your comments, but I find the most difficult one to deal with is my residents who get taken advantage of because they have a poor knowledge of the English language. How would you suggest that we solve that one as a government?

Mr. Michael Lio: I think that the verification call from the current supplier is really important. I think—

Mr. Bas Balkissoon: But that doesn't help if they don't speak the English language.

Mr. Michael Lio: If they don't speak the language, they should either find someone who does or perhaps the current supplier may be able to find someone who speaks the language. At the core here is that you can't have consumer choice if they don't have information that they can understand. And if they don't speak the language, it's incumbent on the industry to provide the information so that they can make the choice that's right for them.

Mr. Bas Balkissoon: Thank you.

The Chair (Mr. Garfield Dunlop): We'll now go to the official opposition: Mr. Barrett and then Ms. MacLeod; three minutes.

Mr. Toby Barrett: We're considering any amendments to the Stronger Protection for Ontario Consumers Act. In 2011, this Legislature passed the Energy Consumer Protection Act. Do you know much about that? Was there anything in the Energy Consumer Protection Act that would be useful when we're trying to deal with the door-to-door—

Mr. Michael Lio: Absolutely. I think the OEB's approach to energy retailers was largely effective. There are lessons there. I don't think you necessarily have to reinvent the wheel. I was there when the market opened

up. I was the executive director of the Consumers Council of Canada. We put out literature on our website, trying to inform consumers. The industry stepped up as well. It was done effectively. So there are certainly lessons there. I think this is an effective piece of legislation, and I urge members to push it forward.

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Mr. Toby Barrett: Do you find there's much in this that replicates what is in that energy consumer—

Mr. Michael Lio: There are certainly pieces here that are similar. Again, I think that this is a reasonable bill that should go forward.

The Chair (Mr. Garfield Dunlop): Ms. MacLeod?

Ms. Lisa MacLeod: Yes. I want to thank you for coming in, and much to my colleague Mr. Balkissoon—we tend to have people who are dealing with—we get a lot of calls on this, with some very bad actors—

Mr. Michael Lio: So do we.

Ms. Lisa MacLeod: Yes, I'm sure you do. In many cases, it is folks who are a bit more vulnerable in society. They don't question. These folks are very intimidating as well when they come to the door, and this bill really won't abolish that or end it from happening. I'm just wondering if you have any suggestions on two things: one thing we could do legislatively; secondly, how do we go above and beyond in making sure that the most vulnerable in society are assisted so that they know when to say no?

I've had just awful calls, where people have almost walked into their home. They have lied to them. They have misrepresented who they were. I really just want to be on the record here today, just to say that I deplore it and, secondly, ask you those two questions.

Mr. Michael Lio: I think complaints need to be taken seriously. So when a consumer complains and says, "I think I've been misled. This isn't the deal that I thought I was going to get. I've looked at my bill. It doesn't look anything like what I was told it was going to look like," there needs to be some strict penalties. I think that the penalties need to get the attention of the industry; otherwise, nothing's going to change.

I appreciate that the devil's in the details. We don't have the regs in front of us, so we're kind of driving blind at this point. I would hope that the regs address this front and centre.

Ms. Lisa MacLeod: As a major stakeholder, you would want to be involved in the drafting of those regulations, and consulted?

Mr. Michael Lio: Absolutely.

Ms. Lisa MacLeod: So let's send that message to the government today, that you want to be involved to help protect homeowners—

Mr. Michael Lio: Absolutely.

Ms. Lisa MacLeod: And I'm sure Mr. Balkissoon will take that back. Thank you very much.

Mr. Michael Lio: Thank you.

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

Mr. Jagmeet Singh: Thank you very much. Good afternoon, sir. Thank you for being here. With respect to water heaters, is there anything in this bill that we can do to further protect consumers beyond that there's a cooling-off period? You've talked about the idea of punishment, of having severe sanctions that would actually send a message that would have a chilling effect perhaps on improper activities. What else can we do to further protect consumers beyond what's already being proposed today?

Mr. Michael Lio: Well, I've given you some items. I think that the messaging at the door needs to be standardized. It needs to be in plain language. Listen, if you give me a contract that's two pages long and it's all mouse type and you force me to sign it at the door, that's not acceptable.

Mr. Jagmeet Singh: So they've addressed that by having a standardized script is what you're looking for—

Mr. Michael Lio: Absolutely.

Mr. Jagmeet Singh: Beyond those requirements or those recommendations, is there anything else that you can—

Mr. Michael Lio: And I think exit fees; you really need to look at these things because if someone does sign up and wants to change, I think those exit fees are an impediment to competition. I'll give you an example. In the new home market, a builder contracts with a supplier. They get—I don't know what incentives the builder gets to deal with a particular supplier. You buy a house; you get the contract. It's not until a month later that you know what you're paying in terms of rental, and by then, it's too late because if you want to get out of it, it's going to cost you big time. This isn't the way for the marketplace to work.

Mr. Jagmeet Singh: My colleague has some questions for you as well.

The Chair (Mr. Garfield Dunlop): Ms. Forster.

Ms. Cindy Forster: I know you've indicated that the kind of tightening of the OEB rules has worked, but it hasn't worked completely, because once a week I still get people in my constituency office who are in an energy contract that they shouldn't be in, and we're trying to get them out, either within that window or even outside that window, sometimes a year later; right?

Mr. Michael Lio: Right.

Ms. Cindy Forster: Do you think there's the same escape in this new legislation that's being promoted?

Mr. Michael Lio: I don't think anything is perfect. You're still going to get complaints. You're still going to get the bad apples, who still act in a way that's unconscionable.

But what has happened, I think, in the electricity and energy retailing business is that we've actually seen an order-of-magnitude decrease in the number of complaints. Certainly, they don't come across my desk. That's the same type of impact that I'd like to see in the water heater business.

Ms. Cindy Forster: I think one thing that we are finding, though, in the constituency office is that we're

able to turn them around where we couldn't in the past. Now, the energy marketers are coming forward and saying, "Okay, we'll let you out of this contract," and they're doing refunds.

Mr. Michael Lio: Yes.

The Chair (Mr. Garfield Dunlop): Thank you very much for being here today, Mr. Lio.

Mr. Michael Lio: Thank you.

VISTA CREDIT

The Chair (Mr. Garfield Dunlop): We'll now go to our next presenters: Vista Credit, Jacob Polisuk and Glen Leis. You have five minutes, gentlemen. Proceed.

Mr. Jacob Polisuk: Good afternoon, ladies and gentlemen of the standing committee. Thank you for providing us with the opportunity today. My name is Jacob Polisuk, and my colleague is Glen Leis.

Vista Credit is an independent provider of financial services to the HVAC industry in Ontario. We represent over 600 local contractors in Ontario, who all use our product to provide rental, lease and financing options to their customers.

We're here today to address proposed changes in Bill 55, specifically to section 43.1, subsections (1), (2) and (3).

We're aware of the large increase in consumer complaints in 2012 related to door-to-door rental water heaters. The question is, why? While it might appear natural to assume that the behaviour of door-to-door sales agents is strictly what led to this increase, this is in fact incorrect, in our opinion. The reality is that the increase in complaints is not necessarily a product solely of door-to-door sales, but it's also tied to the expiry of the Competition Bureau consent order. The consent order prevented Direct Energy from engaging in practices that would prevent consumers from switching water heater providers. Once the consent order was lifted, old behaviours returned, and the outcome was a spike in consumer complaints.

According to Enbridge Gas, many of the consumer complaints in 2012 related to double-billing, a practice where incumbent providers continued to bill a customer on their Enbridge Gas bill after their tank was removed and had been replaced.

Ellen Roseman addressed this in a Toronto Star article on February 1, where she wrote, "After signing contracts, consumers said ... they were often billed by both their existing provider and" the new provider.

"The two legacy suppliers are making it harder to bring back water heaters....

"Double-billing is a common issue with customers who ask me for help with water heater complaints."

The Competition Bureau also recognized that consumer complaints were largely about obstruction by the incumbent providers. In December 2012, they sought an order to prevent continued anti-competitive behaviour by Direct Energy and Reliance Home Comfort, along with a $25-million penalty for practices they deemed anti-competitive and to the detriment of the consumer: "Each company implemented water heater return policies and procedures aimed at preventing consumers from switching to competitors. This anti-competitive conduct affects consumers...."

At the end of the day, we maintain that consumer complaints are directly linked to the battle amongst competitors, and consumers have been caught in the crossfire. But the unspoken reality is that before competition existed in the water heater rental business, rate increases averaged more than 6% per year over a 15-year period, and shortly after competition took hold, annual rate increases declined to around 50% of that level.

How will Bill 55 affect consumers? We do not see how increasing the cooling-off period from 10 to 20 days provides any additional protection for consumers. However, we can assure you that imposing a 20-day cooling-off period will effectively end competition, because if clients have to wait 20 days to install a new water heater, most installations will get cancelled, simply for undue delay. This will serve to reinforce the monopoly position of the incumbent providers and, in our opinion, will eventually lead back to much higher annual rate increases.

While we maintain that door-to-door misrepresentation is not the prime cause of consumer complaints, overall the industry is mindful of the issue, and we are anxious to address it and to eliminate those that are responsible. To that end, in the most recent Ontario Energy Board negotiation on the Enbridge open bill agreement, which concluded in September, a combination of industry players—including parties that are here today, such as ourselves and Direct Energy—Enbridge Gas, and various consumer groups adopted strict rules and punishment aimed at weeding out rogue agents and companies.

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The new process, which will become effective January 1, requires independent verification calls that must be completed after the sale process and with specific process to assure consumers (a) who they're dealing with, (b) that they're switching providers, (c) that they understand the terms of their new contract, and (d) that they are not pressured into switching.

We contend that the adoption of these new practices, along with the existing consumer legislation, will be more than adequate to eliminate those who use misrepresentation as a sales tool.

Furthermore, it's important to note that this was a joint position that was adopted by industry, by Enbridge Gas and by consumer groups after extensive negotiation. We would urge the committee to consider adopting a similar position in the proposed legislation.

A summary of our proposed amendments is attached in your package as appendix E, and we're asking the committee to:

—delete section 43.1, subsection (1), related to the 20-day cooling-off period;

—amend subsection (2) such that if a confirmation call is successfully completed, this section would not apply to the contract;

—amend subsection (3) related to the consumer's ability to assign third party charges by allowing consumers to also appoint an authorized agent and allowing the agent to act as a consumer under the Consumer Protection Act by challenging charges that are imposed in contravention of the Consumer Protection Act by any provider;

—adopt, as an alternative to the 20-day cooling-off period, a mandatory independent verification call process to confirm all door-to-door water heater sales along the lines of the OEB settlement agreement for the Enbridge Gas open bill agreement.

Lastly, we urge the committee not to kill competition. Real competition is the consumer's greatest protection. We've witnessed this time and time again across a whole spectrum of industries. In the water heater rental industry specifically, we've observed that competition has forced monopoly providers to reduce their rate increases by more than 50%. Competition is ultimately the best remedy and in the best interest of all consumers. Thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much. I will now go to the official opposition. They have about three minutes for questions. Mr. McDonell.

Mr. Jim McDonell: One of the concerns we've heard in our discussion has been around the cancellation policies of either the new or the existing contracts. Any suggestions to that or what would be fair?

Mr. Jacob Polisuk: In terms of the cancellation policies for existing contracts?

Mr. Jim McDonell: Well, I mean, certainly in any new contracts or any time a new heater is placed by whoever, there have to be some rules around what the fair compensation is.

Mr. Jacob Polisuk: Yes. I think what you have to do is you have to take a look at the existing Consumer Protection Act, and you have to look at whether those contracts fall into a part IV or a part VIII category. The cancellation rights that exist are protected under the Consumer Protection Act, depending on where that contract falls.

The difficulty that occurs is that we've seen that parties who are using part IV agreements, which specify what termination charges are allowed, are then going after additional termination charges. I think the ministry has to be in a position to say to those providers, "If you're using a part IV contract, you can't impose additional termination charges."

Mr. Jim McDonell: You talked about the 20-day cooling-off period and how it would go counter to competition. Maybe elaborate on that?

Mr. Jacob Polisuk: Well, quite simply, first of all, we live in a society of instantaneous gratification, so when people make a commitment or want to go ahead with something, the next question they ask you is, "When are you going to install? When can you do it?" If you say to them, "Well, we can't do this for 20 days. We'll call you back in three weeks to schedule an install," most people are simply not going to go ahead. You've got to remember that when they're installing a new water heater, often the person has to arrange either to take time off work, stay home, arrange for someone to be there and so on.

So we think, as we stated, the answer is to have independent verification calls. This is a process that we've followed through, even though the regulation is not there. It will be there, obviously, in the Enbridge bill part of it starting in January, which is you have to have an independent verification call that's got to be totally separate from the provider.

For example, the regulation now provides that sales agents or nobody from the new supplier can actually be in the person's residence when the verification call occurs. So it's got to be an outbound call back to them.

You have to make sure that people clearly understand what they're entering into, what they're getting out of, so that they're clear—they don't have to wait. We feel that the 10 days that currently exists is more than adequate to cover off that time frame, as long as you're providing them—I think the issue is that you've got to provide them with clear information, so that they understand what the agreements are. We would propose the adoption of verification calls, which then have to be retained on file in the event of a dispute, to make sure that they're clearly not being pressured into the sale and clearly understand the terms of the agreement they're getting into.

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

Mr. Jagmeet Singh: Sure. Thank you. I'll come back to the cooling-off period and some more questions about that, but you mentioned one of the amendments; I just want some further clarity on this. To be able to act as an agent—do you mean something similar to when we have phone providers? When you're switching, for example, from Bell to Rogers, they can act as the go-between and facilitate the transfer from one service provider to another. Is that what you're looking for, or is it something different?

Mr. Jacob Polisuk: What we're really talking about is, we talked about the double-billing issue, which has been a huge issue in the last year and, we believe, has been the cause of a lot of consumer complaints. A lot of that has happened because one water heater is removed, the new provider puts it in, and then customers get calls, letters or whatever from the old provider saying, "Oh, by the way, you owe us a buyout. By the way, you owe us termination charges. You owe us $350 because your water heater was dented or scratched when it was returned."

What we are talking about is that the bill talks about transferring termination charges to the new provider if they don't observe that cooling-off period. We're saying that it's okay to do that, but if you're going to do that, you've got to allow the new provider to act as the agent for the old provider, for the customer, and, as agent, you've got to allow them to challenge those termination charges if they are not in fact allowed under the Consumer Protection Act.

Mr. Jagmeet Singh: I see. Because, since the consumer is not responsible for it, the consumer would not be challenging.

Mr. Jacob Polisuk: You get the consumer out of the middle of what we've said is a battle between competitors, and you let the competitors battle it out with the existing rules that are in place under the Consumer Protection Act.

Mr. Jagmeet Singh: Okay. I'm left with this: I still want to hear your position on this, because, to me, extending the cooling-off period is beneficial, because sometimes 10 days isn't long enough for people to make a call to someone or figure out if they made the right decision or not, or to think it through. Expanding that period, particularly where nothing is actually put into the house, is a good, actual tangible protection for people, but your argument is that it would have a chilling effect on competition.

How can you convince me, or make your pitch? I see it as a very strong consumer protection measure. Why isn't it, and what can you come up with as an alternative?

Mr. Jacob Polisuk: Well, I think there are a couple of things. First of all, why 20 days? Why not 30? Why not a year? Why not three months? There's no end to where you can go, "Oh, give someone longer to consider what they're doing." I think what our argument is is that if you're providing adequate information, clearly and in readable English—understandable terms and conditions for what they're entering into—and considering that, as some other people spoke to earlier, universally across the country, 10 days appears to be the cooling-off period for various types of contracts, why would you suddenly amend one to 20 days? It just, in our opinion, doesn't make a lot of sense.

What you have to do is make sure that the consumer is fully aware at the beginning, when they enter into the contract, as to what the terms and conditions are, and clearly are comfortable that they're not being pressured at the door. We've heard people talk about pressure at the door. We don't think that should be the case under which they should be bound to a contract.

They should have time to consider that, but we feel that the existing time of 10 days is more than enough, as long as you combine it, certainly, with verification calls, which we were suggesting as the alternative to the 20-day cooling-off period, so that there's an independent third party who verifies it. I can tell you that we use an independent agency to do the verification calls, and we have cases where they come back and go, "This is an elderly person. We just don't think they clearly understand what they're doing." We'll simply not approve the transaction.

You have to remember that, from our point of view as a finance provider, we're in a contract for 10 years with these people. We have no interest in deceiving them on day 1. We don't make any money on day 1. We're making money by billing and collecting over 10 years.

The Chair (Mr. Garfield Dunlop): Okay. We'll go now to the government members. Mr. Balkissoon.

Mr. Bas Balkissoon: Yes, thank you. I'm reading your summary recommendations, and you're basically asking that a third party be assigned to do the verification process. Who would that third party be and how would they be paid for the work they do?

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Mr. Jacob Polisuk: We have an existing relationship. When we're saying third party, we're basically saying that it has to be an independent process from the sale. For example, one of the things that was adopted in the Enbridge rules is that the third party can't be reimbursed on commission for success of the sale. In our case, our verification provider is paid an hourly wage to perform the verification calls. They have no interest in whether that transaction goes ahead or not. There's a myriad of call centres within the province that operate. We have an existing relationship with a couple of them, but there's a myriad of them. Some companies do have their own, internal. We're saying that's acceptable, as long as they're not being compensated on a commission basis for success of calls.

I think that obtaining verification calls that are independent of the sales agent sales process is easily achievable. They're recorded calls. They're kept on record. They have to be kept for the full term of the agreement so that they're available if a consumer has any dispute later on.

Mr. Bas Balkissoon: But it would be an unregulated process.

Mr. Jacob Polisuk: It would be unregulated. In the Enbridge rules, they insist that it has to be an outbound call. For example, it can't be the sales agent at your house saying, "Here, I'm going to call the independent call centre. Answer the phone. I'm in the back." What we've heard in some of those cases is the agents in the background saying, "Just say 'yes'"—when you have a situation where someone doesn't clearly understand and there's someone talking to them in the background. That has to be taken out of the process; it is in our particular case. It's done as a call-back. When the agent leaves, they notify the call centre that they've completed a sale there. The call centre then has to make a call directly to the homeowner. It's a totally independent process from the sale.

Mr. Bas Balkissoon: And that company is compensated by the seller.

Mr. Jacob Polisuk: They're compensated either on an hourly wage or they're compensated—but they're not compensated on the success of the call.

Mr. Bas Balkissoon: But who are they compensated by?

Mr. Jacob Polisuk: In our particular case, we have the arrangement. We're not the supplier, so we have the arrangement with a call centre. We say to the companies that work as our contractors, "You've got to use these guys for a call centre." It's built into our overall pricing model. We're paying the company to conduct those because we feel it's for our own protection.

Mr. Glen Leis: I think it's also important to remember that it's a prescribed script. There are certain things

that have to be said in that call to make sure that the customer understands what they're signing up for.

The Chair (Mr. Garfield Dunlop): Thank you very much. That's the end of your deputation. We appreciate your time today, and your deputation and your submission.

DIRECT ENERGY MARKETING LTD.

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter, Direct Energy Marketing Ltd. We have Gary Newcombe, Len Diplock and Ric Forster here. You folks have five minutes for your presentation.

Mr. Gary Newcombe: Good afternoon, Mr. Chair and committee members. Thank you for inviting Direct Energy to provide comment on Bill 55 here today. I'm Gary Newcombe, vice-president, government and regulatory affairs for Canada. To my right is Ric Forster, director of government and regulatory affairs, and to his right is Len Diplock, vice-president, corporate development, and formerly general manager of our water heater portfolio.

First and foremost, Direct Energy is in favour of this bill and believes that it provides for the appropriate regulations to be made to increase consumer protection with respect to water heater sales. However, you're likely to hear many times throughout these hearings that Bill 55 goes too far and that it will limit certain businesses' ability to compete and prosper while protecting the business interests of incumbent suppliers.

We believe that you need to ask yourselves: Is having an informed consumer not a good thing? Is being truthful about the nature of your sales call not a good thing? Is allowing customers time to consider their purchase and having access to all the facts around the replacement of their water heater not a good thing? We believe that the truth about who you are and why you're at a customer's home, along with a product that an educated customer really wants, is what should be provided to a customer and that parties shouldn't be allowed to use misleading tactics or incomplete information to make a sale.

Direct Energy welcomes and supports full competition. Competition has to be fair, not based on deception or lack of full disclosure to a customer during the sales and installation process. We're here today in support of this bill, which intends to address those misleading sales practices in the water heater rental market.

You've just heard from Vista Credit that it's the incumbent's return policies that are leading to increased consumer complaints in this industry. That's simply disingenuous and ludicrous. To be fair, Direct Energy is currently defending accusations of anti-competitive behaviour before the Competition Tribunal. These allegations claim that Direct Energy has a dominant position in the water heater business in parts of Ontario and is using that position to prevent consumers from switching water heater providers and limiting competition. We deny these allegations, and we're vigorously defending them. These allegations are based on our reasonable response to the ongoing deception of customers by door-to-door marketers.

In February 2012, in the absence of any investigative or legislative action to address the marketing practices of these suppliers, Direct Energy revised its water heater rental return policies to ensure that its customers have the opportunity to make an informed choice and to have their accounts adjusted accurately and in a timely manner. Our policies do not preclude or inhibit customers of ours from switching to other service providers.

Contrary to the position of the Competition Bureau, the water heater business in Ontario is highly competitive. Customers are frequently approached with respect to switching their water heater providers, and they regularly do so. Indeed, the nature and frequency of these solicitations are the very reason we're here today.

In addition, the reality is that the Competition Bureau has looked into this, and they believe that the gravity of deceptive marketing practices used by certain suppliers has caused them to launch an investigation into three water heater rental suppliers in Ontario. In July of this year, search warrants were issued and executed against those companies as part of the bureau's investigation into the allegations of deceptive marketing practices. The Commissioner of Competition requested such warrants on the basis that there were reasonable grounds to believe that these companies had committed a criminal offence under part 6 of the Competition Act, or had engaged in civilly reviewable conduct under part 7 of the Competition Act by engaging in misleading representation and deceptive marketing practices.

We take the view that a highly effective way to protect the consumers of Ontario and promote fair competition in the Ontario water heater market is to use the Energy Consumer Protection Act as a standard by which this bill should be measured. The Energy Consumer Protection Act, or ECPA, has had a profound effect in reducing consumer complaints with respect to energy sales in the last three years because of the measure taken within the act itself and its corresponding regulations and codes.

Direct Energy believes that measures similar to those found in the ECPA, tailored as appropriate for the differences between the energy and water heater markets, should be included in the regulations under Bill 55. These would include:

—the mandatory identification and business card presentation to consumers prior to the beginning of the sales process;

—disclosure statements which inform consumers of their rights and potential obligations and make clear the intentions and origin of the company the salesperson or installer represents;

—a mandatory scripted telephone verification process, with a minimum time period established after the sale and not in the presence of any representative of the seller;

—prohibitions on installations within the cooling-off period; and

—the creation of supplier and customer notifications to ensure that customers are aware of any financial or any other obligations under their current agreement.

Finally, given that the same type of deceptive marketing practices for door-to-door sales can occur by way of telephone solicitations, consumer protections afforded under Bill 55 should extend to remote agreements where telesales are used for the purpose of initiating contracts.

We believe that these items, based on the effective measures within the ECPA, should be taken into consideration during this committee's review of Bill 55 in order to address the marketing practices and to ensure that customers are making informed choices about their preferred suppliers.

In closing, we'd just like to thank the members of this committee for their commitment to improve issues in the water heater business, and we sincerely hope that you find some value in our comments. We're now happy to answer any questions you might have.

The Chair (Mr. Garfield Dunlop): Thank you so much. We'll now go to the third party. Mr. Singh, you have questions for three minutes.

Mr. Jagmeet Singh: Yes, thank you very much.

The major issue here is that we're looking to protect consumers and avoid some of the unscrupulous behaviour at the door. We've heard time and time again that a verification script or a verification call would prevent that. What other measures besides the ones you've indicated and besides this verification script and this verification call would allow consumers to have a more wholesome understanding of the contracts they're getting into before they get into it, would protect them so that they don't feel like they're being taken advantage of as often as they are and to protect the reputation of the industry? What else can we do beyond what is being proposed?

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Mr. Ric Forster: I think what you've already heard today are disclosure statements. I think disclosure statements are important, and those can be made available in multiple languages. The Ontario Energy Board does that, and that has worked effectively. I think that verification process is important, and must be done independently and scripted based on what would be put into the regulations.

One of the major components is ensuring that there are incumbent supplier and customer notifications with respect to any existing obligations that they may have under their current contract.

Mr. Jagmeet Singh: One of the complaints that people have raised is that perhaps this bill would stifle competition. Really, how would it, though? As it has been proposed, what would be the actual impact on competition in a meaningful way? How would it detract from it?

Mr. Ric Forster: I think that we heard from the representatives of Vista Credit earlier saying that we should battle it out, and that entails many things within the regulations in the Consumer Protection Act. But if you want to battle it out, then if you have a customer who's fully informed about any potential obligations they may have in the existing contract; knowing that they're going to another supplier, they have the opportunity to say, "Okay. Well, they're offering me a better rate. Can you offer me a better rate?" or, "Based on what you've told me, I'm going to go back to my new supplier and I'm going to ask them for a better rate." To me, if you have a fully informed consumer, you should be able to increase competition, provided the value of the product is there for the consumer.

The Chair (Mr. Garfield Dunlop): Okay. We're pretty well out of time on that. Okay? Thank you. We'll go to the government members now. Mr. Dhillon.

Mr. Vic Dhillon: Thank you for appearing before the committee. How would you control the quality of the verification calls? What measures would be in place?

Mr. Ric Forster: I think that the first important matter is that they're scripted. If they're scripted under regulations, then you have to actually follow that script. If you don't follow that script, then it's not a verified sale.

Mr. Vic Dhillon: And they would be recorded?

Mr. Ric Forster: And they would be recorded, and they would have to be kept on file with the existing seller so that they could be referenced should the customer have any issues.

Mr. Vic Dhillon: Does your firm provide services other than the rental of—would you be in a house for reasons other than for providing water heater rental services?

Mr. Len Diplock: Direct Energy Services also services water heaters, furnaces, and we're in the plumbing services business. So we'll do other home services on other appliances within the home.

Mr. Vic Dhillon: And you guys are in favour of the 20-day cooling-off period as in the bill?

Mr. Len Diplock: We believe that giving the consumer time to consider their options is important. What is perhaps more important than the length of the cooling-off period is the prohibition of installations during that period and the opportunity for the verification call and supplier notification.

The Chair (Mr. Garfield Dunlop): Yes, go.

Mrs. Amrit Mangat: Thank you, Chair. Thank you for your presentation. The previous presenter spoke about double-billing. What do you recommend so that we can avoid that practice?

Mr. Len Diplock: The previous comments around double-billing were interesting, suggesting that they are the reason for the spike in complaints. I think that speaker got their chronology a little bit wrong. The expiry of the competition order was in 2012. The climb up the lead table of most-complained industries of water heater door-to-door sales predated that by a number of years and actually reached number 2 in 2011.

As it relates to double0billing, because Direct Energy does recognize that we had some double-billing challenges in 2012 following the change of our return policies: They were policies that we implemented to make the return of the water heater and the change to customers' accounts more orderly, so that could avoid double-billing issues. There were some hiccups along the way. We worked well in early 2012 to rectify those. It is an

exception when we see double-billing, and we will rectify those situations with customers when they arise.

Mrs. Amrit Mangat: So what other things do you suggest so that those things don't happen, other than this?

Mr. Ric Forster: I would just add that Enbridge has over 60 third party billers on their bill and we are not the only service provider that's on that bill. We are not the only ones that have water heaters.

They have a very stringent dispute process that allows for them to remove the charges for the customer, and they do that very quickly. They actually made changes to their contracting practices back in 2012 in order to be able to address that. This is being attacked, if you will, from many sides, not just from people in the industry but also from our common biller—that is, Enbridge—and they're saying that if we have a dispute, until the customer is satisfied, those disputes are coming off the bill.

Mrs. Amrit Mangat: Thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much. We'll now go to the official opposition for their questions. Mr. Barrett?

Mr. Toby Barrett: Thank you, Chair. Thank you for the presentation. On page 5 you make mention that this committee should take into consideration those measures in the Energy Consumer Protection Act. Just to confirm, you've listed six major items here leading up to your conclusion. Are those six items all contained within this other legislation, the Energy Consumer Protection Act?

Mr. Ric Forster: I'm just going over it. I would say, yes. There is a mandatory identification and business card presentation that's required; disclosure statements and customer acceptance are required; a mandatory scripted verification process is required. The prohibition of installation is a different industry but the 10-day cooling-off period is respected. The creation of supplier and customer notifications are actually embedded in the rules. There is, as you can see, section 3.6 under the gas distribution access rules. There actually has to be notification to the individual who is switching suppliers to let them know if there are any obligations on their part before they switch to a new supplier.

Mr. Toby Barrett: That's under the Energy Consumer Protection Act?

Mr. Ric Forster: It's under the Energy Consumer Protection Act, which then has the regulations, and these codes from the Ontario Energy Board support regulation 389/10 of the ECPA.

Mr. Toby Barrett: And number 6, the last one? Does that relate to the—

Mr. Ric Forster: They also have various requirements for telephone sales as well. They can actually only be done on renewals at this particular point.

Mr. Toby Barrett: This committee will be considering amendments to a number of other pieces of legislation, but as far as water heater sales, I'm wondering if we're dealing with the wrong act here, if we should actually be making amendments to the Energy Consumer Protection Act to include water heater sales. It includes electricity and natural gas distribution sales. Maybe I'll pose that to the committee. Any comment on that? I guess what we're making amendments to is the Consumer Protection Act but we seem to be ignoring the Energy Consumer Protection Act.

Mr. Gary Newcombe: If I might, Mr. Barrett, I think we're doing these amendments or proposed amendments to the right act in this process. The Energy Consumer Protection Act is very specific to energy contracts, and it's administered by the Ontario Energy Board. I think in this case, water heaters, just because they burn natural gas—I think that's just incidental.

Mr. Toby Barrett: Or electricity.

Mr. Gary Newcombe: Or use electricity, I think is only incidental. On that logic, we could suggest that maybe television sets and fireplaces be regulated under the ECPA as well, and that probably doesn't really follow.

Mr. Toby Barrett: I see.

The Chair (Mr. Garfield Dunlop): Okay. That concludes your time anyway, Mr. Barrett.

Mr. Toby Barrett: All right; thank you.

The Chair (Mr. Garfield Dunlop): And that's the end of your deputation. We appreciate it very much. Thank you so much, gentlemen.

Mr. Ric Forster: Thank you for your time.

TECHNICAL STANDARDS AND SAFETY AUTHORITY

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter, which is the Technical Standards and Safety Authority, TSSA, and the vice-president Tom Ayres is here. Thank you for being here, Mr. Ayres. You have five minutes for a presentation.

Mr. Tom Ayres: Thank you, members, for the opportunity to speak. My name is Tom Ayres. I'm vice-president and general counsel of the Technical Standards and Safety Authority, which is Ontario's public safety regulator.

Under the Technical Standards and Safety Act, TSSA is responsible for a number of sectors including fuels—and that's fuel safety. We license fuel technicians and registered energy contractors—that is, those people who come into your home and work on your fuel-burning appliances. Only a TSSA-licensed technician is permitted to work on fuel appliances and only a TSSA-licensed technician would be qualified to give opinions to a homeowner on whether or not an appliance was safe or in need of replacement.

1400

The improper installation and maintenance of heating appliances is a significant safety concern to TSSA and can in fact be a serious public safety hazard through the release of CO—carbon monoxide—in the home. Indeed, TSSA recommends that all homeowners have regular service done on their their fuel-burning, natural-gas-burning appliances in order to avoid the threat of carbon monoxide.

Although Bill 55 does not have a public safety focus, it does have a significant public safety benefit, in the opinion of TSSA. Door-to-door water heater and furnace salespersons have raised a number of safety concerns with TSSA. TSSA does receive complaints regarding these individuals on a regular basis, and often these are complaints we cannot act upon, because they're more misrepresentations to the consumer rather than public safety issues, although we have in the past had circumstances where these door-to-door salespersons have misrepresented themselves as being a TSSA inspector.

TSSA inspectors do inspect the installation of hydrocarbon appliances—natural gas appliances—but they cannot go into a person's home without an invitation or a search warrant. TSSA advises homeowners to immediately report to us a door-to-door salesperson trying to represent themselves as a TSSA inspector. They do this for the purpose of getting themselves in the door so that they can have a look at the appliance and then, in turn, make a sales pitch for its replacement.

We are concerned about the quality of installations undertaken by such companies, on the basis that these companies use questionable sales tactics and are less likely to be compliant with safety regulations. It's a question about safety culture. It's a question about culture. If you're prepared to go in and misrepresent yourself to homeowners for the purpose of making a sale, it's also more likely that you're going to have an improper or illegal installation.

Such aggressive and misleading tactics undermine our efforts to the public to try and get them to have regular service done on their home heating appliances. Regular service is an important feature. If consumers are afraid to have service technicians come into their home for fear of being subjected to very aggressive tactics for the sale of appliances or for the fact that they may be ripped off, then it undermines TSSA's efforts to say, "Please, have your furnace and your home water heater inspected on a regular annual basis so as to avoid safety problems with that."

The elderly and the more vulnerable would be more likely to be reluctant to have regular service done if they're afraid that they are somehow going to be the victim of a scam. Shoddy installation risks the lives of homeowners through carbon monoxide poisoning. Fortunately, in these circumstances, no one was hurt, but the risks created by such installations are clearly and simply unacceptable to TSSA.

Those are essentially my comments, Mr. Chair.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much. You only took three minutes and 55 seconds; what's wrong with you? Thanks so much. We'll now go to the government members for any questions to the member from TSSA.

Mr. Vic Dhillon: Sure. Thank you very much for appearing before the committee today. How is your organization impacted by misrepresentation at the door?

Mr. Tom Ayres: People use TSSA's good name to get into the home. TSSA has certain legal authority that has been granted to it by the Legislature of Ontario. We need to be able to exercise this authority in a clear manner and get the co-operation of homeowners, and also have their knowledge and understanding of what we do, so that they can ensure that they are safe and take the appropriate steps to ensure their own home safety.

If they believe that the people who come into their home for the purposes of a sale are representing TSSA, they may let them in the door when they might not otherwise. Secondly, they also misrepresent their legal authority to enter the home. We've had reports and have had circumstances where people have said, "I'm a TSSA inspector. You have to let me in," when, in fact, they're not. It undermines the good name of TSSA and undermines the efforts we make to ensure public safety.

Mr. Vic Dhillon: How do you think this bill would help the TSSA?

Mr. Tom Ayres: For one, it helps the public of Ontario as opposed to TSSA, but it helps TSSA in terms of getting its message across about regular maintenance. As I indicated, if people are reluctant to have service contractors come into their home—that is, legitimate service contractors—then they're putting themselves and their family at risk.

We encourage people to hire these people and have them come in on a regular basis. If there's an impression that these people may somehow engage in aggressive tactics to sell them appliances, or may in fact misrepresent themselves as to what they are doing—we have reports that they say, "We're doing an energy audit," or "We're doing a safety audit on your appliance"—then, in fact, it undermines our efforts to encourage people to have regular maintenance done on their home.

Also, as I indicated, if they go in and install something improperly, then it does in fact create a real serious safety hazard. Those who engage in misrepresentative practices are also more likely to do shoddy work, in our opinion.

Mr. Vic Dhillon: Any comments on the 20-day cooling-off period?

Mr. Tom Ayres: We think the extended cooling-off period is appropriate—

Mr. Vic Dhillon: Do you recommend it for other goods and services industries etc.?

Mr. Tom Ayres: We would recommend it for other heating appliances as well, for those heating appliances that are installed. This is infrastructure in your home that can be quite difficult to install; it can require extensive work done on other parts of the home. If it's installed and then has to be removed, it can create serious problems for the homeowner.

The Chair (Mr. Garfield Dunlop): That's pretty well concludes your time, Mr. Dhillon. Thank you very much.

We'll now go to the official opposition. Ms. MacLeod.

Ms. Lisa MacLeod: I'll be quick; I know my colleagues also probably want to speak.

I wanted to thank you for your presentation. It is very important for my residents in Nepean–Carleton that you talked about the importance of being approved, and that if they're not willing to be forthcoming, then it's likely

that that water heater, or whatever it is, is not being installed properly. I think that's really relevant, particularly for seniors, but also for another very important group in communities like mine, where there's fast growth in communities, and that is families with young children. So thank you very much.

Guys, do you have anything to add?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): Mr. McDonell.

Mr. Jim McDonell: I haven't seen a lot of information going to the homeowners, typically, on the regular maintenance. What do you suggest is a typical maintenance or inspection period that people with—

Mr. Tom Ayres: We recommend homeowners have their heating appliances inspected annually; that is, at the start of the heating season.

Mr. Jim McDonell: How long would you expect an installation typically to last, as far as years?

Mr. Tom Ayres: That depends on the nature of the design, the type of the installation. They generally last a significant period of time.

Mr. Jim McDonell: In your experience, is there a significant amount of alterations that have to be made when a tank is changed, or is it simply typically just—

Mr. Tom Ayres: Well, that would depend on the nature of the change. If it's going from electric to gas, for example, there are significant alterations that need to be made. It depends on the nature of the appliance that's being installed.

Mr. Jim McDonell: Typically, other than that, the plumbing would stay very similar?

Mr. Tom Ayres: The plumbing would be similar. If gas piping has to be brought in, there's also a need for clearance to combustibles for gas appliances. There's the need for combustion and ventilation air, which is to allow the flame in the water heater or the fuel-burning appliance to burn properly and avoid the creation of carbon monoxide.

Mr. Jim McDonell: Sure. Any other questions? Mr. Barrett?

The Chair (Mr. Garfield Dunlop): Mr. Barrett? No questions? Thank you very much to the opposition.

I'll go to the third party. Mr. Singh.

Mr. Jagmeet Singh: I appreciate your response to the question as to whether this would help you, as in TSSA. Your response was this would help the public of Ontario. I think that's where our concern is: How do we help the public of Ontario?

One of the issues that you brought up was that having the good name of TSSA besmirched by unscrupulous vendors or sales folks impacts your ability to provide good work. What has been your empirical evidence to suggest that there has been an impediment to the service or to the safety enforcement that your organization does?

Mr. Tom Ayres: We don't have specific empirical evidence, but what we do engage in is an extensive public education campaign. We encourage the public to be wise about the use of fuel-burning appliances.

We have had a particular circumstance where we had to revoke the registration of a contractor whose employees, whose salespersons, were going and saying they were TSSA inspectors and that they had to be let into the home. That, in itself, is a misrepresentation of their authority but also creates fear on the part of the consumer. The consumer himself or herself wants to be safe, and fear tactics such as, "You could poison your whole family. Your hot water heater has to be replaced immediately. Oh, we just happen to have a sale on hot water heaters today"—it's that sort of thing that undermines our entire efforts to educate the public on fuel safety.

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Mr. Jagmeet Singh: Do you have any sense, though, of how often or how regularly it happens that people are holding themselves out to be TSSA representatives?

Mr. Tom Ayres: We're finding it more often than we would like. It's not a widespread problem, but we want to nip it in the bud, so to speak. We want to avoid this becoming a problem. It's about prevention. That's what TSSA is about.

Mr. Jagmeet Singh: In terms of the water heater industry broadly, does TSSA have an opinion on the preferred type of water heater or the preferred delivery mechanism or any other sort of advice that you could provide?

Mr. Tom Ayres: We're not in the business of selling appliances, nor are we in the business of preferring one fuel over another. What we are in the business of is public safety, and we take whatever steps we can to advance public safety. If that means that this bill, with its consumer safety focus—that's why we support it, because it does have a public safety benefit, in our view. But we do not take a position on any of the other aspects.

Mr. Jagmeet Singh: Beyond specifically water heaters, do you have any other input related to the energy industry, or any other concerns or issues that you can bring up?

Mr. Tom Ayres: I think the bill should be monitored to see if problems continue to persist, and if they persist, consider amendments which would require that if you're not a licensed technician and you're selling a water heater, you have to disclose the fact that you're not a qualified, licensed technician. That's one amendment that we would suggest be considered.

Another amendment would be that those engaged in door-to-door heating appliance sales be in fact required to be registered with the Ministry of Consumer Services. That way, if they continue to persist in unconscionable representation and unsafe consumer tactics, the ministry could in fact revoke their registration and their right to sell such appliances door to door.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Ayres. That's your time this afternoon. We appreciate your deputation.

ONTARIO ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputation, which is the Ontario Association of

Insolvency and Restructuring Professionals, Daniel Weisz. Good afternoon, Mr. Weisz. You have five minutes for your presentation.

Mr. Daniel Weisz: Good afternoon. My name is Daniel Weisz and I am vice-president for the Ontario Association of Insolvency and Restructuring Professionals, also known as OAIRP. OAIRP currently has over 400 members, representing the vast majority of licensed trustees in bankruptcy practising in the province of Ontario.

You'll note that my presentation, as well as two documents that I will refer to as I speak, are being passed along.

By way of background, I have practised in the field of restructuring and insolvency for over 28 years. I am a licensed trustee in bankruptcy, and while my practice is primarily in the area of corporate restructuring and insolvency, I have also had involvement with personal insolvency files.

My trustee's licence was granted by Consumer and Corporate Affairs Canada, which at that time had the responsibility for licensing trustees in bankruptcy. Trustees in bankruptcy, including administrators of consumer proposals, are appointed and regulated by the Superintendent of Bankruptcy. The Superintendent of Bankruptcy is a federal officer.

I am pleased to be here today to talk to you about Bill 55 and in particular, the proposed amendments to the Collection Agencies Act.

To put this topic into perspective, in 2012 there were over 47,000 filings in Ontario of personal bankruptcies and consumer proposals—47,000. Clearly, there are a large number of individuals in this province who are facing significant financial hardship and who need to be protected when they seek help to resolve their financial difficulties.

Consistent with our commitment to maintain the highest professional standards amongst our members and to protect the interests of consumer debtors who find themselves in financial distress, we requested to be heard at this committee.

Debt settlement service entities are a relatively new phenomenon in Ontario. In some instances, individuals have paid upfront fees of anywhere between $1,000 and $5,000 to debt-settlement companies from funds that they otherwise desperately need. Unfortunately, when some of these individuals realize that their debt issues have not been resolved by the debt settlement companies, they often seek out our member trustees in bankruptcy to help them resolve their debt problems.

OAIRP supports Bill 55. We believe that individuals facing financial difficulties need to be protected from firms that require these individuals to pay their hard-earned money upfront. That being said, we believe there are certain amendments to the proposed legislation that should be considered by this committee in order to strengthen the act.

Today, we're proposing six points that we are confident will strengthen Bill 55 to better protect consumers. These points, which are included in a background sheet that was circulated to the members of the committee, that we have prepared for your reference, include:

—the need for funds collected for payment to creditors to be deposited into a trust account specifically for that purpose;

—the ability for an individual to cancel a debt settlement agreement if the debtor does not receive the signed agreement within 30 days;

—the requirement for debt settlement service companies to be registered under the Collection Agencies Act; and

—the ability of the minister to revoke the licence of a debt settlement service company if the minister considers it appropriate to do so.

It is important to note that the points outlined on the backgrounder do not include the fees charged by entities providing debt settlement services. Jordan Rumanek, another trustee in bankruptcy, who is also a board member of OAIRP, is scheduled to speak before this committee next week, and I understand that his comments will be directed at the practices of debt settlement service entities and the fees they charge.

I welcome your questions and would be happy to provide further information about the points we have outlined on the backgrounder provided to you today. We are committed to seeing this important piece of legislation go through, and want to ensure that Ontario consumers facing financial difficulties have the necessary safeguards in place to ensure that they are protected from unfavourable industry practices.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Weisz. We'll now go to the official opposition for questions. Mr. Barrett?

Mr. Toby Barrett: Thank you, Chair. With respect to these debt settlement companies, I understand a number of them are operating in Canada or operating in Ontario but the home office may be in the United States or somewhere else. I wondered if you had any advice on what legal recourse consumers would have in trying to deal with a company that's not based in Ontario? What are some of the things that we have to consider there?

Mr. Daniel Weisz: To the ultimate extreme, in terms of litigation, any time anybody tries to challenge somebody in the United States, it's probably cost prohibitive, to say the least. Somebody experiencing financial difficulty will not have the resources to go that route. That is why we're recommending that the debt settlement companies be regulated in Ontario, regardless of where their home office is per se. That is why we're recommending that funds collected for trust accounts or for payment to creditors—the regulations of the Collection Agencies Act provide that the funds are to be in Ontario, but we just want to make it crystal clear in the legislation that it applies to funds also collected by debt settlement companies that are to be used for creditors. So, to have the funds in Ontario and have these entities regulated in Ontario, be licensed in Ontario and, therefore, if they're not doing what they're supposed to be doing or go in

contravention of the act, the minister has the ability to revoke that licence.

Mr. Toby Barrett: The members of your association, for collecting fees, have set up a trust fund in Ontario, but the debt servicing companies don't have to do that?

Mr. Daniel Weisz: For our members, we open up separate trust accounts. We have a trust account in which funds are deposited and they're withdrawn in accordance with the Bankruptcy and Insolvency Act. Debt settlement companies, if they're going to abide by the Collection Agencies Act, there's reference that trust accounts must be located in Ontario, but the legislation, in my opinion, isn't crystal clear to set out that funds that they collect for payments to creditors be deposited into a trust account that would therefore make it subject to the regulations.

Mr. Toby Barrett: And the way this new legislation is written, does it exempt your members? You're not a part of this legislation?

Mr. Daniel Weisz: We are not affected by this legislation.

Mr. Toby Barrett: Correct. I see.

Just one other thing, too, with respect to companies that maybe they lose—I'm not sure if they even have a licence from the ministry—and they set up somewhere else. As far as an enforcement, any ideas on that? Penalties—

Mr. Daniel Weisz: Sorry, can you repeat—

Mr. Toby Barrett: Well, I just get the impression that some of these, it's kind of like nailing jelly to the wall, for the government to track down some of these companies. Is there anything that you would care to advise on the enforcement side? Administrative penalties or—

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Mr. Daniel Weisz: There could be penalties imposed, but the ultimate penalty is a revocation of the licence. To the extent that they're a resident of the United States, all that information would have to be part of their application for the licence, in terms of where they're located, where their bank accounts are, to administer any work that they will be doing in Ontario.

The Chair (Mr. Garfield Dunlop): We'll now go to the third party for three minutes. Mr. Singh?

Mr. Jagmeet Singh: With respect to debt settlement services, are you of the position that there are some providers of services that actually benefit consumers and there are some bad actors? Or do you think the system is inherently flawed?

Mr. Daniel Weisz: I think the system needs to be changed to ensure—you hear anecdotal stories, so I'm not going to cast aspersions in terms of whether they're good or bad. But I think it's important, just to make sure there's a level playing field, that all of these entities are subject to the same rules and regulations, and that if somebody decides to stretch it a little, there are implications and the ability of the ministry to deal with it accordingly.

Mr. Jagmeet Singh: Are you aware of the regulations surrounding credit counselling services?

Mr. Daniel Weisz: Not in great detail, no.

Mr. Jagmeet Singh: Okay. You've proposed six amendments. Is that correct?

Mr. Daniel Weisz: Yes.

Mr. Jagmeet Singh: I just want to go through some of them with you now.

Mr. Daniel Weisz: Sure.

Mr. Jagmeet Singh: Proposal number 5: You indicate that you want to replace "other than debt settlement services" with "including debt settlement services."

Mr. Daniel Weisz: Correct.

Mr. Jagmeet Singh: What's your rationale for that distinction?

Mr. Daniel Weisz: The act currently states "other than debt settlement services," so my read of it was that debt settlement services do not have to be registered under the act, and what we're proposing is, yes, they should be.

Mr. Jagmeet Singh: The Collection Agencies Act, in my understanding, doesn't have any specific regulations or instruction around debt settlement services. It speaks to what collection agencies should do and what their roles are, but it doesn't actually go into details around debt settlement services. Do you think it would be better to have a separate act that governs debt settlement services, or do you think it can be included in the Collection Agencies Act? The reason I bring up the question is because the Collection Agencies Act goes through a number of things surrounding what collection agencies should do, but it doesn't expressly talk about debt settlement services, so to include it in that act may not be the best way to cover it. It may be better to have a separate act altogether. I just want to get your opinion on that.

Mr. Daniel Weisz: It's interesting that you ask that question because when I first started making my notes, I was trying to figure out how debt settlement services fell under this act. From what I can tell, we're trying to fit that class of companies into this act. I take your point that it may be simpler, possibly, to either clarify certain things here or have a very short act just to deal with debt settlement service companies.

Mr. Jagmeet Singh: Okay. That's why I was asking.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Singh. That's your time.

Now we'll go to the government members. Mr. Dhillon?

Mr. Vic Dhillon: Thank you very much for your presentation. You mentioned 47,000 filings for bankruptcy. Is that for one year?

Mr. Daniel Weisz: That's right. That would be for a 12-month period.

Mr. Vic Dhillon: Okay. Can you state some of the key differences between the title that you hold and debt settlement agencies?

Mr. Daniel Weisz: Sure. Trustees in bankruptcy are licensed by the Office of the Superintendent of Bankruptcy. We go through an education process and are subject to a final written examination and, as well, appear before an oral board of examination that will then permit Industry Canada to issue our trustee in bankruptcy

licence. At the moment, we are governed by the Bankruptcy and Insolvency Act, and, as a result, debtors are protected by that legislation. So if individuals come to us to deal with their issues and they file with us, there's an automatic stay of proceedings. Creditors are immediately required to stop collection calls, stop litigation and so forth. I believe that point in and of itself distinguishes us from the other entities.

Mr. Vic Dhillon: What qualifications would debt counsellors have to meet?

Mr. Daniel Weisz: I'm not aware of what—I'm not fully aware, so I don't want to give you the wrong information, but I'm not aware of any formal education requirement.

Mr. Vic Dhillon: So there's no regulatory body or—

Mr. Daniel Weisz: As far as I'm aware, no, which is why we're making our proposal now.

Mr. Vic Dhillon: How can we strengthen consumer rights in the debt settlement industry?

Mr. Daniel Weisz: I think the strongest change that can be made is to make them be regulated and subject to ramifications if they don't—I don't want to use the term "behave," but if they don't act in accordance with the legislation.

Mr. Vic Dhillon: Okay. Do you have a question?

Interjection.

Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Garfield Dunlop): Mr. Weisz, thank you so much for your time today and for your submission as well.

CONSUMERS COUNCIL OF CANADA

The Chair (Mr. Garfield Dunlop): We'll now go to the next deputant, the Consumers Council of Canada, Ken Whitehurst, the executive director. Welcome to Queen's Park, Mr. Whitehurst. You have five minutes for your presentation.

Mr. Ken Whitehurst: I'd better read it fast. I must apologize to anyone who's heard the top of this before.

Thank you, Mr. Chairman and members of the committee. I'm pleased to be here with you this afternoon on behalf of the Consumers Council of Canada. The council is Ontario's and this country's most active volunteer-led consumer advocacy organization.

The council's mandate includes the objective to work collaboratively with consumers, business and government, seeking an efficient, equitable, effective and safe marketplace for consumers by informing and advocating concerning consumer rights and responsibilities.

The organization has an independent volunteer board of directors elected by its members. Membership is open to application from the public. The council supports itself through a mix of membership and sponsorship fees, awards, contributions and social enterprise initiatives. Since the council's inception as a non-profit corporation in 1994, it has been committed to producing evidence-based consumer research in support of its mandate and representation.

The Office of Consumer Affairs, Industry Canada, has funded the council many times after a competitive application through its contributions program for qualifying consumer groups. The council has extensive experience with processes involved in providing all levels of government with consumer impact research and analysis. Some of the ways we do that are through advisory committees and stakeholder panels; our Public Interest Network; our Young Consumers Network, ages 18 to 35; surveys of Canadians about views related to specific consumer issues; and we accept consumer complaints.

There is a whole list—I will, in the interest of time, not provide them all, but volunteers from our organization serve in consumer representative roles in many, many ways. Federally, we represent consumers before the Canadian Radio-television and Telecommunications Commission. Provincially, we represent them before the Ontario Energy Board.

We're always seeking opportunities to support research relevant to advocacy and to provide consumers and public processes with useful information. We welcome the opportunity to have your attention today to talk about Bill 55, the Stronger Protection for Ontario Consumers Act. You know the bill addresses abuses of consumers in three areas: hot water tank rentals, debt settlement and real estate.

First, to address hot water tank rentals: I would like to commend the committee's attention to research done by the Homeowner Protection Centre. Michael Lio, executive director of the centre, is also a member of the Consumers Council. You will find the centre's report, Domestic Hot Water Tanks and Other Equipment: A Consumer Perspective, to be informative.

The water heater marketplace is an example of what happens when exchanging a mature, regulated environment for unknown territory. When the consumer impacts of change are not thoroughly considered, there will be adverse consequences.

The legacy system of water heater rentals in Ontario had many embedded consumer protections. Change has created a sea of consumer confusion.

The costs of supervision, regulation and enforcement to government and consumers will be different from the past, but still considerable.

Our anecdotal observation is that complaints about the terms of water heater agreements emerge:

—when water heater installations are botched;

—upon transfer of title;

—upon caregivers finding an elderly person has been exploited;

—when consumers can't understand complex rental, lease and loan agreements; and

—when consumers realize they have little inexpensive recourse to resolve a dispute or seek redress.

The proposed legislation will address some of these problems in part through a cooling-off period. However, we think that in some cases consumers will not be protected in this area unless regulators work closely with criminal law enforcement.

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The same can be said about the second consumer protection issue being addressed: debt settlement services. It is already the case that many people with indebtedness problems don't understand the risks they assume when entering complex agreements. Increasingly, service agreements are being structured as leases and loans, with all the risks of the business relationship transferred to the consumer.

Consumers who don't understand complex agreements won't understand complex debt settlement service agreements either, and they will enter these agreements during moments of great personal vulnerability. People become vulnerable to usurious schemes to help them with their debts as a result of facing serious personal and economic challenges of many kinds. People of any income level can be affected.

Stress is a source of bad decision-making. This applies to wealthy or poor alike, although, by definition, once one needs help with debt, notwithstanding one's personal social self-identification, they are both poor and potentially vulnerable. The need for debt settlement can be a symptom of larger, more serious problems. Under no circumstances should economics or law allow people in need of debt settlement into anything but trustworthy relationships.

Even large corporations have trouble protecting themselves from economic scavengers when they are in financial trouble, whether they enter bankruptcy or not.

The council is pleased to see this committee consider assertive measures to protect consumers. Many sales practices can be antithetical to basic consumer rights, which are intended to support rational consumerism.

The purchase of a home is one of the most important purchases a consumer can make. It starts a lifetime of costs and obligations. A home represents both shelter and primary investment for most Ontario residents who buy one.

Real estate sales transactions that encourage emotional decision-making are flatly wrong. Real estate transactions must be subject to review so auction sales cannot be rigged. Consumers and honest real estate brokers have an equal stake in this.

Market transparency and control of product information, including price information, is shaping up to be one of the major issues of our time. Hidden risks and careless, misinformed and irrational purchasing and financing schemes in real estate and other sectors harm consumers.

Thank you for this opportunity to speak to the committee today.

The Chair (Mr. Garfield Dunlop): And thank you very much for your presentation. I will now go to the third party. Mr. Singh, you have comments for three minutes.

Mr. Jagmeet Singh: Yes. Thank you very much for your presentation. It's a pleasure to see you again. I've had the pleasure of meeting you once before now.

With respect to—let's just go through each topic briefly—debt settlement services, there has been a distinction made between various steps of—

Mr. Ken Whitehurst: Debt counselling and debt settlement services.

Mr. Jagmeet Singh: Right, but also in debt settlement services, there are a number of different models that are proposed. There are some which require debt pooling, which is placing money into an account, with the purpose of (1) paying the debt settlement service, and (2) paying off the debt. And there are other models which involve negotiating a settlement up front and then being paid to do that settlement. Of the two models, there seems to be more complaints associated with the former, not the latter, meaning there are more complaints with the idea of pooling the debt payments. That's where the source of the complaints is as opposed to someone just providing the settlement services.

Have you noticed that distinction in your work as an advocate for consumers?

Mr. Ken Whitehurst: I think what we're concerned about is that there's an unregulated category emerging. We haven't been able to discern all the fine points of the distinctions. Our organization just flatly hasn't had the resources to do that.

What we've noticed, however, is that, one by one, states in the United States just out and out are banning debt settlement services. There have been really some serious problems, and some of the problems, especially where people have made commitments to settle debts and then actually get people into more difficult debt situations, are—well, they border on something that there are other laws to handle.

The whole area of debt settlement has gotten to be really complicated because it used to be—

Mr. Jagmeet Singh: But just so I understand, you're not familiar with the two different models?

Mr. Ken Whitehurst: No, I couldn't comment on the details.

Mr. Jagmeet Singh: That's fine. Are you aware that credit counselling, which is another form of counselling or service around paying back your debts—that they're almost 50%, if not higher, half-funded by creditors themselves? Is that something that you've looked at at all, and would that, in your mind, as a consumer advocate, impact their ability to provide unbiased protection to consumers?

Mr. Ken Whitehurst: We always believed that redress solutions should be independent, but how you achieve that independence is the key. It's a good thing if responsible lenders will pay part of the cost of the redress system. The question is looking in detail at how that independence is maintained. In the banking sector, we have this very debate going on over redress mechanisms, for instance—

The Chair (Mr. Garfield Dunlop): Okay, thank you. That concludes your time for the third party.

We'll go to the government members now. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much. I just have one question, really. With respect to door-to-door sales, do you feel the 20-day cooling-off period should be applied to other goods, services, industries etc.?

Mr. Ken Whitehurst: Should it be applied in other instances?

Mr. Vic Dhillon: Yes.

Mr. Ken Whitehurst: Well, the cooling—

Mr. Vic Dhillon: For more involved purchases.

Mr. Ken Whitehurst: Certainly, people are having trouble with the cooling-off period and its length. If it involves, say, seniors who need the assistance of care-givers, for instance, you've got an automatic problem, a delay problem. It's hard to know even if 20 days gives a big-enough window.

If someone's in a pressured sales environment, I would say even the extension of what we're doing now is really—people discover the agreements when actions result. Somebody shows up at a door with equipment or whatever, and it's not known about and what have you, so you get those kinds of situations.

Also, realistically, consumers are really time-pressed today. I mean, they've lost all their time on the highways, for instance, in southern Ontario. So they're actually having a hard time, I think, reacting inside of what were once reasonable time frames. So, yes, you could be looking at giving people more contract recourse, I think.

Mr. Vic Dhillon: With respect to debt settlement agencies and the bad players in that industry, what type of solutions do you propose to sort of—

Mr. Ken Whitehurst: Our sense is that at the front end, the ministry has brought forward proposals that are reasonable steps. You have to take action somehow, and you have to look at what your authority is and what you're going to reasonably be able to do. It's good to take those first steps.

I think what we wonder about a little bit sometimes is something I alluded to earlier. In the most egregious cases, where is the place for criminal law enforcement, and why is it that criminal law enforcement seems to be so weak when we get into commercial-sector-type behaviour and fraud?

There certainly are some good initiatives we're supporting, like the anti-fraud centre and what have you. More people ought to know, when they think they're in that position, and take some of these issues up directly with authorities.

But on the other side of it, we don't see what you might describe as systemic fraud being taken up with gusto by policing authorities, and maybe it's just that they're not equipped for it.

The Chair (Mr. Garfield Dunlop): That concludes your time for the government members.

We'll now go to the official opposition. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming out today, and I realize that you're that independent voice sometimes we have to hear.

There's some discussion around the 20-day cooling-off period being too much if you're looking at trying to encourage competition, and not being enough if you're trying to give the chance for consumers to have second thoughts. It seems to be an excessive time period, compared to—or singling out one industry.

Do you see the verification call—what's your opinion of that? Does it need to be independent?

Mr. Ken Whitehurst: The verification for?

Mr. Jim McDonell: Follow-up on the hot water sales to review the contract and what their rights are, letting them know that they are indeed possibly changing companies. Does it need to be independent or can it be, as we talked about before, the same company calling back—

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Mr. Ken Whitehurst: Yes. Here's the tough thing, and I think here we're mostly talking about the water heater rental context. Part of the reason you actually do need the delay and a set time for stuff showing up is just because there are so many cases where someone who should be party to a decision just isn't, and it's not until there's some action that happens that you know that a contract has been entered into. For the most vulnerable people, that's often part of the problem.

I don't think that should be looked at through the lens of competition. It's actually kind of hard to know, with a lot of these agreements, whether the consumer is ever being offered an actual competitive advantage, and when they think they are, they can be frequently mistaken. Part of what this is dealing with is actually trying to surface the information so that people understand the transaction they're in.

The other problem that I think we're having around these timelines is just that there has been a culture in Ontario of getting your water heater service a particular way. It was pretty simple: You got your water heater. You had it. If you sold your home, the obligation just transferred to the next person. It was always reasonably priced. If you had trouble with your water heater, someone came in and fixed it. It was all simple.

These agreements are not making it simpler for consumers in any way. It's kicking up all kinds of noise. It's creating problems for people closing house sales and all kinds of things.

We have a general problem, and there are other issues that have been before the Ontario Legislature recently where what ought to be simple competitive commercial transactions are being turned into these incredibly complex agreements. Everything is becoming a complex contract. They're getting longer and longer. That's before we even get the software.

The Chair (Mr. Garfield Dunlop): That concludes our time, Mr. Whitehurst. Thank you so much for your presentation today.

ENBRIDGE GAS DISTRIBUTION INC.

The Chair (Mr. Garfield Dunlop): We'll now go to the final deputation today: Enbridge Gas Distribution. Welcome to Queen's Park. We look forward to your presentation. You have a five-minute presentation.

Ms. Kerry Lakatos-Hayward: Okay. Good afternoon, committee. My name is Kerry Lakatos-Hayward;

I'm director of customer care at Enbridge Gas Distribution. To my left is Steve McGill, senior manager of contracts and finance at Enbridge.

Enbridge Gas Distribution is Canada's largest natural gas utility; we have more than two million customers in Ontario. We serve more than 100 communities in the GTA, Niagara, Barrie and Ottawa regions.

On behalf of Enbridge, I would like to acknowledge the work of the Ministry of Consumer Services on Bill 55, important legislation aimed at protecting the rights of Ontario customers in regard to door-to-door sales. We believe this is a consultative and balanced approach, and we continue to work with the ministry on this bill as well as other legislation, including Bill 8, the underground systems notification act.

Some of you are probably wondering why Enbridge Gas Distribution, a regulated natural gas utility, is here today, since in 2000 we sold off all of our unregulated businesses, including those related to energy services and water heaters. In addition to distributing natural gas reliably and safely, we also provide third party billing services to unrelated energy service providers through which the third party bills customers for their energy-related products and services.

Just to give you a little bit of stats here, almost 1.5 million Enbridge customers see third party charges on their monthly bills from us. We provide a billing service to 59 third party billing clients. As well, in a typical month, we handle about 2,200 customer disputes in respect to these third party charges.

Since Enbridge provides this billing service to our customers on behalf of these third parties, we're often in a unique position in that customers call us first when they do have a dispute or concern about what is on their bill. Enbridge has received complaints of aggressive tactics utilized by door-to-door sales, including misleading information, high pressure and intimidating tactics, and conduct that could be considered fraudulent. In the submission that we've provided, we have included a bit more of a detailed description of some of these practices that we have observed. We do believe that Bill 55 and its subsequent regulations will be very important to curb some of these troublesome practices, although we recognize and acknowledge that development of subsequent regulations will be important as we move forward.

During our initial consultations with the Ministry of Consumer Services, we did recommend the following potential solutions, and some of them have been included into the legislation. We do believe that they're important to mitigate the impacts of aggressive door-to-door sales, and I want to highlight a couple of them that we do believe are important.

The first is prohibition of installation of water heaters during cooling-off periods. The prohibition of the installation of water heaters during the cooling-off period will allow customers sufficient time to identify, contemplate and understand the implications of entering into the agreement.

Now, of course, in any subsequent regulations, there will have to be consideration to certain carve-outs: customers who are installing water heaters in emergency situations, or where the sale has been initiated by the customer.

The second point is contract verification. Enbridge Gas Distribution concluded, in a settlement with the Ontario Energy Board, the form of its open-bill service. Effective January 2014, we will be introducing a contract verification call requirement for all direct-contract sales transactions. The nature of these calls will be recorded, conducted after the customer has finished the transaction with the salesperson and there is a firm agreement for the good/service, and the call is not done while any representative of the seller is at the customer's premises. We do believe that's an important point. Additionally, the customer must be advised of their right to the cooling-off period and positively elect to have any equipment contracted installed before the expiry of this cooling-off period. We have included in the appendix a bit more of a detailed description of our requirements for the verification call.

Because this contract verification only relates to the third parties who are entering into the services with Enbridge, the ministry may wish to consider including a contract verification requirement in the contemplated amendment to the Consumer Protection Act.

One of the other recommendations that we believe may be considered is implementation of licensing and a code of ethics. The licensing of sales reps could be combined with a code of ethics. To be effective, the code of ethics would have to be enforceable, such that there are ramifications if the code of ethics is breached, up to and including restrictions on both the sales rep and their employee, including the loss of the licence altogether.

Lastly, we do believe it's important, with respect to water heaters—the establishment of a protocol concerning rental water heater replacements, setting out such things as the removal and return of rental equipment, such that the rules would be followed by all rental water heater service providers; and recognizing the impracticality of reversing a water heater installation, from a customer perspective; and recognizing the need for a balanced approach that respects the rights and interests of the customer but also the prior and new service provider.

In conclusion, I would like to thank the committee for its time this afternoon and for hearing our remarks today.

The Chair (Mr. Garfield Dunlop): Thank you so much. We'll now go to the government members for three minutes of questions. Mr. Dhillon?

Mr. Vic Dhillon: Thank you, Chair. How do you think protection for consumers can be strengthened for door-to-door sales?

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Mr. Steve McGill: We believe that the key thing is a prohibition on the installation of the hot water heater during the cooling-off period. I think it was the fellow from the TSSA who pointed out that when you're installing a new hot water heater in someone's home,

there are a lot of alterations that need to be done. Then if the customer or the consumer were to change their mind about the purchase within a cooling-off period, there would still be significant cost involved in reversing that decision and taking out the new hot water heater. As far as we're concerned, that's the key thing that needs to be addressed here.

The second thing would be some form of contract verification that is transparent and gives a reasonable level of comfort that the customer or the consumer actually understands the nature of the contract that they are about to enter into. They should be made aware that they may have obligations to the incumbent service provider and that to be fully informed, they may need to contact that party to find out what those obligations may be.

Mr. Vic Dhillon: Has Enbridge been a victim of any misrepresentation at the door?

Ms. Kerry Lakatos-Hayward: Yes. We have received complaints of that nature, where the customers have indicated that the sales representative has indicated that they are representing Enbridge Gas Distribution, but also, as the member from TSSA indicated, from TSSA as well. We do hear that, yes.

Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Dhillon. Any other questions? We'll now go to the official opposition, Mr. Barrett.

Mr. Toby Barrett: Thank you to Enbridge. A couple of your recommendations—the cooling-off periods and contract verification—were also presented to us by Direct Energy. Direct Energy owns Enbridge; is that right?

Ms. Kerry Lakatos-Hayward: No, that's not correct. They're independent companies.

Mr. Toby Barrett: Okay. Direct Energy—

Ms. Kerry Lakatos-Hayward: There's no relationship between Direct Energy and Enbridge Gas Distribution.

Mr. Toby Barrett: Oh, okay. What about in water heaters? There's no—

Ms. Kerry Lakatos-Hayward: Absolutely—

Mr. Toby Barrett: Okay, fine.

Ms. Kerry Lakatos-Hayward: Yes, we provide a third party billing service to Direct Energy but also to 58 other independent companies.

The Chair (Mr. Garfield Dunlop): They all have nice trucks.

Mr. Toby Barrett: Yes, but different colours. Anyway, Direct Energy made recommendations and made mention of the 2011 Energy Consumer Protection Act and indicated that there were measures in that legislation that this committee would do well to take a look at as far as considering here. I just noticed during your presentation that two of them, I think, would be—you mentioned cooling-off periods. As I understand, that's in the Energy Consumer Protection Act, something like that, and also the contract verification business. Do you have any comments on that? Would that help this committee, to take a look at that previous legislation, the Energy Consumer Protection Act? It's already law. Not that I'm maybe not that averse to reinventing the wheel here, but I'm just wondering to what extent can some of the stuff be replicated here.

Ms. Kerry Lakatos-Hayward: Yes. I believe that the independent contract verification, as well as the cooling-off period and the prohibition of installation of equipment during that period, would be very important measures to contemplate here.

One of the other things that I did mention close to the end was the licensing of sales representatives and a code of conduct. Again, from our experience we find that maybe not all but many of these companies employ independent sales representatives who are compensated on a commission basis. They're a fairly transitory—let's call it—sales force, and they often go from company to company, so there's really not a lot of, let's say, control over these sales agents. So we believe some form of licensing and/or a code of conduct would be very helpful to help in that regard.

The Chair (Mr. Garfield Dunlop): That concludes your time, Toby. Sorry.

Mr. Toby Barrett: Just a quick one: Is that one also in the previous energy—

Interjections.

Mr. Steve McGill: I think, in conjunction with the Energy Consumer Protection Act, you should probably look at the gas distribution access rule as well, because that contains rules and standards with respect to the switching of gas commodity marketers. There's a process there. If a new provider is going to bump an incumbent, there's a noticing process and a review and confirmation process associated. That would be good to look at.

The Chair (Mr. Garfield Dunlop): Thank you. We'll now go to the third party. Ms. Forster.

Ms. Cindy Forster: Thanks for being here. I actually just want to take this back to something a little more simplistic. I understand that you used to be in the business of water heater rentals, so why is it that so many people in this province are actually using this system of a monthly rental as opposed to buying? I realize that there are some advantages, but are we communicating the actual cost differences to consumers with respect to renting as opposed to purchasing? In my experience, I've changed one hot water heater in 40 years and have lived in three different homes. They tend to last a fair bit of time. Can you comment on that?

Ms. Kerry Lakatos-Hayward: Certainly. The former Consumers Gas Company has had water heaters back to the day, and so it was really an effective tool for Enbridge Gas Distribution to encourage customers to use natural gas. When you look at the competitive advantage of natural gas versus other forms of energy, it is very cost-effective in that regard.

I believe what's important is transparency to customers of rental versus leasing versus ownership. Absolutely, that should be included in any kind of contracting arrangement with customers so that they can make informed decisions with respect to which way they want to go. Our research has shown that customers really

like the rental option, certainly with respect to the service we provide of including it on our bill. They appreciate the convenience of that.

Ms. Cindy Forster: Thank you.

Mr. Jagmeet Singh: Just very quickly, the cooling-off period exists, but you're specifically asking for that prohibition on insulation. That's the unique thing that you're asking for.

Mr. Steve McGill: Yes. That would be what we believe to be one of the key components of the revised act.

Mr. Jagmeet Singh: Okay.

Interjection.

Mr. Steve McGill: Yes. Again, we've also made note of the carve-out there with respect to customer-initiated transaction, which sort of distinguishes—

Mr. Jagmeet Singh: It's a customer's choice.

Mr. Steve McGill: Right.

Mr. Jagmeet Singh: Then with the contact verification, in appendix B when you kind of qualify what you mean by independent verification, you describe it as made by a qualified party—and I appreciate the component that the representative is not going to get remunerated based on how many contracts get approved or new contracts get signed. It doesn't necessarily mean that they have to be an independent company, though. They could be by the same company, but just not be compensated for each renewal. Am I understanding that correctly?

Mr. Steve McGill: That's correct. When we negotiated the requirements of the verification call with the other industry participants and, actually, VECC, which is a consumer advocate group, we were consistent with the requirements of the Energy Consumer Protection Act. We probably don't match them word for word, but it's consistent with that in that the qualified party, as we define them, doesn't necessarily need to be a third party, as long as they're not being directly compensated.

Mr. Jagmeet Singh: Just one last question—

The Chair (Mr. Garfield Dunlop): That concludes your time. We're over. The meeting is adjourned. Ladies and gentlemen, we have to adjourn now because the House is starting up.

Next week we'll meet again from 1 p.m. to 3 p.m. on the 30th. We have a full deputation at this point and more might come forward. We might be starting again at noon, so we'll keep a close eye on that. To everyone here today, thank you very much for your time.

With that, the meeting is adjourned until next week.

The committee adjourned at 1500.

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