

**SUBMISSIONS ON BILL 142
AN ACT TO ENACT THE *CONSUMER PROTECTION ACT, 2023*, TO AMEND THE
CONSUMER REPORTING ACT AND TO AMEND OR REPEAL VARIOUS OTHER
ACTS**

ADVOCACY CENTRE FOR THE ELDERLY
55 UNIVERSITY AVE., SUITE 1500
TORONTO, ON M5J 2H7

416-598-2656

info@ace.clcj.ca

www.ancelaw.ca

GRAHAM WEBB, LL.B., LL.M.
LAWYER/EXECUTIVE DIRECTOR

SUBMISSIONS ON BILL 142
AN ACT TO ENACT THE CONSUMER PROTECTION ACT, 2023, TO AMEND THE
CONSUMER REPORTING ACT AND TO AMEND OR REPEAL VARIOUS OTHER
ACTS

1. ABOUT ACE

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

On average, ACE receives more than 4,000 client intake inquiries a year. Many of these calls are reports of complaints due to unfair practices contrary to the *Consumer Protection Act, 2002 (CPA)*, including:

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

In addition to the above, since the beginning of 2022, ACE began to receive numerous calls from seniors, concerned family members, and the police about an alleged private mortgage fraud scheme that heavily relies on the registration of NOSIs. The cases that have come to ACE's attention have the following similarities:

- The senior is a highly vulnerable individual with significant mental and/or physical disabilities;
- A flurry of highly unconscionable home service contracts with NOSIs precede the allegedly fraudulent mortgage. Often a “groomer” approaches the senior offering to help remove the NOSIs at no cost to the senior;
- Private mortgages are placed on the seniors' homes with extremely inequitable terms including high interest rates (up to 25%); high brokerage, referral, and lenders' fees; pre-taking of interest for the full one-year term (making the mortgage harder to discover until it becomes due);
- The mortgages are unaffordable on their face given the small, fixed pension income of the seniors and are setting the seniors up for foreclosure or power of sale proceedings;
- The mortgage proceeds are used to pay out the above-mentioned NOSIs (and often the private mortgage lenders are not at arms-length from the directors of the financing companies that have NOSIs); and,
- The seniors are unable to afford private lawyers to remedy their situation.

Once the unconscionable NOSIs are paid, it is extremely difficult to retrieve the funds absent complex litigation. ACE understands that there are hundreds of victims of this alleged scheme, and that the gateway into the scheme is the registration of NOSIs by unscrupulous actors.

2. ACE SUPPORTS BILL 142

The Advocacy Centre for the Elderly (ACE) welcomes and supports the introduction of Bill 142, an act to enact the *Consumer Protection Act, 2023*, (the “Act”) to amend the *Consumer Reporting Act* and to amend or repeal various other acts.

2.1. Stronger and Modern Protections for Consumers

Bill 142 would modernize and strengthen protections for consumers in important ways that reflect an evolving marketplace in the 21st century. It contains some new provisions that enhance consumer rights in all consumer transactions. It would expand and modernize consumer rights concerning unfair business practices. It would provide consistent rules concerning consumer contracts. It would address new and current consumer issues, including purchase-plus-cost leases, contract-breaking agreements and the termination of

timeshare contracts. It would enhance consumer remedies by providing treble damages for the failure of a supplier to pay a full refund within 15 days following a contract rescission. It would enhance enforcement mechanisms by implementing administrative penalties and doubling fines for provincial offences. All of these are important measures that are important to Ontario consumers.

2.2. Plain Language Contract Terms

Most people who call ACE are unaware of the existing *Consumer Protection Act, 2002* and have no knowledge whatsoever of their consumer rights. They trust that the terms of the contracts they sign comply with the law. It is essential that all terms in contracts should be clear, in plain language, and understandable without the need for legal advice.

Section 4 (1) of the *Act* would continue an existing legal obligation of the supplier to disclose information that is “clear, comprehensible and prominent.”

Section 4 (2) adds a new obligation to provide this information “in a manner that will likely come to the consumer’s attention,” as well as the existing obligation that the information be delivered “in a form that can be retained by the consumer.”

The new element of this provision – that information be delivered in a manner that will likely come to the consumer’s attention – is important because information is often provided very small type or in ways that would not reasonably be noticed by the consumer.

2.3. Ambiguities to Benefit the Consumer

Section 5 of the *Act* is a new interpretive rule which provides that “any ambiguity that allows for more than one reasonable interpretation of the consumer contract provided by the supplier to the consumer or of any information that must be disclosed under this act shall be interpreted to the benefit of the consumer.”

This new provision is an important rule of statutory construction in favour of consumers. Consumer contracts are often vague and ambiguous, and most often heavily slanted to favour the business interests of the suppliers and service providers. This new rule of statutory construction, which broadly reflects the common law doctrine of *contra proferentem*, is needed to help level the playing field between consumers and businesses in litigating consumer disputes.

2.4. False, Misleading or Deceptive Representations

Section 8 (1) of the *Act* continues an existing provision that it is an unfair practice for a person to make a false, misleading, or deceptive representation.

Section 8 (2) expands the examples of false, misleading, or deceptive representations to include:

- a representation that the person who is to supply the goods or services, the operations of that person, or the goods or services are approved, licensed, endorsed, associated with, or registered by the Government of Canada, the Government of Ontario, the government of any other province or territory of Canada or any municipality of Ontario if they are not;
- a representation made by a person involving a prepaid purchase card, voucher or similar item that states that another person will provide goods or services or will provide goods or services at a discounted or reduced price if the person making the representation knows or ought to know that the person will not;
- a representation that includes a statement of opinion, if the statement of opinion is misleading and relying on it would be to a consumer's disadvantage; and,
- a representation, including a representation that the consumer has won or is eligible for a prize, that misrepresents the purpose or intent of any solicitation or of any communication with the consumer.

Each of these new examples of false, misleading, or deceptive representations are responsive to current market practices and are necessary under current market conditions to help ensure effective consumer rights.

2.5. Unconscionable Representation or Acts

Section 9 of the *Act* expands the definition of an unfair practice to include an unconscionable representation as well as to engage in an unconscionable act.

In addition to the existing examples of unconscionable representations, "subjecting a consumer to undue pressure to enter into, amend, continue, cancel or terminate a consumer contract" would be added as an unconscionable act that would vitiate a contract.

The type of undue pressure contemplated by this example is a very long-standing and insidious sales tactic that particularly affects older adults. In the area of door-to-door sales, older adults having allowed a salesperson to enter their home are often browbeaten, alone, and physically and mentally exhausted to the point that they will enter into an improvident consumer agreement for no other reason than to cause the salesperson to leave their home. Sales pressure of this type is the very epitome of an unconscionable act that should be absolutely prohibited.

2.6. Timing of an Unfair Practice

Section 10 (3) of the *Act* provides that “an unfair practice may occur before, during or after a consumer contract is entered into and is an unfair practice even if no consumer contract is entered into.”

This provision expands the rights of consumers, which under the existing legislation speaks to unfair practices that occur before or during the making of a consumer agreement. A statutory provision allowing that an unfair practice may occur after a contract is entered into creates the possibility of a retrospective application of consumer rights that would be appropriate in the current marketplace.

Furthermore, allowing that an unfair practice may occur even if no consumer contract is entered into may allow redress for damages against unscrupulous businesses in appropriate circumstances.

2.7. Prohibited Terms and Acknowledgements and Contracts

Section 14 (1) of the *Act* prohibits terms and acknowledgements in the consumer contract that:

- prevents the consumer from commencing action in the Superior Court of Justice;
- prevents a consumer from participating any class proceedings;
- purports to negate or vary an implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under this *Act*;
- allows or has the effect of allowing a supplier to acquire title to, possession of or any rights in any goods of the consumer, other than the goods passing to the consumer under the contract or related agreement;
- prevents or has the effect of preventing a consumer from publishing or communicating a review of the supplier or of the goods or services supplied; or,
- prevents or has the effect of preventing a consumer from filing a complaint with the Ministry or otherwise communicating with the Ministry.

Section 14 (2) provides that any prohibited term or acknowledgement is deemed to be void.

Although some of these rights are already contained in the existing legislation, a proposed prohibition of any contract terms to this effect and the deemed invalidity of such terms is a stronger statutory remedy that is of significant benefit to consumers.

2.8. Prohibition On Door-To-Door Sales

Section 20 of the *Act* delegates to regulations – yet to be written – concerning the prohibition of door-to-door sales, and sales at any other prescribed place, of prescribed consumer contracts under prescribed conditions.

It is impossible to know the prescribed places, contracts and conditions that would presumably be addressed through the regulation-making power laid out in s. 107 (1) 1 of the *Act*.

However, it would be expected that any regulations would at least prohibit the sales of HVAC equipment, water tanks and water-treatment devices and duct-cleaning services that are presently proscribed under s. 35.1 of O. Reg. 175/05, made pursuant to s. 35.1 of the current *Consumer Protection Act*, 2002. Furthermore, the prescribed conditions of door-to-door sales should at least meet or exceed the consumer-protection measures presently prescribed for direct agreements under ss. 42 and 44 of the current *Act*.

ACE submits that current regulations do not go far enough in favour of consumer protection, and that some of these protections should reside in the statute rather than the regulations, along with a corresponding regulation-making power to expand any statutory protections.

ACE submits that the *Act* should be amended to prohibit door-to-door sales in amounts exceeding \$50, unless the consumer has initiated contact with the supplier and specifically asked the supplier to attend the consumer's home for the purpose of entering into a consumer agreement, in addition to any other consumer protections that might be implemented by regulation.

2.9. Contract-Breaking Agreements

“Contract breaking” is an emergent door-to-door industry that victimizes vulnerable community-dwelling older adults. Door-to-door salesmen identify vulnerable and often cognitively impaired older-adult homeowners who have already entered into multiple oppressive consumer agreements and may have tens of thousand dollars of NOSI registrations placed against title to their homes.

Using unfair business practices, including unconscionable acts, these salesmen enter into contracts with the homeowner promising to help them escape from the financial obligations already incurred under the existing consumer agreements and NOSI registrations.

One problem that is endemic to these contracts is that the service providers often do not deliver the results they promised. In some cases, they may genuinely negotiate with creditors to reduce a homeowner's overall debt, but in many other cases there is no debt reduction and only an additional expense to the home owner for the fee charged by the contract-breaking supplier.

Another overriding problem is that the contract breakers usually demand an upfront fee, paid in advance, of tens of thousands of dollars before any services are provided. Commonly, the contract-breakers' contracts will state that their fees are earned and are due and owing as soon the contract is signed.

Usually, the homeowner does not have funds to pay the contract breaker upfront. In those cases, the contract breaker will refer the homeowner to a lender who will enter into a consumer credit agreement lending the homeowner tens of thousands of dollars – paid directly to the contract breaker – and secured by a NOSI registration or even a mortgage loan against title to the homeowner's home.

These agreements can be very oppressive, and they frequently put a vulnerable older adult homemaker at risk of losing their home entirely based on these unscrupulous transactions.

The *Act* brings rules concerning contract breaking explicitly within the scope of consumer protection. It defines "contract breaker" and "contract breaking" in s. 1 (1) of the *Act*.

Section 26 of the *Act* prohibits advance payments in respect of contract breaking, until such time as the contract breaker has fulfilled its contractual obligations to the consumer.

This provision is a positive and forward-looking remedial step for an unfortunate and devastating current market practice. However, the rules concerning contract breaking must be accompanied by other statutory measures recommended below to provide effective relief for vulnerable, older-adult community-dwelling homeowners.

2.10. Timeshare Exits

Section 56 of the *Act* provides retrospective rules in relation to timeshare contracts and related agreements made before or after the *Act* comes into force. This type of retrospective statutory operation is laudatory and should also apply to other consumer protections as recommended below and elsewhere in this submission.

The essential substantive consumer protection provided is the right to terminate a timeshare contract after 25 years, upon paying a termination fee and complying with other conditions, both of which may be prescribed by regulations. While the general direction of this provision is favourable for consumers, the fees and conditions that will apply are yet unknown.

Furthermore, 25 years in relation to an older adult is a very long period of time. Someone who buys a timeshare in midlife or while nearing retirement, may continue to be saddled with the timeshare obligation well into retirement and after their health and financial conditions have fundamentally changed.

A shorter period of 10 years would more closely reflect the dynamic health and financial conditions that are incumbent on older adults as they pass from midlife to early and late

retirement. A 10-year limitation of timeshare agreements would more accurately provide the type of consumer protection that older adults tend to require.

2.11. Administrative Penalties

Sections 95 through 98 of the *Act* provide for administrative penalties of up to \$50,000 to promote compliance with the *Act*, in accordance with regulations that have yet to be developed.

These provisions are nearly identical to those contained in s. 104.0 of the current legislation, which has yet to be proclaimed in force.

Administrative penalties are a useful enforcement mechanism that ACE highly recommends.

ACE also recommends, as outlined in section 5 of this submission below, that the implementation of administrative penalties should take place immediately, as the necessary statutory framework already exists.

2.12. Increased Fines

Section 102 (4) and (5) of the *Act* would double the fines for provincial offences under the *Act* to \$100,000 for an individual (in addition to imprisonment for up to two years less a day) and \$500,000 for a corporation. These increased penalties are highly appropriate given the life-changing and catastrophic damages suffered older-adult community-dwelling homeowners through fraudulent consumer transactions.

However, throughout its 39 years of legal practice serving older adults in Toronto, the GTA and throughout Ontario, ACE has scant experience with provincial prosecutions under the *Consumer Protection Act*, 2002, and its predecessor legislation. We are not aware of a single prosecution brought in respect of any of our older-adult clients despite having made a great many complaints to the Ministry and its predecessors.

As outlined in section 6 of this submission below, increased penalties must also be accompanied by increased resources for the enforcement of consumer protection legislation.

3. SUGGESTED AMENDMENTS TO BILL 142

While ACE strongly supports this bill, we also recommend that the following amendments to Bill 142 are necessary and advisable:

3.1. Retrospective Operation of Consumer Remedies

Retrospective operation of consumer remedies concerning unfair business practices, including unconscionable acts, which might be permissible under regulations eventually made under section 107(2) and (3), should be written into the statute alongside the regulation making power for further retrospective operation of consumer rights.

Bill 142 is remedial legislation intended, in large part, to address abuses that are currently prevailing in the consumer marketplace. Large numbers of older adults have already been victimized by unfair business practices and unconscionable acts. Many of them are currently under financial distress – even to the point of risk of loss of their homes – due to these predatory transactions.

It would be fit and just to provide retrospective relief to consumers who continue to suffer harm due to predatory unfair business practices and unconscionable acts.

3.2. A Tolling Provision for Mental Incapacity

A tolling provision for mental incapacity concerning any notice provisions for the rescission of consumer contracts should be provided by statute, such that the relevant notice period should not run while a consumer is mentally incapable, by operation of statute.

While s. 7 of the *Limitations Act* suspends the running of a limitation period while a person “is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition,” a similar provision does not yet apply to the various notice periods for the exercise of consumer rights under the *Act*.

Furthermore, s. 72 of the *Act* continues the current law that where a consumer is required to give notice in order to obtain a remedy “a court may disregard the requirement to give the notice or any requirement relating to the notice, if it is in the interest of justice to do so.” However, this is a discretionary remedy that may only be pronounced by a court after litigation has been commenced.

Consumers should have the statutory right to be relieved of compliance with time limitations under similar circumstances to the tolling provisions of the *Limitations Act*, whether or not litigation has been commenced.

3.3. Presumptively Void Contracts Based on Mental Incapacity

Furthermore, any consumer contract entered into with a consumer who is mentally incapable at the time the contract is made should be presumptively void, and voidable at the sole prerogative of the consumer and/or their substitute decision-maker without any time limitations, by operation of statute.

In view of the rampant financial abuse of low-income, cognitively impaired community-dwelling older adults, these amendments would further reflect the nature of the marketplace

and are immediately necessary to ensure the fair administration of justice and the enforcement of consumer rights.

3.4. Vicarious Liability for Independent Contractors, including Sales Agents

In our experience, groups of unscrupulous and unethical sales agents represent many different providers of consumer goods and services, while using unfair business practices and unconscionable acts on low-income community-dwelling older adults. These agents return time and again to a homeowner's door, selling many different products from many different suppliers. In many cases, they will sell the same product such as an electronic doorbell or an air purifier at grossly exorbitant prices to the same homeowner several times over.

Oftentimes, when consumers seek redress businesses will claim that their salespeople are "independent contractors" when they engage in unfair practices, and that they are not responsible for the conduct of independent sales agents.

The *Act* should be amended to make it explicitly clear that businesses are vicariously liable for the conduct of salespeople acting on their behalf.

This vicarious liability should also explicitly extend to creditors entering into consumer credit agreements because the same sales agents that sell consumer goods and services also represent consumer credit holders, who also deny liability for the sales agents' actions.

3.5. Liability of Consumer Credit Holders for Illegal Consumer Contracts

Presently, abusive and illegal door-to-door sales are widely made using unfair business practices and unconscionable acts, resulting in consumer contracts that are financed by consumer credit agreements with a third party.

Even when the supplier of goods and services and the supplier of consumer credit are introduced to the consumer and represented by the very same sales personnel, the third-party consumer credit holder will deny liability for any illegal consumer contracts they finance with their loan. They will often insist on payment in full, leaving the consumer to seek redress against the supplier of goods and services, who in all likelihood has a fly-by-night operation that is not traceable and/or is no longer in business.

Where consumer credit holders place loans initiated by a referral from a sales agent, the creditor should be liable for all breaches of the *Act* that are associated with the underlying consumer contract. In short, the consumer creditor should not be able to deny liability and seek enforcement of a consumer loan despite the illegality of the underlying consumer contract.

The *Act* should be amended to categorically state that a consumer credit holder is liable for and subject to any defences that the consumer may have in respect of the underlying consumer agreement for the provision of the financed goods and services.

3.6. Notice of Assignment of Consumer Contracts and Credit Agreements

Section 46 of the *Act* provides rules for the assignment of consumer contracts, including credit agreements, that broadly reflect the existing law. However, both the *Act* and the current law do not require notice of the assignment of any consumer contracts and credit agreements to be given in writing to the consumer.

Notice of an assignment is important because the consumer may need to contact the assignee of a consumer contract or credit agreement in order to give notice or otherwise enforce their consumer rights against the contract holder.

ACE recommends that the *Act* be amended to include a statutory requirement that written notice of any assignment of a consumer contract or consumer credit agreement be provided to the consumer.

3.7. Prohibition of Door-to-Door Sales of over \$50

ACE submits that the *Act* should be amended to prohibit door-to-door sales in amounts exceeding \$50, unless the consumer has initiated contact with the supplier and specifically asked the supplier to attend the consumer's home for the purpose of entering into a consumer agreement, in addition to any other consumer protections that might be implemented by regulation.

3.8. No Registration of NOSIs on Residential Property

Clause 18 of s. 107 (1) of the *Act* confers a regulation making authority "governing the use of security interests, liens or notices with respect to consumer contracts, including imposing limitations as it relates to such security interests, liens or notices."

This regulation-making authority entails governance of the use of Notices of Security Interest (NOSI's), which involve nuanced legal concepts, blending real and personal property, that are also dealt with under the *Personal Property Security Act*.

The Ministry has widely consulted on consumer protection and is currently amid a concurrent consultation process specifically addressing the use of NOSI's. ACE appreciates all those consultations and will actively participate in the concurrent NOSI consultation now underway.

Without limiting our further submissions on NOSI's, ACE's first and fundamental submission is that the registration of NOSI's should be prohibited as against title to

residential property. If that recommendation were not accepted, then ACE would also make further and other recommendations concerning limitations on the use of NOSI's with respect to consumer agreements.

The abolition of the registration of NOSI's against title to residential property would resemble the abolition of a landlord's right of distress in residential tenancies. Although at one time residential landlords relied on their right to seize a tenant's personal property for partial satisfaction of unpaid rent, that right has long been abolished without fundamentally upsetting the residential tenancy market. Similarly, abolition of the use of NOSI's – which are widely abused in consumer transactions – should not fundamentally upset the legitimate extension of credit for the purchase of consumer goods and services.

ACE will make further submissions on this point in the upcoming NOSI consultation.

3.9. Limitation of Charges for Cashing Government Cheques

Sections 85.1 through 85.5 of the current *Act* provide rules on agreements for cashing a government cheque that include a limitation on fees – presently set by regulation at two dollars plus 1% of the face value of the cheque, to a maximum of \$10 – and the disclosure of information to be given to the consumer upon cashing the cheque.

Despite our careful reading of the *Act*, we are not able to find any provision nor any regulation-making power that would carry over these important rules.

ACE therefore recommends that the provisions of ss. 85.1 through 85.5 be substantively carried over into the new *Act*, if they have not been done so already.

4. SUBSTANTIVE CONSUMER RIGHTS SHOULD BE ENACTED BY STATUTE, NOT REGULATION

Bill 142 leaves many important matters of substance to regulation. While it is desirable that regulations may be passed to enhance consumer rights under the regulation making powers of the bill, it would be better for more of those substantive rights – once developed – to be written into the statute itself. This could necessitate returning the *Consumer Protection Act, 2023* to the legislature, following its passage, for amendments that would incorporate further consumer rights into the statute itself following the regulation making process. However, ACE would not recommend delaying passage of Bill 142 pending the development of further consumer rights under the proposed regulation making powers.

Section 107 (2) and (3) of the *Act* provide that a regulation made under section 107 (1) may specify that a regulation and/or a provision of the act apply to a consumer contract or a related agreement that was entered into before the day the *Act* and or the regulations come into force.

Some provisions of the *Act* are so critical that they should have retrospective operation, which should be spelled out by statute rather than by regulation. These types of measures should include enhanced consumer rights that should operate retrospectively.

5. ADMINISTRATIVE PENALTIES SHOULD BE IMMEDIATELY IMPLEMENTED

Section 120 of the *Act* provides that it comes into enforce on proclamation. While this provision is necessary to permit the development and promulgation of accompanying regulations, one hopes that proclamation of all sections of the *Act* will soon follow.

Consequently, there would be a latency period between royal assent and proclamation of the *Consumer Protection Act, 2023*, that would allow time for the development of regulations to make the *Act* fully operational before it comes into legal force and effect.

Part X.1 of the current *Consumer Protection Act, 2002*, already contains provisions for administrative penalties that were enacted in 2020 but have not yet been proclaimed in force.

However, at present, the 2020 amendments to the *Consumer Protection Act, 2002*, that would provide administrative penalties in a similar fashion to those proposed under Bill 142 are not yet enforced because they remain unproclaimed.

It would be consistent and appropriate to immediately bring into force Part X.1 of the *Consumer Protection Act, 2002*, pending passage and proclamation of Bill 142. These administrative penalties are important enforcement mechanisms and should be implemented immediately.

Having twice signalled its intention to implement administrative penalties, the Ministry should demonstrate its *bona fides* on this policy initiative by immediately having the existing measures proclaimed in force, pending development of more extensive regulations and the proclamation of the new *Consumer Protection Act, 2023*, should it pass third reading in the legislature.

6. MORE RESOURCES ARE NEEDED FOR ENFORCEMENT OF CONSUMER RIGHTS

Finally, it is imperative that the Ministry immediately devote more resources to the enforcement of the *Consumer Protection Act, 2002*, and the expected *Consumer Protection Act, 2023*, in order that inspections, investigations, administrative penalties, and the prosecution of provincial offences under consumer protection legislation may be effectively undertaken. At present, Ontario consumers have little confidence that these functions are diligently undertaken, for want of administrative resources.

The preamble to the *Act* states that “the government of Ontario is dedicated to . . . “[p]rotecting consumers from unfair business practices, while holding noncompliant

businesses accountable.” These are laudatory legislative objectives that ACE fully supports and endorses.

The existing *Consumer Protection Act*, 2002, already contains extensive consumer protections that cry out to be modernized to protect consumer rights more effectively in the 21st century.

However, in our experience vulnerable older adults do not normally benefit from any Ministry enforcement of the existing *Consumer Protection Act*, 2002.

While the Ministry does, in fact, assist with mediation of consumer complaints, such mediation fails because it is a voluntary process. Noncompliant businesses do not normally provide the full cooperation that would be needed to resolve a mediated consumer complaint within the two-year limitation of action that would bar any subsequent court proceedings on behalf of the consumer. Typically, the consumer must commence action – usually in the Small Claims Court – before mediation is completed, and once legal action is brought the mediation is terminated. While mediation might work well – and even more so might not be necessary – for reputable and compliant service providers, it does little to assist consumers in advancing complaints against noncompliant businesses.

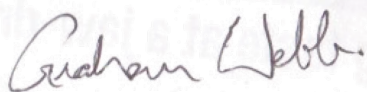
Furthermore, while the existing *Consumer Protection Act*, 2002 also contains extensive provisions for Ministry inspections, investigations, search and seizures, freeze orders, compliance orders, and prosecution of provincial offences, in our experience these remedies are rarely undertaken by the Ministry for want of resources. In fact, we are not aware of a single Ministry prosecution or other disciplinary step under the *Consumer Protection Act*, 2002, in respect of any of the many consumer complaints made by or on behalf of our clients.

To fulfil its legislative mandate under the new or existing legislation, the Ministry must devote greater resources to the investigation and enforcement of the *Consumer Protection Act*.

Without such resources, the new legislation would amount to important self-help remedies without the active support and assistance of the Ministry to enforce the *Act* on behalf of all Ontarians.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Toronto, Ontario, this 22nd day of November, 2023.

ADVOCACY CENTRE FOR THE ELDERLY



Graham Webb, LL.B., LL.M.
Lawyer/Executive Director