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**Official Report
of Debates
(Hansard)**

Wednesday 6 November 2013

**Journal
des débats
(Hansard)**

Mercredi 6 novembre 2013

**Standing Committee on
the Legislative Assembly**

Stronger Protection for
Ontario Consumers Act, 2013

**Comité permanent de
l'Assemblée législative**

Loi de 2013 renforçant
la protection du consommateur
ontarien

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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 6 November 2013

Mercredi 6 novembre 2013

The committee met at 1204 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): Good afternoon, everyone. We'll call the meeting to order. We're here today to do the clause-by-clause consideration of 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.

Before we get into the actual clause-by-clause, I normally ask of each of the caucuses if they'd like to make any kind of statement or something before we start into the clause-by-clause. I'll start with you, Mr. McDonell. Do you have any comments you'd like to make before clause-by-clause?

Mr. Jim McDonell: There's an opportunity here to make some changes that would benefit the consumer, and we think that that's important. That's what we're looking for at the end of the day, that we have a stronger bill.

The Chair (Mr. Garfield Dunlop): Okay. Thank you very much. Mr. Singh, would you have any comments on behalf of the third party?

Mr. Jagmeet Singh: Certainly, yes. When it comes to consumer protection, there's a balance that we need to strike between protecting the consumer and encouraging a climate where the consumer gets the best product. So that's going to be our difficulty: making sure we strike the right balance between consumer protection and creating a climate where we can ensure that the best product is available to the consumer.

The Chair (Mr. Garfield Dunlop): Thank you very much, Mr. Singh.

Would anybody from the government side like to make a comment or just an opening statement on the clause-by-clause?

Mr. Vic Dhillon: We're fine, Chair.

The Chair (Mr. Garfield Dunlop): No problems? Okay. Thank you very much.

With that, to the members of the committee, I think we'll stand down sections 1, 2 and 3, and we'll go right to the schedules because all of the amendments are on the actual schedules. We have a number of them here. Do you agree that we can stand down the three sections and vote on them at the very end? Okay? Okay. That's agreed.

I'll start with 0.1. The motion is by the—

Interjection.

The Chair (Mr. Garfield Dunlop): Okay, so as we go through the schedules, some of them don't have any amendments. Because there are none on schedule 1, section 1, could I ask people to—shall schedule 1, section 1, carry? There are no amendments to that. Carried? Okay, that's carried.

Schedule 1, section 2: There are two amendments on that. The first amendment is by the PCs. Mr. McDonell?

Mr. Jim McDonell: Do you want me to read it in? Is that the—

The Chair (Mr. Garfield Dunlop): Yes, you have to read the whole motion in.

Mr. Jim McDonell: Okay. I move that the definition of "debt settlement services" in subsection 1(1) of the Collection Agencies Act, as set out in subsection 2(2) of schedule 1 to the bill, be struck out and the following substituted:

"debt settlement services" means any of the following services if they are provided in consideration of a fee, commission or other remuneration that is payable by the debtor:

"1. Offering or undertaking to act for a debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors.

"2. Providing a debtor with advice relating to managing or repaying the debtor's debts or negotiating with the debtor's creditors; ('services de règlement de dette')".

The Chair (Mr. Garfield Dunlop): So everyone has heard that motion. Would you like to make comments on it, or would you like to explain the reason?

Mr. Jim McDonell: Well, we want to bring into the definition all counselling services, even if they don't col-

lect a fee. Anybody who collects, we think, should be included in this legislation.

The Chair (Mr. Garfield Dunlop): Okay. Any comments? Mr. Singh.

Mr. Jagmeet Singh: Yes, it's actually a motion that I support. I think it's very similar to our motion, so what I'd like to do, just to avoid redundancy, is if I could ask counsel, Mr. Wood, to just briefly—if you could peruse both motion 0.1 and 0.1.1, and if you could highlight any significant differences, if there are any. If not—I think they're almost the same—does it make sense to have two motions that are very similar? We could facilitate an easier process if we could figure out if they're similar.

Mr. Michael Wood: I'm Michael Wood, legislative counsel. I agree with Mr. Singh that the substantive effect of both the PC motion and the NDP motion is the same. The NDP motion, as members can see, inserts the words "counselling a debtor with respect to debts that the debtor owes to creditors", whereas the PC motion introduces a new paragraph 2. It seems that, for all practical purposes, they achieve the same thing.

Mr. Jagmeet Singh: Thank you very much, Mr. Wood, for that comment. Did that complete your remarks?

Mr. Michael Wood: Yes.

Mr. Jagmeet Singh: Thank you very much, sir. Just for the benefit of Mr. McDonell, I guess the only significant difference that I see is that I expressly mentioned the word "counselling," which would capture in an obvious way credit counselling, though I agree that providing a debtor with "advice" achieves the same result. It's just, in terms of the language, having the word "counselling" ensures that credit counsellors are also captured in this.

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Otherwise, really, it's almost identical. They're written in two different ways, but I think that having the word "counselling" is useful because it captures a credit counsellor in a very easy-to-understand way. But I want to hear if you agree with that or not.

Mr. Jim McDonell: Sure—

Mr. Jagmeet Singh: Through the Chair.

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

Mr. Jim McDonell: The intent is included, and if it's cleaner, we're fine with that.

The Chair (Mr. Garfield Dunlop): Okay. Any questions—

Interruption.

The Chair (Mr. Garfield Dunlop): So our consensus—we'll join the two together. It would be the same motion.

The Clerk of the Committee (Mr. Trevor Day): It's been withdrawn.

The Chair (Mr. Garfield Dunlop): One is withdrawing?

The Clerk of the Committee (Mr. Trevor Day): No, they're both going.

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): Okay. Now, I want to ask questions to the government members on this.

Interjection.

The Chair (Mr. Garfield Dunlop): What has been withdrawn? Mr. McDonell's has been withdrawn?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): Okay, so we'll—

Mr. Jim McDonell: We'll go with the NDP one.

The Chair (Mr. Garfield Dunlop): We'll go with the NDP motion, then. Any questions on the NDP—

The Clerk of the Committee (Mr. Trevor Day): They have to read it into the record—

The Chair (Mr. Garfield Dunlop): Oh, I'm sorry. All right. Please read it into the record.

Mr. Jagmeet Singh: Thank you very much. This is a motion to the committee, motion 0.1.1.

I move that the definition of "debt settlement services" in subsection 1(1) of the Collection Agencies Act, as set out in subsection 2(2) of schedule 1 to the bill, be struck out and the following substituted:

"debt settlement services" means offering or undertaking to act for a debtor in arrangements or negotiations with the debtor's creditors, counselling a debtor with respect to debts that the debtor owes to creditors or receiving money from a debtor for distribution to the debtor's creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor;"

That's the motion, and just a quick explanation: What this does is it clearly defines what debt settlement services do. It provides an exhaustive definition so that it will cover all debt settlement services so that we know who will actually be covered by this bill. It provides a definition for it. What it also does is it includes credit counsellors so that they are also regulated, as opposed to not being regulated. Now, they'll be captured by this legislation as well. It just clarifies the definition and then broadens it to include credit counsellors as well.

It doesn't take away from any of the protections. In fact, I would submit that it strengthens the protection because it actually clearly defines who is covered by the bill; and it also includes the credit counsellors, who we heard from before. That provides more protection to consumers.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Singh.

Any questions from the government members? Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Chair. We'll be voting against both the PC and the NDP motions because this would potentially affect an unknown number of people. The language in this motion is too broad. So we're voting against it.

The Chair (Mr. Garfield Dunlop): Okay. So your caucus will not be supporting this at this point?

Mr. Vic Dhillon: Yes.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Singh.

Mr. Jagmeet Singh: Sorry, my apologies. I think Mr. McDonell had his hand up first.

The Chair (Mr. Garfield Dunlop): Oh, Mr. McDonell?

Mr. Jim McDonell: I just think if you're truly looking at trying to protect the consumer, why would you leave a significant group out of the legislation? The legislation seems to be broad in dealing with some of the issues. It just makes it confusing and it rallies people behind a title change just to get around to the legislation. Thank you.

The Chair (Mr. Garfield Dunlop): Okay. Any other questions? I'm going to call the vote—Mr. Singh.

Mr. Jagmeet Singh: My question is just to Mr. Wood, to objectively indicate the impact of this definition. How would it impact the bill in your estimation?

Mr. Michael Wood: Well, I can give you my interpretation of it. Ultimately, if the motion passed, it would be up to the ministry administering the Collection Agencies Act to interpret the act. Any time you make a change to a definition, it can have a huge repercussion in the rest of the act, as amended, because this term, "debt settlement services," is used throughout the amendments that we make. There is a whole new block of sections inserted into the Collection Agencies Act to regulate collection agencies, and collectors who act on their behalf, who enter into debt settlement services agreements with consumers.

Mr. Jagmeet Singh: Thank you very much, sir. My apologies, Mr. Chair, I have one other question. I wanted to ask if there is a ministry lawyer we could ask the same question to—the impact? Is there a ministry lawyer available?

The Chair (Mr. Garfield Dunlop): Yes, please? Could you come forward, sir, and give an explanation on this? Please take a chair and state your name.

Mr. Neil Hartung: Neil Hartung. I'm with the Ministry of Consumer Services, legal services branch.

Mr. Jagmeet Singh: Mr. Chair, and perhaps to Mr. Clerk, could we have a copy of this in front of Mr.—sorry, I apologize.

Mr. Neil Hartung: I have it back here. I'll pick it up. It's Hartung.

Mr. Jagmeet Singh: Mr.—

Mr. Neil Hartung: Mr. Hartung.

Mr. Jagmeet Singh: Hartung.

The Chair (Mr. Garfield Dunlop): Thank you, Mr. Hartung. Please proceed.

Mr. Jagmeet Singh: My question, Mr. Hartung, through the Chair, is on the definition with respect to clarifying what a debt settlement service is. My submission is that it would increase the protection because it would define clearly what a debt settlement service is. My submission is that it adds credit counsellors to the definition, so that it provides regulation or protection with respect to those agencies as well.

Mr. Neil Hartung: Credit counselling, in the true sense, is already captured. They're already regulated as collection agencies, under the act. The provision of "counselling a debtor," expands, per what Michael Wood said, the scope of the act. Because it is a definition, it's

difficult to say what the impact will be of the inclusion of those words.

Mr. Jagmeet Singh: Just to clarify, because of the addition of "counselling": It could be someone who provides informal counselling, that's not through a credit counsellor. But if they provide any counselling with respect to debts, they would also be covered by this new definition?

Mr. Neil Hartung: Potentially, yes.

Mr. Jagmeet Singh: Do you agree with me that there would not be any detriment to the consumer in any way by including folks who offer counselling services in an informal way in the definition?

Mr. Neil Hartung: Well, I don't think there would be a detriment to the consumer. There may be a detriment to the business that's providing counselling and is not taking money in advance. Certainly, that isn't the mischief that we were aiming at when we made these amendments.

Mr. Jagmeet Singh: Thank you very much.

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

Mr. Jim McDonell: I'm just wondering, if you get a service provider that's taking money from anybody, whether it be the debtor or the creditor, should this not apply? If it's a business, it's surviving on an income. The bill is fairly encompassing. Why would we leave out that group? They are providing a service. I would have more concern about somebody who's getting money back from the creditors, because you really have to wonder whose best interests are at heart.

Mr. Neil Hartung: The way that the act is arrayed, if you're engaged in collection activities, which is very broadly defined, you need to be registered and licensed as a collection agency, and you need to use registered collectors.

The idea of providing counselling, I think, goes beyond what the four square corners of the act contemplate. You can certainly make this amendment, but as to what those results will be over the longer term, we won't know. That's not to say that consumers aren't protected when they're getting counselling services. That would be a consumer transaction under the Consumer Protection Act, and there would be certain requirements that would apply to that agreement in any event.

The Chair (Mr. Garfield Dunlop): Any further questions? I'm going to call the question, then.

Those in favour of the amendment?

Mr. Jagmeet Singh: Can we have a recorded vote?

The Chair (Mr. Garfield Dunlop): A recorded vote.

Ayes

Forster, McDonell, Milligan, Singh.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): In this case, because it's a change from the format we received it in, I'll

be supporting the government motion as we received it. So I'm voting against the change. It's lost.

Shall schedule 1, section 2, carry? That's carried.

We'll now go to schedule 1, section 3. There are two amendments on this one as well. The first one is the NDP motion. Mr. Singh?

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Mr. Jagmeet Singh: I move that subsection 2(0.1) of the Collection Agencies Act, as set out in section 3 of schedule 1 to the bill, be struck out and the following substituted:

“Application of act

“(0.1) This act applies to a collection agency or collector that deals with a debtor if the debtor is a resident of Ontario or located in Ontario when the dealing takes place, regardless of where the applicable one of the collection agency or the collector is located at that time.”

This is to essentially make sure that the protection applies to Ontario residents, whether or not the agency is based out of another province, that the debtor—when the dealing took place in the province of Ontario, they should be protected by this act.

The Chair (Mr. Garfield Dunlop): Any further comments, Mr. Singh?

Any questions on this from the government members? Ms. Cansfield?

Mrs. Donna H. Cansfield: We'll be voting against this motion. Our position is that we do not want Ontario to become a haven for these activities; that, in fact, everyone should be protected.

The Chair (Mr. Garfield Dunlop): Okay. Anybody from the official opposition have any comments on it?

Mr. Jim McDonell: Yes. I think the idea is we want to make sure that the residents of Ontario are protected, regardless of where the agency's from. I don't know how that would make Ontario a haven. We're looking at protecting the residents of Ontario, as we have a duty to do that.

The Chair (Mr. Garfield Dunlop): Mr. Singh, you have a further—

Mr. Jagmeet Singh: It seems to be a very friendly day between the PCs and the NDP.

I was going to echo the comment that by simply stating who is protected and who gains the protection, it's not making anything a haven. It just clearly sets out that if you live in Ontario and the dealings took place in Ontario, then you should be protected by this act. Whether or not the collection agency or the collectors started off in Ontario and moved to another province or to another jurisdiction or to another country, because the dealings happened in Ontario and the person lives in Ontario, they should be entitled to protection.

It's really quite similar to what was included in the wireless agreement act, and the wireless agreement act went even further than that. It said that either party—it said, to put it into this context, that even if the collector was in Ontario but the debtor was in another province, they would still be covered. This is actually more narrow than what the wireless agreement is, but, I think, appro-

priately so because it covers the resident in Ontario and where the dealing took place. So I think it directly addresses the issue.

The Chair (Mr. Garfield Dunlop): Further questions? Further comments? All those in favour of the NDP motion?

Mr. Jagmeet Singh: A recorded vote, please.

The Chair (Mr. Garfield Dunlop): Recorded vote.

Ayes

Forster, McDonell, Milligan, Singh.

Nays

Cansfield, Crack, Dhillon, Dunlop, Mangat.

The Chair (Mr. Garfield Dunlop): I'll be supporting the government members because it's a change from the format we found the bill in. The motion does not carry.

We now go to the PC motion, 0.2, and that will be Mr. McDonell.

Mr. Jim McDonell: I move that section 3 of schedule 1 to the bill be amended by adding the following subsection:

“(2) Clause 2(a) of the act is amended by striking out ‘a barrister or solicitor’ and substituting ‘a barrister, solicitor or paralegal member of the Law Society of Upper Canada’.”

The Chair (Mr. Garfield Dunlop): Would you like to give any more explanation on that?

Mr. Jim McDonell: We feel that the paralegals are a valuable resource in this province. It has legislative protection. It's included as part of the law society, and we think that it should be in there. It gives them the power to act on behalf of the client. It gives them an avenue to—likely a cheaper resource than having to go with a full lawyer. We just think that it's a small change. It's maybe not in a clause that's looking after—I think you're looking for benefit for the consumer, and I think that all parties should be interested in that.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Singh?

Mr. Jagmeet Singh: We'll be supporting this motion. The paralegals presented in this committee and they advised that it would allow them to better serve their clients if they were able to represent their clients in these sorts of cases. They can currently represent their clients, but the only prohibition is that, one, paralegals are equally—they're licensed members of the Law Society of Upper Canada, so they have rights, obligations and responsibilities to the public. They have insurance. There's a remedy if they don't provide proper service to a consumer. A consumer can file a complaint with the law society, and it can follow up. So all the levels of protection are still there for the consumer. It doesn't expand the scope of what a paralegal can do because that's something that we need to research and reflect upon before we do that. All it does is, in cases regarding collection agencies, it allows a paralegal to act. It can also mean the difference in a para-

legal being able to collect their own fees. From the paralegals' deposition, I think it makes sense to include them.

The Chair (Mr. Garfield Dunlop): Okay. Now to the government members: Mr. Dhillon, you have a comment?

Mr. Vic Dhillon: We won't be supporting this because the law society hasn't studied this issue, so we're in opposition—and as well, the AG's office. So we won't be supporting this.

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

Mr. Jim McDonnell: Yes, I wonder if we could ask our legal counsel if, other than adding this licensed group in, there's any other ramifications? We have our legal counsel, and we shouldn't have to go back. If the law society wanted to make a deputation to this bill, they could have, but they didn't.

The Chair (Mr. Garfield Dunlop): Okay, Mr. Hartung, would you like to make a comment on that?

Mr. Neil Hartung: I can tell you that we've been in discussions with the law society. I think the issue is that on the ground, collection agencies do use paralegals. I think you heard during the deputations that part of the debt settlement services that are provided are, in fact, paralegal services. So an outright exemption may in fact create a rather large back door for what the provisions are trying to do, which is to control debt settlement services agreements. That's why it requires more study, and that is the basis upon which we provided advice to the ministry that it ought not to proceed forward at this time.

The Chair (Mr. Garfield Dunlop): Any other questions from anyone? Okay, can I call the question? All those in favour of the PC motion? Those opposed? That motion is not carried—

Interruption.

The Chair (Mr. Garfield Dunlop): Again, it's a change from the format we received the bill in, and I won't be supporting it.

Shall schedule 1, section 3, carry? Carried? Okay, it's carried.

We'll now go to schedule 1, section 4. The NDP have a motion. Mr. Singh.

Mr. Jagmeet Singh: Thank you very much. The motion is 0.2.1.

The Chair (Mr. Garfield Dunlop): Yes.

Mr. Jagmeet Singh: I move that subsection 16.3(2) of the Collection Agencies Act, as set out in section 4 of schedule 1 to the bill, be struck out and the following substituted:

“Required representations

“(2) A collection agency or collector shall communicate or cause to be communicated, in the circumstances that are prescribed,

“(a) all terms of a debt settlement services agreement that are key to understanding the agreement;

“(b) a clear and detailed explanation of the effect that a debt settlement services agreement will have on the debtor's credit rating; and

“(c) all representations relating to a debt settlement services agreement that are prescribed as required representations.”

Just a brief explanation: The motion is simply to provide more clarity to the consumer when they enter into a debt settlement services agreement. I think the way it is currently crafted, these same requirements are all ministerial powers. Instead of having them as ministerial powers, it clearly states those requirements in law. The requirements for representations are stated in law as opposed to at ministerial discretion. I think that's really the only difference. It's straightforward in terms of providing a clear and detailed understanding of what the agreement is. That's it.

The Chair (Mr. Garfield Dunlop): Any comments from the government members? Mr. Dhillon?

Mr. Vic Dhillon: Yes, Chair, we potentially may support this if we can get a change to the term “key” in section 2(a) of this bill, and replace it with “unnecessary”—

Mrs. Donna H. Cansfield: “Necessary.”

Mr. Vic Dhillon: “Necessary”; I'm sorry.

Interruption.

The Chair (Mr. Garfield Dunlop): Go ahead, Mr. Wood.

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Mr. Michael Wood: Michael Wood, legislative counsel. I would just suggest striking out two words. Instead of striking out just “key,” strike out “key to” and replace them with “necessary for.”

Mr. Vic Dhillon: That's fine.

The Chair (Mr. Garfield Dunlop): Are you making that amendment, then, to this motion of the NDP?

Mr. Vic Dhillon: Yes. If it's—yes.

Mr. Jagmeet Singh: I consider that a friendly amendment. It keeps the spirit of what I want. It achieves that, just changing “key” to “necessary.” I'm fine with that.

The Chair (Mr. Garfield Dunlop): Okay.

Mr. Vic Dhillon: Yes, Chair, if I'm not—

The Chair (Mr. Garfield Dunlop): I'll be calling the vote on both of them. Okay?

Mr. Vic Dhillon: So on the original motion we would be voting no, and then—

Mrs. Donna H. Cansfield: No, we'll do the amendment first.

Mr. Vic Dhillon: We'll do the amendment?

The Chair (Mr. Garfield Dunlop): We'll do the amendment first—

Mr. Vic Dhillon: I'm not too familiar with it.

The Chair (Mr. Garfield Dunlop): —and then we'll do it as amended. Okay?

Mr. Vic Dhillon: That's fine.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon has moved that we strike “key to” and replace it with “necessary for.” Those in favour of that? That's carried.

Now on the original motion, as amended, 0.2, as Mr. Singh has moved—all those in favour of that one?

Mr. Vic Dhillon: As amended?

The Chair (Mr. Garfield Dunlop): As amended. Thank you very much. That's carried.

Now we'll go to 0.3, which is a PC motion. Mr. McDonell.

Mr. Jim McDonell: I move that section 16.3 of the Collection Agencies Act, as set out in section 4 of schedule 1 to the bill, be amended by adding the following subsection:

"Required disclosure

"(3) If a collection agency or a collector, acting on behalf of the collection agency, has received funding or payments in the previous year from creditors or any person or body that extends credit, the agency and the collector shall ensure that information about the funding and payments is communicated to the debtor before the agency enters into a debt settlement services agreement with a debtor."

What we're trying to do here is make it mandatory that they disclose funds. I know that it's always possible that the regulations could include that, but we think this is an important disclosure. People should know who's working for them and where they're getting all their funds.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Singh?

Mr. Jagmeet Singh: Yes, thank you very much. I support this amendment. This issue came up. I understand that the credit counsellors who came forward indicated that they do disclose their funding sources—they testified or they provided deputations to that effect—but it's still a question that it's not as apparent or readily available to the average consumer, and so the idea of requiring disclosure of the funding or the payments is important. It allows consumers to have a more fulsome understanding of who they're dealing with and what their source of revenue is. If a consumer has questions about the bias of a particular organization, they can satisfy themselves by understanding what the source of funding is for that particular organization. So we'll be supporting this motion.

The Chair (Mr. Garfield Dunlop): Okay, you're supporting it. Any comments from the government members?

Mr. Vic Dhillon: Yes.

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

Mr. Vic Dhillon: We'll be putting forth a new motion addressing this, which we feel is—

The Chair (Mr. Garfield Dunlop): Further down?

Mr. Vic Dhillon: Yes, the next motion.

The Chair (Mr. Garfield Dunlop): Okay.

Mr. Vic Dhillon: But we'll be voting this one down.

The Chair (Mr. Garfield Dunlop): You'll be voting this one down?

Okay. Any other questions? Mr. Singh? Sorry, Mr. McDonell has a question first, and then Mr. Singh.

Mr. Jim McDonell: Before we vote this down, should we have legal counsel comment on the differences in the two, if it's really seeing that we're supporting one and not the other?

The Chair (Mr. Garfield Dunlop): If Mr. Hartung feels—

Mr. Jim McDonell: He's talking about 0.3, not 0.1.

The Chair (Mr. Garfield Dunlop): Are you comfortable with that question?

Mr. Neil Hartung: I think they amount to the same thing. Substantively, they require the disclosure of sources of funding. It's a matter of the wordiness of 0.3 versus perhaps a little more crispness to the government-proposed motion. But other than that, they achieve the same result, in my view.

The Chair (Mr. Garfield Dunlop): Mr. Wood?

Mr. Michael Wood: May I add something? Yes, I do agree with what Mr. Hartung has said, but I point out one additional matter: In the government motion on subsection 16.5(1), by adding the new clause (c), it does refer to information that is prescribed. "Prescribed" is a defined term in the act, meaning prescribed by the regulations. I could ask Mr. Hartung to confirm this.

I would think, then, that if there are no regulations to prescribe information for the purposes of this clause (c), then there is no obligation to disclose any information.

Mr. Neil Hartung: I would think that's correct. I guess what I see in the language of the motion under consideration is, how does the collection agency meet those words in there. Right? Those words seem to have some doubt around them as to what exactly they mean, and that's oftentimes why one will go down the road of prescription, so you can be very clear as to how organizations can meet their obligations, as opposed to living under the doubt of "all sources of funding."

Mr. Michael Wood: Just so the committee members realize the difference between the two motions, if there is no regulation to prescribe information for the purposes of the new clause (c) of 16.5(1), then there is no obligation under that clause (c).

If the regulations are made, it could be that the two motions achieve the same thing. But in the government motion, you need regulations to be made to achieve that effect.

The Chair (Mr. Garfield Dunlop): Mr. McDonell and then Mr. Singh.

Mr. Jim McDonell: We believe this is a fairly fundamental consumer protection so that they know, if they are entering into an agreement, just where they are getting their funds. We believe it should be up front. It should be in the legislation so there's no doubt where it is, instead of relying on something that may happen or may not happen, and then there is no protection.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: I appreciate the distinctions raised by both counsel. I think that, in fairness, if there was a prescription, if what was prescribed was defined or laid out, then I would be very happy to support the government motion. But absent that clarity in terms of it not being prescribed, at this point I agree with Mr. Wood that we would be left with a good section which would have no real implementation until there's actually a regulation.

Absent regulation—if there's a regulation later down in the government amendments, then I think it would make some sense, but otherwise I think we have to stick

with the PC motion, which provides that requirement of disclosure and doesn't require a regulation to be present.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon, do you have more comments?

Mr. Vic Dhillon: Chair, can we get a five-minute recess so we can have a discussion?

The Chair (Mr. Garfield Dunlop): Does the committee agree to recess, and then further debate after?

Interjection: Yes.

The Chair (Mr. Garfield Dunlop): Okay, a five-minute recess.

The committee recessed from 1237 to 1242.

The Chair (Mr. Garfield Dunlop): I call the meeting back to order. Does the committee require more time to discuss this? Where's Mr. Dhillon?

Mr. Singh?

Mr. Jagmeet Singh: I'm just curious, as a result of the discussion, what the government's position is.

The Chair (Mr. Garfield Dunlop): Just give us a second, Mr. Singh.

Mr. Jagmeet Singh: Sure.

The Chair (Mr. Garfield Dunlop): Here he comes. Mr. Dhillon, do you have further comments on this?

Mr. Vic Dhillon: I believe my colleague will be addressing—

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

Mrs. Donna H. Cansfield: The only comment I'd like to make is that legislation typically is an enabling process. The reason we had (c) is because regulation is a process whereby we do consultation with those affected to make the regulatory changes. It's much easier, in the future, to change a regulation than it is to change legislation. That's why we inserted (c), because, in fact, it gives more ability for the government to make regulatory change than legislative change. We will not be supporting this motion.

The Chair (Mr. Garfield Dunlop): So the government members won't be supporting it.

Mr. McDonell, then Mr. Singh.

Mr. Jim McDonell: I'm just thinking that it's fairly fundamental to know who you're employing and where they get their funding in a case like this, because you want to know, are they working for you or are they actually working for somebody else? I think that's fairly basic and I think it's fairly clear. To rely on it being in legislation—I know there are lots of things that could be in regulations, because they do change, but this is just a basic right, and we think it should be here.

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

Ms. Cindy Forster: We heard from at least one agency during the deputations that they got 50% of their funding from banks, for example; right? So we think that we really need to make sure that this disclosure is in the legislation and it isn't just out there somewhere where it may not ever end up in regulation.

The Chair (Mr. Garfield Dunlop): Mr. Singh, did you have any further comments on it?

Mr. Jagmeet Singh: Yes. Perhaps if someone else is ready, though; I just need a minute to collect my thoughts.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Dhillon? No. Do any of the government members have any more comments on it?

Mrs. Donna H. Cansfield: If I may, Chair, again, we wouldn't have (c) in if there wasn't intent to do a regulatory process. That is how legislation works. You enable and then you put in a process of making it work, and that's why (c) was inserted. If we had no intention of doing regulations, we wouldn't have inserted (c) in the first place.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. McDonell.

Mr. Jim McDonell: On the surface, I would have tended to believe that before I got here, but I see many cases where regulations haven't been enacted. I know on the surface it would seem that that should be the case, but there are many, many cases where you don't see that happen. It's something that's fundamental, and I think that people expect to know, when they hire somebody, are they working for them or are they working for somebody else, especially in something like this.

As the member from the NDP had said, there have been cases where 50% of the revenue actually comes from the people, and I think that puts a conflict of interest in. The consumer should be aware. We're only asking that they should be aware of it.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: I continue to support the intent of this motion. The one question I have, which is a fair question—perhaps I can put it to both counsel and they could maybe assess it. Based on the wording of motion 0.3, could a collection agency or collector or anyone that falls within the scope of this bill—would they have to disclose receiving a mortgage payment as well, or any other type of loan that they receive, whether it's not actually for the purpose of funding their operation but just maybe securing a mortgage for the property that they're operating in? That might be a bit broader than we want, but I just want to hear the response to that issue from both Mr. Wood and Mr.—sorry, I keep on forgetting your name. My apologies.

Mr. Neil Hartung: Hartung.

Mr. Jagmeet Singh: Mr. Hartung. Thank you.

The Chair (Mr. Garfield Dunlop): Would you please come and answer, if you can?

Mr. Neil Hartung: I spoke up. I guess I have to answer.

Potentially they need to disclose the fact that they have a corporate credit card that they use for part of their operations. The wording is extremely broad. To the extent that you wanted to narrow that wording, the idea is fine and I don't think the ministry objects to that.

The issue is that the wording is so long—they'd have to disclose the fact that they have a lease, because a lease is a form of credit. They'd have to disclose their credit

card, their mortgage. All sorts of things would be swept into this that are not otherwise captured.

As well, that information already exists. These are charities. You can go to the Revenue Canada website; you can look up what their basic information is, what their spend rates are. Certainly you can house this in the legislation. It doesn't have to be; we could certainly address it by reg. But to the extent that you want to, I think you need to look at how to narrow those words. I don't know that you'll be able to do that today. Therefore, you may want to consider adding regulatory authority to narrow down what those words mean.

Mr. Jagmeet Singh: Perhaps Mr. Wood?

Mr. Michael Wood: Yes, I agree with what Mr. Hartung said. Funding isn't defined in the act, so there could be differences of opinion. It could be that a more reasonable position is that the funding should just be relating to the collection agency carrying on its operation. But somebody certainly would be within their rights to read that very broadly and push the disclosure requirement.

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

Mr. Jim McDonell: I think there's always the opportunity for bad players, and I think that there need to be amendments. It can be done through regulation in the future.

I caution the committee to the fact that a lot of this information is probably readily available, but I think the whole talk and the preamble about this bill, that generally people who utilize these services can be in dire straits—are they going to be researching the Internet? Are they going to be researching the very public records that in most cases you'd pay a lawyer to do? I think that has to be considered back here. This is a group of people sometimes that are desperate and take on a wish and hope something happens, and I think we want to protect them. These aren't people who tend to have a lot of time to do research to see maybe what's out there and where some of this funding comes from.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: My final suggestion, perhaps, to the committee—definitely to the committee—is that if we could perhaps tighten the language, because the concept is something I think everyone agrees on. Perhaps the wording needs to be tightened somewhat. Would it be possible to defer just this section to the next date, and in the interim come up with tighter language, and then we could address it that way? Is that something that everyone is agreeable to on this point, since it's not contentious? It's really just the language and the concern between putting it in the actual legislation versus regulation.

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The Chair (Mr. Garfield Dunlop): Further comments? Any more comments?

Mr. Jagmeet Singh: Sorry; I'm noticing the Clerk just wants me to repeat what I just said. What I'm asking direction from the committee on is that—this is not a contentious issue, I think we all agree, but the concern is

that the language may be somewhat too broad. Would it be acceptable to defer just this particular motion and this part of the legislation in the clause-by-clause and come back to it on the next day with something perhaps we could agree upon—maybe even at subcommittee just work out an amendment that actually tightens up the definition and then propose it on the next date and then just move it through quickly?

The Chair (Mr. Garfield Dunlop): So we're looking for agreement to stand down this particular motion.

Mr. Jagmeet Singh: Sorry; it would be the PC motion—I'm actually speaking about the PC motion—and the government motion because they both deal with the same thing. We just want to consolidate them and perhaps—

The Chair (Mr. Garfield Dunlop): Okay, just a sec. I've got to get clear on this. You're saying to stand down 0.3 and 0.3.01?

Mr. Jim McDonell: To give them a chance to work on them, and we can bring them back at our next meeting.

The Chair (Mr. Garfield Dunlop): Is everybody in favour of that, then? Okay, that's agreed upon. We're saying that both of these motions are stood down at this point, then.

Okay, we'll go to the next one, 0.3.1, which is an NDP motion. Mr. Singh.

Mr. Jagmeet Singh: Sure. This motion is actually quite similar to a PC motion but with one distinction. I'll read the motion, and then I'll explain.

I move that section 16.5 of the Collection Agencies Act, as set out in section 4 of schedule 1 to the bill, be amended by adding the following subsections:

“No contacting a debtor

“(6) If a debtor has entered into a debt settlement services agreement with a collection agency and the agency notifies the debtor's creditors that the debtor has entered into the agreement, the creditors shall not contact or attempt to contact the debtor to negotiate anything with respect to the debt that the debtor owes to the creditors, except if it is a licensee as defined in subsection 1(1) of the Law Society Act that contacts or attempts to contact the debtor for that purpose.

“Money received from debtor

“(7) A debt settlement services agreement is void unless it provides that the collection agency or collector under the agreement that receives money from a debtor for distribution to the debtor's creditors deposit the money into an account held in trust account jointly for the debtor and the creditors before distributing it to the creditors.”

There's a lot of words; it's somewhat wordy. Essentially, the subsection 6 component, the purpose or the spirit behind it is that if you do enter into an agreement for the services of a debt settlement service—what happens often is consumers are contacted regularly by a collection agency, and that causes a great deal of stress for consumers. The idea is that it would preclude that collection agency from continually harassing or calling

and speaking with the consumer. But one aspect that we were concerned with is that if there was some sort of legal implication or legal action, the creditor should be able to let the debtor know that they are facing a legal action, and if we didn't allow them to communicate for that purpose, then the creditor could basically send a lawsuit to the debt settlement service, and it may never get to the actual debtor. Basically, if I'm in debt, and I hire a debt settlement service company, they could correspond for me with the collection agents, and the collection agent wouldn't call me, but if the collection agent wanted to initiate a lawsuit, at that point, they should be able to contact me directly so that I know that I'm actually facing a lawsuit. That's what section 6 does, unless Mr. Wood or Mr. Hartung disagrees.

Section 7 just indicates that the money received from the debtor should be held in a trust account before it's distributed to the creditors, just to ensure some oversight of that part of the transaction.

The Chair (Mr. Garfield Dunlop): Okay, further questions? Mr. McDonell.

Mr. Jim McDonell: We agree with the spirit of this. We're just wondering if they would entertain an amendment for that purpose and put it in writing.

Mr. Jagmeet Singh: Sorry, Mr. McDonell, I missed what you said.

Mr. Jim McDonell: At the end of your part 6, that you shall "contact the debtor for that purpose" in writing.

Mr. Jagmeet Singh: I'd be happy with that, yes. That's fine. Just defining the contact: The contact technically would be service if it was actually a lawsuit. The service would actually be in person. Someone, in person, would have to hand it—but then there's all sorts of—maybe we can make it in accordance with the laws of service, so that it fits with the current—

The Chair (Mr. Garfield Dunlop): Am I correct in saying that you're looking for an amendment somewhere on section 6 here?

Mr. Jagmeet Singh: I support the concern that Mr. McDonell is indicating. I think he's essentially indicating that we don't want it to be that the lawyer or the paralegal or whoever the licensee on the law side is can just call the person and say, "We're going to sue you." He's saying that it should be done in a written manner, and I agree with the concept, but maybe the written manner is an actual initiation of a lawsuit, within the existing definition of how you serve someone to initiate a lawsuit.

I notice that Mr. Wood is looking on with some consternation. Perhaps he can illuminate us.

Mr. Michael Wood: I was thinking that perhaps we can achieve your purpose by inserting the words "in writing" before the final words "for that purpose," so that "in writing" would qualify the ways in which the collection agency could contact the debtor. "For that purpose" relates to negotiating with the debtor.

Mr. Neil Hartung: Just a point of clarification: This provision is actually operating on creditors, not on collection agencies. The Collection Agencies Act applies to third parties who collect on behalf of creditors. It does

not apply to direct collections. So the effect of this provision—at least reading it quickly—is that you're stopping creditors from being able to collect on the debts that they're owed. This provision doesn't actually control collection agencies; it controls the people who are outside the scope of the act, i.e. creditors.

Mr. Jagmeet Singh: Two questions arise from that. I still think it's important that it would prohibit a creditor from continually calling someone, and it would only allow them to call them if they've entered into a debt settlement service agreement. Then, a direct creditor would no longer be able to contact a debtor. Is that how you understand—

Mr. Neil Hartung: That's how I read the provision, yes.

Mr. Jagmeet Singh: So I support the motion. Whether someone is directly obtaining the debts owed to them or whether it's a third party, either way, if you enlist the services of a debt settlement service company, that person should deal with the debt settlement service company that you've made the arrangement with, and the exception to that should be if there is a legal action or if lawyers are involved. That's what my intention was. Do you agree that that's what's being said here?

Mr. Michael Wood: Yes, I agree with that. It's focused on the fact that, if there is a debt settlement services agreement in place, the creditors can no longer contact the debtor directly, but must honour the fact that there is a debt settlement services agreement and deal with the collection agency instead.

Mr. Neil Hartung: I don't want to say what creditors would do, but I would suggest that a provision like this means that you're going to see a lot more people being sued.

Mr. Jagmeet Singh: Or contacted by a lawyer. They can be contacted by a lawyer for an attempt to negotiate the settlement, and if they do want to commence legal action, any creditor is entitled to do so. A person could then respond in kind.

The Chair (Mr. Garfield Dunlop): So am I seeing that amendment happening here—the amendment to the NDP motion?

Mr. Jagmeet Singh: I'm happy with that—"in writing." I have no problem with the way Mr. Wood has suggested.

The Clerk of the Committee (Mr. Trevor Day): So Mr. McDonell's amendment is to insert the words "in writing" before the words "for that purpose" in subsection 6.

The Chair (Mr. Garfield Dunlop): Any discussion on the amendment? The amendment carries? Carried?

Mr. Vic Dhillon: No, no.

The Chair (Mr. Garfield Dunlop): Hold on a sec. I'm going to put the question on the amendment.

Mr. McDonell has made the amendment to Mr. Singh's motion. All in favour of the—

Interjection.

The Chair (Mr. Garfield Dunlop): Go ahead. You want to say something?

Mr. Jim McDonell: This really doesn't change the purpose of the amendment. It is only clarifying something—

Mrs. Donna H. Cansfield: You called the question, Chair.

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The Chair (Mr. Garfield Dunlop): I'll decide when the question is called. I'm giving everybody lots of opportunity on this, okay?

Go ahead.

Mr. Jim McDonell: I guess I would encourage that we vote for this change. There's still the chance, if they don't like the amendment, to vote that down, but all this does is clarify something, and I think that's in the best interests of it.

The Chair (Mr. Garfield Dunlop): Any further questions on the amendment?

All those in favour of the amendment? Those opposed to the amendment?

It's a tie vote. I won't be supporting the amendment.

We'll now go to the actual motion.

Mrs. Donna H. Cansfield: Recorded vote.

The Chair (Mr. Garfield Dunlop): Do you have any comments at all on the motion?

Mrs. Donna H. Cansfield: No, I just asked for a recorded vote.

The Chair (Mr. Garfield Dunlop): A recorded vote. Okay.

Mr. Jim McDonell: We're going back on the amendment, as amended?

The Chair (Mr. Garfield Dunlop): We're going back to the motion that wasn't amended. The amendment didn't pass.

Mr. Jim McDonell: Oh, okay.

The Chair (Mr. Garfield Dunlop): Now we're going back to the actual motion that Mr. Singh made.

Mr. Jim McDonell: I have nothing at this point.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Okay. Are there any further questions, then, on the motion moved by Mr. Singh?

It's a recorded vote.

Ayes

Forster, McDonell, Singh, Walker.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): I won't be supporting it, because it's a change to the format. It doesn't carry.

We're going to move to 0.3.1, the replacement. You had the original 0.3.1 and then you had a replacement.

Mr. Jagmeet Singh: A moment's indulgence, please.

Interjections.

Mr. Jagmeet Singh: I'll withdraw that motion.

Ms. Cindy Forster: Just say you're not moving this.

Mr. Jagmeet Singh: I'm not moving it. Sorry.

Ms. Cindy Forster: So you're not moving this one.

Mr. Jagmeet Singh: I'm not moving—I think what we were talking about was 0.3.1R. I'm not moving 0.3.1.

The Chair (Mr. Garfield Dunlop): Okay. So 0.3.1, then, is withdrawn.

We'll now go to the PC motion, which is Mr. McDonell: section 16.5.1, motion 0.4.

Mr. Jim McDonell: I move that section 4 of schedule 1 to the bill be amended by adding the following section to the Collection Agencies Act:

“Notice to creditors

“16.5.1(1) If a debtor enters into a debt settlement services agreement under which a collection agency is to receive all money from the debtor for distribution to the debtor's creditors, the agency shall cause a copy of the agreement to be provided immediately to the creditors.

“Debtor's credit rating

“(2) For as long as a debt settlement services agreement described in subsection (1) remains in effect and the debtor has not contravened it, no collection agency, collector or creditor that has been notified of the agreement under subsection (1) shall,

“(a) cause the debtor's credit rating to be changed; or

“(b) do anything that is prescribed as an act that would adversely affect the debtor's credit rating.”

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

Mr. Jim McDonell: I think we just want to make sure that the settler notifies the creditors that he is the agent, and this then requires the creditors to deal with him and not the debtor. That's to do with the second part—oh, I'm sorry; that's the first part. We think that's an important part of this protection, and we would like to see that go through—as well as the credit rating. We think, until there's a final decision, that that should not be impacted, because it can have a very negative impact on the consumer.

The Chair (Mr. Garfield Dunlop): Okay. Any questions? Mr. Singh or government members?

Mr. Jagmeet Singh: I'm okay for now. I might have a question in just a moment.

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

Mr. Vic Dhillon: Yes, Chair. We won't be supporting this motion because we feel this is out of the scope of this act, so we will not be supporting this.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Singh.

Mr. Jagmeet Singh: Mr. Chair, through you to Mr. McDonell: The notice component of it is simply that when you enter into a debt settlement service agreement, the provider of services has to notify the creditors of the agreement. Is that the idea? That's one question. And the second component of it is that the debt settlement service provider has to ensure that they don't do anything that would negatively impact their creditor's credit rating or anything that would adversely affect their credit rating. If that's what it is, I think part 2 makes absolute sense and is very supportable.

Part 1, if I understand it, is just a notice provision. It doesn't say anything about the communication issue—just a clarification on that.

Mr. Jim McDonell: The intent is really quite important here. If you sign an agreement and you have an agent working for you, it is the responsibility of the agent, first of all, to identify to the creditors that he is the agent. Then the second part of that—and I think the whole idea of this whole bill is to ensure that the creditors actually deal with the agent and to stop the calls and the harassment that can occur to the consumer. So I believe that's what this bill is trying to get at, but we're just trying to clarify that, and maybe Mr. Wood would have comments on that or further clarification.

Mr. Michael Wood: Yes. I agree with those comments.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: Mr. Wood, I just don't see that, in the "Notice to creditors" component—I'm looking at the same motion, 0.4. It doesn't prohibit the creditors from communicating, though I agree with Mr. McDonell that that's important. I don't see that prohibition of communication. Am I mistaken?

Mr. Michael Wood: I'm sorry, what did you say? It doesn't prohibit the—

Mr. Jagmeet Singh: My question is that in 16.5.1 of motion 0.4, it doesn't prohibit communication on the part of the creditor to the debtor.

Mr. Michael Wood: No, that's correct. It doesn't.

Mr. Jagmeet Singh: It's just a notice provision.

Mr. Michael Wood: That's right. It's a notice provision.

Mr. Jagmeet Singh: I agree with the idea of prohibiting communication, but this is just a notice part, which I also agree with.

Interjection.

Mr. Jagmeet Singh: Okay, sure. I agree with that.

The Chair (Mr. Garfield Dunlop): Further debate?

Mr. Jagmeet Singh: It's very straightforward. There is absolutely nothing controversial. I don't see why anyone would not support it. It just indicates that a debtor should provide notice to the creditors and let them know what's going on, and that the debt settlement service should ensure that what they do doesn't negatively impact the debtor's credit rating. I don't see any issue with that at all.

The Chair (Mr. Garfield Dunlop): Any further comments from the government members?

Mr. Jim McDonell: A recorded vote on it.

The Chair (Mr. Garfield Dunlop): A recorded vote on it, then.

Ayes

Forster, McDonell, Singh, Walker.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): I will be opposed to it because it changes the format, so that's not carried.

Mr. McDonell, the next one: 0.5.

Mr. Jim McDonell: I move that subsection 16.6(1) of the Collection Agencies Act, as set out in section 4 of schedule 1 to the bill, be struck out and the following substituted:

"Restrictions on payments for services

"Advance payment or security

"(1) A collection agency or collector that provides debt settlement services shall not require or accept, directly or indirectly, in advance of providing the services, any payment or security for payment, except a flat, one-off fee for administration and initial negotiation.

"Fee payable on successful settlement

"(1.1) A debt settlement services agreement may provide for a fee to be payable on successful settlement of all the debts to which the agreement applies.

"Restrictions

"(1.2) A fee described in subsection (1) or (1.1),

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"(a) shall not exceed the prescribed maximum amount or a maximum amount determined in the prescribed manner; and

"(b) shall not be calculated based on the debtor's debt obligations.

"No other fee

"(1.3) A collection agency or collector that provides debt settlement services shall not require or accept a fee for the services, directly or indirectly, except as described in subsections (1) and (1.1)."

The Chair (Mr. Garfield Dunlop): An explanation, Mr. McDonell?

Mr. Jim McDonell: I think it is a right of the provider not to work for free, but it would regulate the maximum amount. We think that there needs to be the opportunity for some remuneration; it's only fair in business. It talks about the existing regulation—can't charge unless they make the regulation. So I think this makes it clear that there are some changes and charges here.

The Chair (Mr. Garfield Dunlop): Okay. Further debate? Mr. Dhillon.

Mr. Vic Dhillon: We will not be supporting this. We're not satisfied with the language of this motion, and we feel that there needs to be more consultation on this. So we will not be supporting this.

The Chair (Mr. Garfield Dunlop): Okay. Any comments, Mr. Singh?

Mr. Jagmeet Singh: Thank you very much, Mr. Chair. Through you to, I guess, the counsel, an issue that was brought up during the deputations was that a trustee in bankruptcy indicated that the payment plan that trustees are under—there is no similarity to that payment plan and what's proposed? That's my first question.

The second is, how would this impact the actual payment? From what I understand, it's entirely left to regulation, so that what someone could charge would be essentially, very much so, determined by or set by what

was in regulation, and there's no regulation—I don't think—that's set out right now.

Am I understanding that correctly?

Mr. Michael Wood: Broadly, yes. Subsection 16.6(1) that appears in the bill hinges directly on what limits are set by regulations, whereas this PC motion does set out certain payments that can be allowed.

Mr. Jagmeet Singh: What's the difference between the PC motion and what exists? In what manner would that change the ability to be remunerated under this motion versus the existing 16.6(1) in the original act?

Mr. Michael Wood: Well, in order to explain what subsection 16.6(1) does, we would have to see what the regulations say, but if there are no regulations made, we can't really say what the limits are as set by the regulations.

The PC motion would, irrespective of what regulations say, allow for certain fees to be charged by collection agencies.

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

Mr. Jim McDonell: We just think that, as mentioned before we started here, there has to be some encouragement for the services to be there. We think if people are going to provide services, there should be the expectation that they should be partially paid for those. It puts it up front. It may be in the regulations; it may not be. We don't see those, and there's no requirement to issue those. I think it's just in line with that, that it allows for certain payments.

The Chair (Mr. Garfield Dunlop): Further debate? I'm going to call the question, then.

Mr. Jim McDonell: Recorded vote.

The Chair (Mr. Garfield Dunlop): Recorded vote.

Ayes

Forster, McDonell, Singh, Walker.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): I won't be supporting it because of a change to the format of the bill.

We'll now go to 0.6, again a PC motion. Mr. McDonell?

Mr. Jim McDonell: I move that section 16.8 of the Collection Agencies Act, as set out in section 4 of schedule 1 to the bill, be amended by adding the following subsection:

“Same

“(1.1) For greater certainty, the payments for which a debtor may demand a refund under subsection (1) do not include any payments that the debtor or a collection agency acting on the debtor's behalf has made to the debtor's creditors.”

The explanation of this is that if the service provider has provided funds back to the creditors, that should be taken into account. It's only fair that if—I know that the

consumer has paid his provider X amount of money, but if he has referred that back to the creditors, that should be removed. The government's bill does not specify that, so we think that's important.

The Chair (Mr. Garfield Dunlop): Does anybody have any further questions? Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Chair. We'll be voting against this because this amendment is unnecessary. The law only applies to monies paid to the debt settlement services provider. Payments to the creditors are not subject to this act.

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

Mr. Jim McDonell: Just to clarify that—and maybe I'll ask the legislative counsel—you're entering into an agreement where you're making payments to your provider, who is then referring the money back to the creditors. You may have made a payment which includes money back to creditors. This bill does not allow you any credit for that. Maybe if we could ask legislative counsel just to comment on that.

The Chair (Mr. Garfield Dunlop): Do you feel comfortable making a comment? It doesn't matter—

Mr. Jim McDonell: Just for clarification.

Mr. Michael Wood: No, it's fair for me to comment on it. People can view this differently. Technically, the government is right in what it said, that a payment that is collected and transmitted to creditors is not a payment made under the debt settlement services agreement, because that's an agreement between the debtor and the collection agency. It doesn't cover payments that the debtor, in any event, is going to try to make to creditors.

However, having said that, it's certainly reasonable to say it doesn't do any harm to have the PC motion in, to clarify that.

I can't tell you what approach is the better approach. There is validity in either approach.

The Chair (Mr. Garfield Dunlop): Questions from the—

Mr. Vic Dhillon: Chair, can we have Mr. Hartung comment on that?

The Chair (Mr. Garfield Dunlop): Yes, you can. Mr. Hartung?

Mr. Neil Hartung: You take your act as you find it. It says “under the agreement.” To me, that seems pretty clear that you're cancelling the agreement and you get the money back that you paid for the actual debt settlement services that were provided, not the money that's flowing out underneath that agreement to the creditors.

We can make lots of things very clear; the statute will be 1,500 pages long.

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

Mr. Jim McDonell: I guess I'll comment on the comment that it would make it 1,500 pages long. I mean, you're adding a little clarification here, and I think that, really, our job is to make the laws clear. I kind of don't take that comment well. I think our job is to clarify it, and I think that's all we're trying to do.

For many people in this role, there may be people who have made payments, and to them, it's a payment to the

debt settler, but actually the debt settler has then referred that money back, in many cases, or a portion of it.

It just clarifies that. It's not a huge one, but I think sometimes clarity is worth it.

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

Mr. Jagmeet Singh: Yes, just on my behalf, a final point of clarification: Including this, if I understand Mr. Hartung's comment, is not going to change anything, because it's already set out in the act, the way the act is worded, that a refund would apply to the money given to a debt settlement service agency. But I understand that this wouldn't change that or impact that. As Mr. McDonell is saying, it may provide more clarity, but it doesn't significantly or substantially change or undermine the purpose of the bill.

Mr. Neil Hartung: No.

The Chair (Mr. Garfield Dunlop): Okay. Any further debate?

Mrs. Donna H. Cansfield: Excuse me. Can I ask a question? So is it redundant? Is the motion redundant?

Mr. Neil Hartung: I think you heard Michael say and you heard me say that technically, it's not necessary. But other than that, if clarity is required in some quarters—

Mrs. Donna H. Cansfield: Thank you.

Mr. Jim McDonell: Recorded vote.

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The Chair (Mr. Garfield Dunlop): Recorded vote? Okay.

Ayes

Forster, McDonell, Singh, Walker.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): Because it changes the format, I won't be supporting it, so it doesn't carry.

We won't vote on schedule 1, because we have the deferrals—section 4.

We'll now go to section 5. PC motion: Mr. McDonell.

Mr. Jim McDonell: I move that section 5 of schedule 1 to the bill be struck out and the following substituted:

“5. Section 22 of the act is amended by striking out ‘or’ at the end of clause (d), by adding ‘or’ at the end of clause (e) and by adding the following clauses:

“(d.1) communicate or attempt to communicate with a debtor for the purpose of collecting, negotiating or demanding payment of a debt of the debtor if the debtor has,

“(i) entered into a debt settlement services agreement, under which another collection agency acts for the debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors, and

“(ii) provided a copy of the agreement to the agency or collector that attempts to communicate with the debtor;

“(f) engage in any prohibited practice or employ any prohibited method in providing debt settlement services or in respect of debt settlement services agreements.”

The Chair (Mr. Garfield Dunlop): Further questions? Any further debate?

Mr. Jim McDonell: What this does is it bans harassing calls once the debtor has entered into an agreement with a collection agency. I think that it just clarifies that part. Section 5 doesn't include creditors; it only deals with the debt settlers.

The Chair (Mr. Garfield Dunlop): Okay. Further debate on this?

Mr. Dhillon, do you have a comment?

Mr. Vic Dhillon: We'll be voting against this.

The Chair (Mr. Jagmeet Singh): Okay. Mr. Singh, do you have a question? Do you have any comments?

Mr. Jagmeet Singh: Yes, just to clarify, if I give you a scenario, perhaps, Mr. Wood and Mr. Trenton: In this case, a collection agency, based on this motion, would not be able to contact the debtor and would have to speak to the debt settlement service agency. But what if the collection agency wanted to commence a legal proceeding? Would they be precluded from contacting with respect to that? Or would they continue to have the right to communicate for the purpose of legal proceedings? That's my question. Or would it be precluded from any communication whatsoever, even if it is a lawsuit?

Mr. Michael Wood: Ideally, I'd like a bit of time to consider this, but just my first-hand reaction is that this new clause (d.1) is aimed at a situation where you have two debt settlement services agreements. You have one that's in place, for sure, and then you have another collection agency that comes along and communicates, or attempts to communicate, with the debtor, knowing that there already is an original debt settlement services agreement in place with another collection agency.

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

Mr. Neil Hartung: The provisions themselves only apply to collection agents, right? Section 22 establishes the list of noes that collection agents can't do, and this would add to that list of noes.

The Chair (Mr. Garfield Dunlop): Okay. Any further questions from anyone?

Mr. Jagmeet Singh: What Mr. Wood is describing is, if there are two different debt settlement services, once you've already assigned one, another one couldn't come in and take over or communicate with them. That's what I understood Mr. Wood to say.

Mr. Michael Wood: A second one cannot come in and communicate with the debtor once there is an existing collection agency in place under a debt settlement services agreement.

Mr. Jagmeet Singh: Would that address the issue of a collection agency contacting a debtor repeatedly and harassing them? Would this motion prohibit a collection agency from contacting the debtor directly, and would

they instead have to go through the debt settlement service agency?

Mr. Michael Wood: It's only a prohibition in the context of there being two collection agencies involved.

Mr. Jagmeet Singh: I know that the definition of collection agencies applies to both a collection agency and a debt settlement service. Just for me to understand it, would you be able to distinguish between a debt settlement service and an actual collection agency in your response? Technically, since there is a Collection Agencies Act and there isn't a debt settlement services act, debt settlement services are subsumed under the Collection Agencies Act. When you were answering the question, you were just using the words "collection agency." I'm assuming that you meant "debt settlement services," but you were just using "collection agency" as a catch-all. Or did I misunderstand you?

Mr. Michael Wood: No, you're correct in that.

What we have already done in the bill—the committee has already passed the section which added a clause to the definition of "collection agency." Now, a collection agency, as a result of the amendments made in committee, does cover a person who provides debt settlement services.

Mr. Jagmeet Singh: Right. Just to understand this—you could just break it down in terms of the debt settlement services and the collection agencies. Does this motion stop the collection agency from communicating with the debtor and require them instead to communicate with the debt settlement service? Is that what this motion is doing?

Interjection.

The Chair (Mr. Garfield Dunlop): Guys? Mr. McDonell has asked for a five-minute recess to get some clarification, to give counsel a chance to clarify this. Does everyone agree with that? So let's have a five-minute recess, and we'll pick up the debate after. Thank you.

The committee recessed from 1327 to 1332.

The Chair (Mr. Garfield Dunlop): Okay, we'll call the meeting back to order. We'll continue debate on 0.7. Mr. McDonell, do you have anything to add to 0.7?

Mr. Jim McDonell: Yes. It might be ambiguous, but what we're trying to do is that once a debtor has entered into a settlement agreement, aggressive collection calls on behalf of the creditors must stop. I guess, in talking to Michael, that may not be the way wording has come out in the intent. But that's what the intent of the amendment was.

The Chair (Mr. Garfield Dunlop): Any more debate? Did you want to add anything to that, Michael?

Mr. Michael Wood: No.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: Mr. Chair, the initial intent which Mr. McDonell expressed is something that I support, and it's similar to the motion that we had put forward, 0.3.1. But this particular issue of not allowing another debt settlement service agency to compete with an existing one is not an issue that has come up with my

constituents. It's not an issue that came up in the committee hearings, nor is it a concern that was brought up by debt settlement services themselves, so it's not something that we're in a position to support.

The Chair (Mr. Garfield Dunlop): Any questions? I'm going to call the vote, then. Is this recorded?

Interjection.

The Chair (Mr. Garfield Dunlop): Okay, it is recorded.

Ayes

McDonell, Shurman.

Nays

Cansfield, Crack, Dhillon, Forster, Mangat, Singh.

The Chair (Mr. Garfield Dunlop): The motion doesn't carry.

With that, shall schedule 1, section 5 carry?

Interjection.

The Chair (Mr. Garfield Dunlop): I'm just totalling up that one section. I need to make sure the whole section will carry. Shall schedule 1, section 5 carry? That's carried.

We'll now go to schedule 1, section 6. The NDP want to make a few comments. They've got a notice here.

Mr. Jagmeet Singh: Yes. I'm just going to read out section 6 subsection (1):

"Use of unregistered collection agency

"(1) No person shall knowingly engage or use the services of a collection agency, other than debt settlement services, unless the agency is registered under this act."

My understanding of the way this is worded is that it essentially makes an exception for debt settlement services, that you can engage with a debt settlement service that's not registered. I think what that does is kind of undermines the whole purpose of bringing debt settlement services into the Collection Agencies Act. I may be misunderstanding that, but if that's what this says, I'm suggesting that we don't support it, because what it does is it allows unregistered collection agencies. The name of it would suggest that what I'm saying is right, because the description of that subsection says, "Use of unregistered collection agency". So it's essentially allowing, if I'm not mistaken—and I ask Mr. Trenton and Mr. Wood to respond to this. It's essentially opening up the potential for an unregistered collection agency, namely a debt settlement service that's not registered, and you could use it. If that's the case, I don't think we should support it.

Mr. Hartung and Mr. Wood, if you can please respond to that.

The Chair (Mr. Garfield Dunlop): Please feel free.

Mr. Neil Hartung: This is an adjustment to what exists in the act already, which says, "No person shall knowingly engage or use the services of a collection agency that is not registered under this act." When we got in the new provisions, we didn't want to be in a situation

where consumers could be charged under that provision, and that's why we have the "except for a debt settlement services agreement."

The Chair (Mr. Garfield Dunlop): Further debate? Or are there any further comments on Mr. Singh's comments?

Mr. Jagmeet Singh: So what this does is it allows for a consumer who mistakenly uses a debt settlement services agency, thinking it was registered perhaps, but it turns out it wasn't registered—we don't want that person to then be liable to any sort of sanction or punishment for doing something that wasn't necessarily their fault, or they made a mistake, or whatever the reason was.

Mr. Neil Hartung: Correct.

Mr. Jagmeet Singh: Okay. That's fine. This is simply a notice, anyway. I'm not proceeding on the notice.

The Chair (Mr. Garfield Dunlop): Okay. We'll now call the question on schedule 1, section 6. Shall schedule 1, section 6, carry? Carried.

There are no amendments to either sections 7 or 8. Shall schedule 1, sections 7 and 8, carry? Carried. They're both carried.

Now to section 9 and the PC motion.

Interjection.

The Chair (Mr. Garfield Dunlop): Sorry?

The Clerk of the Committee (Mr. Trevor Day): This amendment is dependent on an earlier one that we stood down. For that reason, it should be stood down as well.

The Chair (Mr. Garfield Dunlop): Okay. We're going to stand down 0.8. It's stood down.

The PC motion is a replacement motion. Mr. McDonell.

Mr. Jim McDonell: We're on 0.9R, is it?

The Chair (Mr. Garfield Dunlop): Motion 0.9R, yes.

Mr. Jim McDonell: I move that section 9 of schedule 1 to the bill be amended by adding the following subsection:

"(2) Section 30 of the act is amended by adding the following subsection:

"Trust accounts

"(2) A trust account that a collection agency is required to hold shall be held in a separate account in Ontario designated as a trust account at a bank listed in schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation or a credit union."

The Chair (Mr. Garfield Dunlop): Mr. McDonell, comments?

Mr. Jim McDonell: We just think that the trust account should be held in Ontario or in a place that can be deemed by most concerned consumers as a fair and adequate trust.

The Chair (Mr. Garfield Dunlop): Any comments on it? Mr. Singh first and then over to the government members.

Mr. Jagmeet Singh: Sure. Similarly, there are restrictions around how lawyers hold their trust accounts and the requirements of where they're held and at what type

of institution. I think it's consistent and it makes sense that if it's a collection agency operating in Ontario, the trust account that it operates should be held in Ontario as well. I think that's consistent. It makes sense, and it's something that's supportable.

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The Chair (Mr. Garfield Dunlop): To the government members.

Mr. Vic Dhillon: Chair, we'll be voting in favour of this motion.

Interjections.

Mr. Neil Hartung: There are already trusting requirements in section 17 of the regulation. You're amending a regulation-making section of the act with a substantive provision that is neither here nor there, as far as I'm concerned. The trusting requirement is already in the statute, and if I'm not mistaken, it's pretty well in the same language that's being proposed here.

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

Mr. Jagmeet Singh: Mr. Trenton, if I understand what you're saying, the regulation prescribes something very similar already. Instead of having a regulation that is subject to minister discretion, it just clarifies what it is without having a discretionary component. It just states the definition of where it should be. Is that what it is? And are there any pros and cons to that?

Mr. Neil Hartung: I don't think that those sections in the regulation have changed in any number of years. They've been there, as far as I know, since the statute was enacted and rolled out.

I can tell you that that wording is very similar to what's in the regulation, from a legal perspective. Whether it's in the statute or whether it's in the regulation, those are of equal force and have equal authority.

As to whether this motion should be made, that's not for me to say.

Mr. Jagmeet Singh: That's fine. I think you laid out that there were really no significant pros and cons. That helps us. Thank you.

The Chair (Mr. Garfield Dunlop): Mr. McDonell, you have a question?

Mr. Jim McDonell: I'm just asking if Mr. Wood would—we've had some discussion on it, but are they equivalent, in your mind?

Mr. Michael Wood: I don't have the text of the regulation in front of me, so I shouldn't comment on that. If I did have it, I'd be able to comment. I have to rely on what ministry counsel says.

Mr. Jim McDonell: They're saying that it's covered in the regulations. We thought it should be put in the legislation itself.

Mr. Michael Wood: That's a policy choice for the committee to make.

The Chair (Mr. Garfield Dunlop): Mr. Singh?

Mr. Jagmeet Singh: I guess I'm stating the obvious, but at the end of the day, a regulation, although Mr. Hartung indicated it hasn't been changed since the enactment of the bill—I guess the main difference is that a regulation can be changed, versus legislation, which is

set unless it's changed by the will of the assembly. So one is ministerial discretion, and one is the will of the assembly. That's really the distinction, if I'm not mistaken.

The Chair (Mr. Garfield Dunlop): Further comment? I'm going to put the question, then, on Mr. McDonell's motion.

Mr. Jim McDonell: Recorded vote.

The Chair (Mr. Garfield Dunlop): Recorded vote.

Ayes

Cansfield, Crack, Dhillon, Forster, Mangat, McDonell, Shurman, Singh.

The Chair (Mr. Garfield Dunlop): That's carried. Thank you very much.

I take it that the next amendment is redundant? It's a replacement motion—PC motion number 9.

Interjections.

The Chair (Mr. Garfield Dunlop): It's not being moved whatsoever?

Interjection.

The Chair (Mr. Garfield Dunlop): It's withdrawn. Okay.

Section 9 is stood down for now.

We now go to sections 10 right through to 19. We've got no amendments proposed there. Is schedule 1, sections 10 to 19, carried? Carried.

We'll now go to section 2.

The Clerk of the Committee (Mr. Trevor Day): So we're going to stand down schedule 1 because we still have some things to deal with in it.

The Chair (Mr. Garfield Dunlop): Okay. So the overall schedule we'll stand down for now because there are some things to deal with.

We'll now go to schedule 2.

Mr. Jim McDonell: Chair, are we starting schedule 2 now?

The Chair (Mr. Garfield Dunlop): We're starting schedule 2, yes.

Mr. Jim McDonell: Can we ask for a 20-minute recess?

The Chair (Mr. Garfield Dunlop): A 20-minute recess?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): They're asking for a 20-minute recess.

The Clerk of the Committee (Mr. Trevor Day): They have to agree.

The Chair (Mr. Garfield Dunlop): They have to agree. Okay.

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): Okay. A 20-minute recess.

Interjections.

The Chair (Mr. Garfield Dunlop): We're starting a 20-minute recess right now.

Mr. Vic Dhillon: No, we don't—

The Clerk of the Committee (Mr. Trevor Day): They're not agreeing on a 20-minute recess.

The Chair (Mr. Garfield Dunlop): We can't? I thought you said we had to.

The Clerk of the Committee (Mr. Trevor Day): No, we don't have to unless it's before a vote.

The Chair (Mr. Garfield Dunlop): Okay. Mr. McDonell, we don't have agreement on your 20-minute recess. Okay?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): All right. Can we proceed then?

The Clerk of the Committee (Mr. Trevor Day): Schedule 2, section 1.

The Chair (Mr. Garfield Dunlop): Okay. Go to schedule 2, section 1. There are no amendments on that.

Shall schedule 2, section 1, be carried? Carried.

We'll now go to schedule 2, section 1.1. It's a new section. Mr. McDonell.

Mr. Jim McDonell: I move that schedule 2 to the bill be amended by adding the following section:

"1.1 The definition of 'direct agreement' in subsection 20(1) of the act is amended by striking out 'in person' in the portion before clause (a)."

The Chair (Mr. Garfield Dunlop): Mr. McDonell, that's outside the scope of this bill, so it's not open. It's out of order.

Mr. Jim McDonell: We just think that—you know, we're dealing with—

The Chair (Mr. Garfield Dunlop): I know. There's no debate. It's out of order.

Mr. Jim McDonell: Okay. Can I just make a comment on it?

The Chair (Mr. Garfield Dunlop): No. We're going to go to the next one.

Ms. Cindy Forster: So what was ruled out of order?

The Clerk of the Committee (Mr. Trevor Day): It's 0.10.

Ms. Cindy Forster: 0.10, okay.

Mr. Jagmeet Singh: Mr. Chair, what was the reason provided for why it was out of order?

The Chair (Mr. Garfield Dunlop): It's outside the scope of the bill.

The Clerk of the Committee (Mr. Trevor Day): Section 20 is not open in the bill.

The Chair (Mr. Garfield Dunlop): Okay. We'll now go to the NDP motion. Section 10.1.

Hold on. We have no amendments to schedule 2, section 2.

Shall schedule 2, section 2, be carried? Carried? That's carried.

Now we'll go to the NDP motion. Mr. Singh.

Mr. Jagmeet Singh: Yes. This is motion 0.10.1, and it impacts—

The Chair (Mr. Garfield Dunlop): You've got a replacement one?

Mr. Jagmeet Singh: Do I?

The Chair (Mr. Garfield Dunlop): Mr. Singh, you have a replacement motion?

Mr. Jagmeet Singh: I do, yes; sorry. This is 0.10.1, our replacement.

I move that section 3 of schedule 2 to the bill be struck out and the following substituted:

“3. Section 42 of the act is amended by adding the following subsections:

““Disclosure of information

“(2) Before a supplier enters into a direct agreement with a consumer that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed, the supplier shall disclose the following to the consumer:

““1. The identity of the supplier.

““2. That the supplier is a private retailer and not a representative of any other supplier or a local utility, regulator or government agency.

““3. That there is a cooling-off period described in subsection 43(1) during which the consumer may cancel the agreement and a description of the rules in subsection 43.1(1).

““4. That the consumer may have financial and other obligations to another supplier with whom the consumer has previously entered into a direct agreement for the same purpose if the consumer cancels the latter agreement.

““5. That by signing the agreement, the consumer may be entering an agency agreement whereby the supplier may act on the consumer’s behalf.

““6. The start date and length of the agreement.

““7. The cost that the consumer is required to pay under the agreement, including the amount of any periodic charge, any additional charges payable after the supply of the goods and taxes.

““8. The possible energy savings attributable to the goods supplied under the agreement.

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““9. An indication whether the supplier or the consumer is entitled to assign the agreement.

““10. The means whereby the consumer can contact the supplier to make a complaint, request information or renew the agreement.

““11. The means whereby the consumer can contact the ministry or the Competition Bureau to make a complaint.

““Minister’s regulations

“(3) In addition to the power of the Lieutenant Governor in Council to make regulations under section 123, the minister may make regulations,

“(a) governing contents of direct agreements and requirements for making, renewing, amending or extending direct agreements;

“(b) requiring a supplier under a direct agreement to disclose to the consumer the information specified in the regulation, governing the content of the disclosure and requiring the supplier to take the other measures specified in the regulation to ensure that the consumer has received the disclosure.”

The Chair (Mr. Garfield Dunlop): Would you like to speak to that, Mr. Singh?

Mr. Jagmeet Singh: Certainly. It’s actually just specifying what the disclosure of information is, putting it into legislation and clearly identifying the areas of concern that constituents have raised. It’s stating it all in a very clear and, I would suggest, exhaustive manner, and making sure that it’s part of the legislation and not left to regulation.

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

Mr. Jim McDonell: We were hoping that section 8 could be—that we deal with it later on. We think that that information should come from the manufacturer, which may be the intent here, but we were going to be more clear about that.

Interjection.

Mr. Jim McDonell: Point 8? Are we on—

The Chair (Mr. Garfield Dunlop): We’re talking about section 10 here—

The Clerk of the Committee (Mr. Trevor Day): No, actually we’re on section 3 of schedule 2.

The Chair (Mr. Garfield Dunlop): Section 3 of schedule 2, and you’re saying point 8?

Mr. Jim McDonell: What’s the—I’m sorry. You’re dealing with 0.10.1?

The Chair (Mr. Garfield Dunlop): The motion that’s in front of us is the NDP motion, 0.10.1R, and you’re saying—what were you asking to do?

Mr. Jim McDonell: Because it’s split into—yes, okay. We were looking at point 8. Is that the second page of it?

Interjection.

Mr. Jim McDonell: Okay. Yes, we were looking at dealing with that separately because we think that they should be dealing with the manufacturers’ savings. I think one of the issues we have is, there are a lot of claims being made about the energy savings. Really, that should come from the manufacturer.

We deal with that motion later on, so we’d like to see that—

The Clerk of the Committee (Mr. Trevor Day): Are you amending that to strike it?

Mr. Jim McDonell: Yes, we’d like to see that struck out and added later on, in our motion.

The Chair (Mr. Garfield Dunlop): I’m not clear what’s happening here.

Mr. Jim McDonell: We have a motion later on that asks that the energy efficiencies actually come from the manufacturer of the equipment. First, it’s from a claim from the door-to-door salesman. We feel that it will carry more weight. We have an issue now, we hear from our depositions, that there were claims being made at the door that aren’t backed up.

The Chair (Mr. Garfield Dunlop): So you’re suggesting we remove that section 8. Are you moving that?

Mr. Jim McDonell: Yes, we’d like to amend it and cover it through our amendment later on, which calls for that to be disclosed by the manufacturers’ information.

The Chair (Mr. Garfield Dunlop): Okay. Mr. McDonell wants section 8 removed. He's moving that it be removed from your motion, Mr. Singh.

Mr. Jim McDonell: And just be addressed separately, that it be handed out as—the information being provided through manufacturers' information as opposed to just coming from the door-to-door salesmen. We deal with that separately in our own motion—or we could amend yours and just add that that information be handed out as manufacturers' information, if that would work.

Mr. Jagmeet Singh: Okay. Mr. Chair, I agree with Mr. McDonell's comment because in point 8, it says, "The possible energy savings attributable to the goods." It doesn't specify that that should come from something verified by the manufacturer of the actual product so that it's something verifiable. I agree that that's an important clarification, so I think that this should be—I can move my own amendment—the energy—

The Chair (Mr. Garfield Dunlop): Can I just—

Mr. Jagmeet Singh: Yes.

The Chair (Mr. Garfield Dunlop): He's moving an amendment to remove section 8 from your amendment. Is there any debate on that?

Mr. Jim McDonell: Can I withdraw that amendment?

The Chair (Mr. Garfield Dunlop): Pardon me?

Mr. Jim McDonell: I'll withdraw my amendment.

The Clerk of the Committee (Mr. Trevor Day): He's not going to amend his own. You have to amend his.

Mr. Jim McDonell: Oh, okay. I'm sorry.

The Clerk of the Committee (Mr. Trevor Day): If Mr. Singh wants to change his amendment, he would withdraw the original and re-move it with 8 missing, reading the whole thing again.

You can move an amendment to strike number 8.

Mr. Jim McDonell: Okay. Can I make an amendment, then, that we clarify, in number 8, that the information provided come from the manufacturer, as opposed to—

The Clerk of the Committee (Mr. Trevor Day): What's the exact wording on the amendment?

Mr. Jim McDonell: It's not specific, and I would think that we'd make the wording specific so that the information provided on energy efficiencies would actually be manufacturing documentation, as issued on the—

Mr. Jagmeet Singh: "As provided by the manufacturer."

Mr. Jim McDonell: Yes.

The Clerk of the Committee (Mr. Trevor Day): At the end?

Mr. Jim McDonell: Sure.

The Clerk of the Committee (Mr. Trevor Day): You want "as provided by the manufacturer" at the end?

Mr. Jim McDonell: Yes.

The Chair (Mr. Garfield Dunlop): Okay. Now we're going to ask for discussion on Mr. McDonell's motion.

Mr. Jim McDonell: I think that we all heard that there are a lot of claims being made at the door. This just clarifies that if you're going to make a claim that your

unit is energy-efficient—these things are all handled by the TSSA and through their standards. I think that that's the information that should be provided. There is already some legislation that looks after that in another field, so we would be sure that the information coming in that would be accurate and readable for the consumer.

The Chair (Mr. Garfield Dunlop): Okay. Has everyone heard Mr. McDonell's explanation about his amendment?

Mr. Vic Dhillon: Could you read that?

The Clerk of the Committee (Mr. Trevor Day): My understanding is that number 8 will now read, "The possible energy savings attributable to the goods supplied under the agreement as provided by the manufacturer."

Is that correct? That's the amendment.

The Chair (Mr. Garfield Dunlop): That's the amendment. Okay. Those in favour, then, of the amendment? Opposed?

Okay, that's a tie.

I'll support you on that one, because it's a clarification.

We'll now go to the actual amendment made by Mr. Singh, as amended.

Mr. Singh, did you want to explain that further?

Mr. Jagmeet Singh: If there are any questions. Like I said initially, it's just providing a clear disclosure of the information that needs to be provided, things that we've talked about before. You want to let the people know, let the consumer know, that there's a cooling-off period.

We want to require that they identify who the supplier is. There has been a lot of confusion. People indicate, at the door—the representative holds themselves out to be someone from either the government or from a government agency, or they hold themselves out to be the provider of the energy. This would just require that they have to indicate who they are, and that they're not a representative of any other supplier, local utility, regulator or government agency. It just specifies what the disclosure of information is and puts it into legislation.

There is nothing in this that's controversial in terms of the content. It's simply a matter of putting it in legislation.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Crack?

Mr. Grant Crack: Thank you very much, Mr. Chair. I think the general intent of the motion is noteworthy, but at the same time, we believe that we can encompass a lot of these concerns within regulations. As we move forward, we want to be able to adapt to industry concerns and the changes within the industry as well, so we'll be voting against it in order to be able to implement the substantive regulations.

The Chair (Mr. Garfield Dunlop): Okay. Further comments? Mr. McDonell?

Mr. Jim McDonell: Again, I think the whole purpose of this—we heard many complaints from different sides of the industry that the door-to-door salesmen's credentials and what they were providing were always in

question. We think that this just spells something out and adds more consumer protection.

The Chair (Mr. Garfield Dunlop): Okay. Any further debate?

I'm going to call the question, then, on the amended motion.

Those in favour of the amended motion by Mr. Singh?

Mr. Jagmeet Singh: Recorded, Chair.

The Chair (Mr. Garfield Dunlop): Recorded? Okay. I'm recording these motions as much as possible.

Ayes

Forster, McDonell, Shurman, Singh.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): I will not be supporting this, because it changes the format of the intent of the bill.

1400

Mr. Grant Crack: Point of order, Mr. Chair.

The Chair (Mr. Garfield Dunlop): Yes?

Mr. Grant Crack: Just for my clarification, the process by which a recorded vote can be requested: Perhaps the Chair—

Interjection.

Mr. Grant Crack: Well, that's a concern as well. But at what point can a recorded vote be called? I've experienced this in different committees as well, even the one that I'm chairing, so I would like clarification. If a vote is called and the hands are up, is it appropriate for a member to be calling a recorded vote once the hands are up?

The Chair (Mr. Garfield Dunlop): My understanding is that once we call for the vote, someone can immediately ask for a recorded vote. In the last round, which most of the votes have been recorded this afternoon, I thought, in fact, that they wanted it to be recorded. That's why I had asked for it to be recorded. It was my fault.

Mr. Grant Crack: No, no, I'm not—

The Chair (Mr. Garfield Dunlop): It's nobody else's fault there.

Mr. Grant Crack: Thank you, Chair. I'm just looking for some clarification as to when the hands go up and then we can all see who is voting and then a request for a recorded vote comes through. Is it in order or is it too late? I guess, that's the question that I want, and not only for this committee but for every committee that I sit on in the future.

The Chair (Mr. Garfield Dunlop): I'll ask Trevor to explain that.

The Clerk of the Committee (Mr. Trevor Day): When the question is put, normally before the ayes are called for, "those in favour, those opposed," is when a recorded vote is requested. There is traditionally some

leniency, depending on what, but it is before the question itself is put.

Mrs. Donna H. Cansfield: Is it a member who requests it?

The Clerk of the Committee (Mr. Trevor Day): It would be requested by a member in the committee.

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

Mr. Jim McDonell: So it's before the question is put or immediately after? Lots of time, you're waiting and there's discussion and—

The Chair (Mr. Garfield Dunlop): When I ask for the question, when I call the question, I'm now going to call the question on a certain motion.

Mr. Jim McDonell: Then we ask then.

The Chair (Mr. Garfield Dunlop): Then you can ask at that point. Okay?

Mr. Jim McDonell: Okay.

The Clerk of the Committee (Mr. Trevor Day): You can ask previous to that, like well before.

The Chair (Mr. Garfield Dunlop): Before I ask for "in favour," you can ask for a recorded vote up until that point. Okay?

Mr. Jim McDonell: Okay, yes.

The Chair (Mr. Garfield Dunlop): My understanding is, according to Trevor here, you may want to do that as soon as you've made your initial statement, "I want a recorded vote on this." Okay?

Mr. Jim McDonell: Oh, okay.

The Chair (Mr. Garfield Dunlop): All right. Everybody straight on that? Okay. Thank you.

We now go to the NDP motion—

The Clerk of the Committee (Mr. Trevor Day): What are they doing with 0.10.1?

The Chair (Mr. Garfield Dunlop): I'm going to that right now. Mr. Singh?

Mr. Jagmeet Singh: We're not moving—

The Chair (Mr. Garfield Dunlop): 0.10.1?

Mr. Jagmeet Singh: Yes, we're not going to be moving that motion.

The Chair (Mr. Garfield Dunlop): You'll be withdrawing that?

Mr. Jagmeet Singh: Just not moving it.

The Chair (Mr. Garfield Dunlop): Okay. Shall schedule 2, section 3 carry? Carried.

Now we'll go to schedule 2, section 3.1, which is a new section. There are a couple of PC motions here, long motions. Mr. McDonell?

Mr. Jim McDonell: I just want to make sure I have my—

The Chair (Mr. Garfield Dunlop): Okay. You've got a fairly long one here. Okay, Mr. McDonell, it's yours.

Mr. Jim McDonell: All right, it's just formatted different.

I move that schedule 2 to the bill be amended by adding the following section:

"3.1 The act is amended by adding the following sections:

"Direct agreements re: water heaters etc.

“Application

“42.1(1) This section applies with respect to a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed.

“Duty of supplier’s representative

“(2) Before making, renewing, amending or extending the direct agreement, the supplier’s representative shall,

“(a) identify himself or herself to the consumer, and

“(b) give the consumer a business card showing the representative’s name, identifying the supplier and providing contact details for the supplier.

“Manufacturer’s technical information only

“(3) The supplier’s representative may give the consumer information that is published by the manufacturer about the energy efficiency, safety and technical specifications of the water heater or other goods that are prescribed, but shall not provide such information from any other source.

“Lease, all-in monthly cost

“(4) If the direct agreement provides for the lease of the water heater or other goods, it must specify the all-in monthly cost of the lease, excluding harmonized sales tax and government fees.

“Verification call

“(5) Upon making, renewing, amending or extending the direct agreement, the supplier shall arrange to have an independent third party contact the consumer, in accordance with the following rules, to verify that the consumer agrees to making, renewing, amending or extending the agreement, as the case may be:

“1. The independent third party shall not be the same person as the representative who acted on behalf of the supplier for making, renewing, amending or extending the agreement.

“2. The remuneration which the supplier pays to the independent third party for making a verification call shall not depend on the outcome of the verification.

“3. The contact shall take place by way of a telephone call, which the independent third party shall record.

“4. The independent third party shall advise the consumer, at the beginning of the telephone call, that the call is being recorded.

“5. The independent third party shall,

“i. provide his or her name to the consumer,

“ii. identify himself or herself as an independent third party who is making a verification call required by this act,

“iii. verify the consumer’s identity,

“iv. identify the agreement, and

“v. verify that the consumer agrees to making, renewing, amending or extending the agreement, as the case may be.

“Disclosure, replacement of goods

“(6) Before a supplier enters into an amendment, renewal or extension of a direct agreement that requires the consumer to accept a replacement of any goods that the supplier supplied to the consumer under the original agreement, the supplier shall disclose to the consumer

that such is the effect of the amendment, renewal or extension, as the case may be.

“Minister’s regulations

“(7) In addition to the power of the Lieutenant Governor in Council to make regulations under section 123 and in addition to the minister’s power to make regulations under subsection 42(2), the minister may, by regulation,

“(a) require that a direct agreement to which this section applies be in a prescribed form; and

“(b) prescribe a form for the purposes of clause (a).

“Right of termination, lease

“(8) If the direct agreement provides for the lease of the water heater or other goods, the consumer may terminate the agreement at any time by giving notice to the supplier or by having another supplier, whom the consumer has authorized in writing for that purpose, give notice to the supplier; the termination terminates the rights and obligations of the parties under the direct agreement effective from the date on which the notice is given to the supplier.

“Consumer’s obligations on termination

“(9) A consumer who terminates a direct agreement under subsection (8) is not liable in damages to the supplier if the consumer,

“(a) returns to the supplier, in accordance with the agreement, all goods leased to the consumer under the agreement; or

“(b) causes an amount to be paid to the supplier, not exceeding the amount determined by the following formula:

“ $A - (A \times B \div 120)$

“where,

“A = the estimate that the supplier makes in good faith of the value of the goods leased to the consumer under the agreement, which shall not exceed the manufacturer’s suggested retail price plus harmonized sales tax, and

“B = the number of months that have elapsed under the agreement until the termination, counting the final part of a month, if any, as a whole month.

“Title to goods

“(10) If the consumer causes the amount described in clause (9)(b) to be paid to the supplier, the supplier shall transfer title to the goods and all of the supplier’s rights under warranties affecting the goods,

“(a) to the consumer; or

“(b) to the person to whom the consumer directs the supplier in writing to make the transfer.

“Non-application of part VIII (Leasing)

“42.2 Part VIII (Leasing) does not apply to the lease of a water heater or other goods that are prescribed.”

The Chair (Mr. Garfield Dunlop): Mr. McDonnell, did you want to have an explanation of that or a comment on it?

1410

Mr. Jim McDonnell: Yes, just a couple of points: We were looking around, and if you look at the duty of the supplier’s representation, just around proper ID, we feel that is not covered.

The manufacturer's technical information: Again, efficiency seemed to be a large issue here. We want to make sure that the information given can be verified, and the manufacturer's information is a way of doing that.

If I could move on to the lease, the all-in monthly, we think that that's just something that should be very much obvious to the consumer. It's important for some of the regulations that deal with the consumer getting exactly what he thought he was purchasing.

If I go down a little bit further—I'm just looking for some of the highlights here.

"Disclosure, replacement of goods": We're just looking to make it consumer-friendly.

Some of the stuff that's not in the legislation—if you look down at "Minister's regulations," we just allow the minister to prescribe the form. We think that the type of form can be important, especially if it's seen that somebody is not following what I think the average person would think would be a form that's very clear.

I think those are the highlights, so let people ask questions, if they have any.

The Chair (Mr. Garfield Dunlop): Okay. Further comments on this motion from anyone? Mr. Singh?

Mr. Jagmeet Singh: There may be a lot of questions, because it's rather lengthy. I'll begin with just the last part, "Non-application of part VIII (Leasing)" and 42.2. What is the impact of that last line? Perhaps starting with Mr. McDonnell, and if not, then Mr. Wood. If you could explain that, Mr. McDonnell?

Mr. Jim McDonnell: Well, I think we heard some depositions that there may be a way of getting out of the intent of this bill, if people were allowed to use part IV. So we just wanted to make sure that that wasn't an option.

The part VIII is meant to deal with the hot water tank issue. It would just clarify that.

Mr. Jagmeet Singh: Okay, so let me put it to Mr. Wood, then. Is the impact, then, of 42.2—would that get rid of leasing as a loophole? If I understand what you're saying, Mr. McDonnell, right now, the way it stands, if it's not a rental agreement, it's a lease agreement. Technically, all the protections wouldn't apply to a lease agreement, but they would apply to a rental agreement. This 42.2, the last part of this motion, would close that loophole and not allow leasing to exist. Is that what it's doing, or is it doing something else?

Mr. Michael Wood: Generally, that is what it is doing, because if it's a lease, it would be covered by part VIII of the Consumer Protection Act, 2002. What this particular section is saying is that rather than apply the rules in part VIII of the Consumer Protection Act, we apply everything that is set out in this motion instead.

I think it would be good to ask the ministry counsel to confirm this as well, but in just taking a quick look at part VIII of the Consumer Protection Act, it seems that there is not much in part VIII. Most of what is in part VIII directs readers to regulations for setting out obligations and determining the rights of parties for such things as requirements about representations or requirements about disclosure statements.

Mr. Jagmeet Singh: Mr. Chair, my apologies to Mr. Hartung for calling him Mr. Trenton so many times. I don't know where I even got that from.

Mr. Neil Hartung: I understand. He's a really nice guy, too.

Mr. Jagmeet Singh: Mr. Hartung, if you could please—Hartung, right? Yes. If you could please respond.

Mr. Neil Hartung: Sure. Part VIII deals with the cost-of-leasing disclosure. That's largely what it does. It doesn't have special remedies attached to it. If you were going to lease a car, for example, they would have to disclose the implicit financing rate in a certain way.

It's certainly possible for someone who is providing water heaters into the market to use part VIII, and if they do use part VIII, part IV of the act, which contains the cooling-off period, does not apply to the transaction.

The Chair (Mr. Garfield Dunlop): Mr. McDonnell?

Mr. Jim McDonnell: I just want to make clear—I had it backwards. But part IV is really what—we're looking at trying to solve some of the issues, so we want to make sure that that applies to the hot water door-to-door sales.

The Chair (Mr. Garfield Dunlop): Okay. Any comments from the government members? Mr. Dhillon?

Mr. Vic Dhillon: Chair, a lot of what's in this motion is already covered by the minister's regulation authority. As well, there is a lot of redundancy in this motion, so we'll be voting against it.

The Chair (Mr. Garfield Dunlop): Further comments from anyone? Mr. Singh.

Mr. Jagmeet Singh: Sorry, I heard the redundancy issue, the argument that there is redundancy in this, but what was the other reason—my apologies, Mr. Dhillon—for not supporting it?

Mr. Vic Dhillon: Because the minister has the powers to make changes under regulation-making authority.

The Chair (Mr. Garfield Dunlop): Mr. McDonnell?

Mr. Jim McDonnell: I guess you could have gotten rid of this whole bill if we're going to rely on regulations for everything. What we're doing is addressing an issue here, and I think it was pointed out rightly that the bill, as it is here—it's a simple change. You've gone to making a fairly exclusive bill to cover hot water heaters. We're just saying that we should further specify that if you're entering into an agreement, you can't fall under another subsection; you have to fall, I guess, under the part IV that's here.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Singh? Anyone?

Mr. Jagmeet Singh: Yes. I have a couple of issues that I want to reflect on. I'm wondering if I can ask the committee's indulgence for a five-minute recess just to look it over. It's a particularly long motion; other motions are a lot shorter. I think there are some key components that are of great interest, and I want to be able to give it the proper time, so I need to reflect on it.

The Chair (Mr. Garfield Dunlop): A five-minute recess?

Mr. Jagmeet Singh: Yes.

The Chair (Mr. Garfield Dunlop): Agreed? Okay. Five-minute recess. Be back here at 2:22.

The committee recessed from 1417 to 1422.

The Chair (Mr. Garfield Dunlop): The five-minute recess is up. We'll now go back to Mr. McDonell.

Mr. Jim McDonell: Just a couple of things.

One thing we wanted to clarify: The termination clause that is in here is very similar—exactly, I guess you'd say—to the wireless bill that's being proclaimed this afternoon, whether it's a straight-line depreciation, with the penalty or buyout clause, I guess you'd call it, at the end.

For instance, if you get a 10-year agreement, after five years, typically, to get out of your contract, you have to make the supplier whole for the material value of it. But, of course, saying that, after you pay for that, it's your hot water heater. So there's no need to worry about giving it back, because it is yours, unless there's another agreement in the contract that actually gets it back and gives you a credit for that.

The Chair (Mr. Garfield Dunlop): Further debate? Mr. Singh.

Mr. Jagmeet Singh: Two questions. One is, beginning with the—actually, I have three questions. So beginning with the verification call, having the verification call laid out in legislation, my question is, does this allow for more flexibility in the way that the call is carried out? I guess this question is for Mr. McDonell and Mr. Wood, and perhaps Mr. Hartung as well, if we can get three perspectives on it. Does the verification call being laid out in legislation mean that there is more flexibility given to the independent caller, the verification call, meaning that they don't have to follow a specific script; they just have to make sure that they have these things covered off? So that's one question. Let's start with that, actually.

Mr. Jim McDonell: I'll defer to—

Mr. Michael Wood: The advantage of putting requirements in legislation, as you yourself indicated earlier in this committee, is that the requirements are set there in the legislation, and the legislation can only be amended by the assembly.

The disadvantage of putting requirements in regulations is that they can be amended whenever the regulations are amended, and regulations are made, typically, by the Lieutenant Governor in Council or by a minister and not subject to assembly approval.

So imposing requirements by legislation allows you more flexibility but gives you no guarantee of what the requirements are going to be. You've got more guarantee of what the requirements are going to be if you put it in the legislation, which is harder to amend. However, once you put the requirements in the legislation, that doesn't mean you are prevented from building on those requirements, adding additional requirements by way of regulation.

Mr. Jagmeet Singh: Mr. Chair, through you again; and I also want to hear from Mr. Hartung on this—the scripted call was an issue. To protect the consumer, if there was a scripted call, there were certain require-

ments—not just certain requirements—that the entire language of the call had to be a certain way. So you would have to start off with a certain greeting, identification and follow along. That model, having a scripted call that was specific in terms of what was actually said versus having this legislation, which in the verification call lays out the components of the call but doesn't necessarily say the script in terms of what you actually have to say—can you speak to that difference?

Mr. Michael Wood: Well, I can attempt to give you an answer. It strikes me on a practical level that the more you put requirements on what the call is supposed to contain, the safer you would be to have an actual scripted call, to make sure that you include all those requirements when you make the call. That's not to say that you must have a scripted call where every single word is laid out, but, as I say, the more you put requirements in there, the more there's the danger that you might miss something if you are not following a script or a checklist.

Mr. Jagmeet Singh: Mr. Hartung, do you have a comment on this notion of having the requirements in the legislation versus having a scripted call that actually has the exact content laid out?

Mr. Neil Hartung: Certainly, I think the experience in a related sector that was a problem of concern—energy marketing—went down the road of doing scripted calls for the very reason that an outline of your obligations is easy to get around with, and you can still get things out of consumers that you perhaps ought not to have received from them. That's why that particular regime went down the scripted call route. I don't see this sector of consumer harm to be any different, and that would suggest that you'd want to go with a scripted call.

The Chair (Mr. Garfield Dunlop): Mr. McDonell? Or did you have another question, Mr. Singh?

Mr. Jagmeet Singh: I have some more, but it's okay. I want to share my time.

Mr. Jim McDonell: Just to address that, I think what this does is that it puts in a minimum amount, and I think adding a script to the legislation is certainly not something you want to do. That may come at the minister's sides, but all we're looking at are some of the basics. We think that in legislation, wanting these points—they're just common sense, but from what we heard today they're not being done today. People are coming in, they're claiming to be somebody else, they're not showing ID. We're just looking at some of the basics we put in there.

Of course, if there are issues, the minister can always address those later on, but sometimes you don't know the issues until you get into the workings and see how industry handles this. From what we're hearing, there are a few bad players out there, but I would hope that most of the industry is on the up and up.

The overall bill also allows that if somebody's not a good player, the penalties later on can be significant. I think they've taken out some of the incentives to be a bad player because you can now be turned back after a cooling-off period that wasn't necessarily there.

Anyway, this is a minimum and the government can always go further.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Singh.

Mr. Jagmeet Singh: Thank you very much, Mr. Chair. Through you, Mr. Chair, this would actually go back specific to Mr. Hartung. I'm having a hard time finding it, if it's there. I remember reading something along the lines of this, but Mr. Hartung, is there a regulation requiring a scripted call in the current act?

Mr. Neil Hartung: In the current act? No.

Mr. Jagmeet Singh: Okay. Is there a regulation that would allow for a scripted call?

Mr. Neil Hartung: We have legal authority to do a scripted call, yes.

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Mr. Jagmeet Singh: Having the requirements listed out in the verification call doesn't impact the ability to have a scripted call, does it?

Mr. Neil Hartung: Well, to the extent that the legislation specifically says you have to do something, then you've lost that room to manoeuvre underneath the regulation. So if you find, "Oh, we made a mistake, and in fact that's not the way we should be phrasing it," you would have to come back to the Legislature and get that changed.

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

Mr. Jim McDonell: I guess that's right, but of course, you're looking at, "These are the components that are going to be in a scripted call." I don't think there's any disagreement around the table. If you look at it, they're providing their name—I would hope that any scripted call would not only have these minimum items, but they'd probably have more. Would anybody look at this and think that when you're calling back to verify, you'd want to have anything less? You'd probably want more, but never less.

The Chair (Mr. Garfield Dunlop): Go ahead, Mr. Singh.

Mr. Jagmeet Singh: Mr. Chair, my next question is regarding the right of termination. It's written "Right of termination, lease" and then the first line says, "If the direct agreement provides for the lease of the water heater..."

The first question is, we're speaking of water heater rentals. There's a language of "lease" here, and then the last bit is to preclude the concept of leasing so that this is all captured in the rental. Was that the intention, to use the word "lease" there? Or should there be a friendly amendment for that to be a rental?

Mr. Jim McDonell: You're looking at 8?

Mr. Jagmeet Singh: Yes, section 8. I could perhaps ask Mr. Wood.

Mr. Michael Wood: I'm not sure I understand the question. Is the question, should there be "rental" instead of "lease"?

Mr. Jagmeet Singh: Yes, that's the question.

Mr. Michael Wood: I think that really means the same thing. I thought you might be asking, is there a reference to a direct agreement that provides for the lease of

a water heater, which would be a subset of direct agreements that require the supply of a water heater. "Supply" is not saying whether it's a purchase situation or whether it's a lease situation.

Mr. Jagmeet Singh: I understood that the last component of 42.2—the reason why the last component was added in is that there's a potential loophole that if you structure the agreement as a lease as opposed to a rental agreement, section 4 would no longer apply and, instead, section 8 would apply. That's why 42.2 exists, to get rid of that loophole—which made sense to me. If that's the case, then I just thought the language was somewhat unclear, using the word "lease." I might be wrong on that. It may not have any bearing whatsoever. I'm just curious if that makes the waters more murky.

Mr. Jim McDonell: You're saying "lease" or "rental"?

Mr. Jagmeet Singh: Yes. Do you agree? Is there any sort of impact?

Mr. Michael Wood: I personally do not see any difference between talking about a lease or a rental situation. I think "lease" was used because the term "lease" is used in the Consumer Protection Act itself, particularly in part VIII.

Mr. Neil Hartung: Down on the ground, there is a difference between a lease and a rental. You never own a rental. The mischief that you're dealing with here is about the rental of water heaters, not the lease. Part of the reason that there is an exemption for part VIII leases is because if you're leasing a water heater as a financing matter, you own it at the end of the day; whereas in the water heater model that you're concerned with, you never own it, and you get to pay in perpetuity for this water heater at \$9 a month or whatever it is, and they will take it out when it finally breaks down.

The Chair (Mr. Garfield Dunlop): Mr. Crack has a question too. I'm just going to go around here again.

Mr. Grant Crack: Thank you, Mr. Chair. I just wanted to put our position on the table. We find that this is too detailed for the legislative changes, and we'd like to address these through regulations. We respect what's in there, but we also would want to consult with industry to make sure that as we prescribe the regulations and create the regulations, we're addressing the concerns presently and for the future not only of industry, but of consumers as well.

The Chair (Mr. Garfield Dunlop): Absolutely, yes. Mr. McDonell.

Mr. Jim McDonell: I'm looking at it, and—how do you get out of not talking about the end-of-service contract? We're talking about a lease. There has to be one day that you own the thing. One of the issues we've heard about was people being billed for equipment that was many years old when, likely, they should have owned it.

This same government was very strict on the rules they put in the wireless bill, where, at the end of a two-year period, you own the cellphone. We're doing the same thing. We think that at the end of a prescribed period, you should own it and you should know what that

is, because if you don't, how do you ever know what the cancellation fee is? I don't think you can do one without the other. When somebody comes—and it can be anybody—to sell you the unit, you have to be able to know what it's going to cost to get out of it. If you haven't got anything that says there's some type of drop-dead—we suggested 10 years. We think after 10 years, it should be worked into the lease, those details. You should own it after that. We put in a buyout clause, which is exactly the same as your cellphone bill: If you own it for five years, then you should only be left with paying half the cost of the unit, and if you're going to pay that money, then you own it. There should be no problem with trying to return it. If the company wants it back and is willing to take it, that's fine, but really, it's yours. You can leave it in place or do what you want.

If you don't have that addressed in the bill, what's the bill doing?

The Chair (Mr. Garfield Dunlop): I understand. Further questions? Further debate?

Mr. Jagmeet Singh: Yes. I guess my first suggestion is that for section 8 to now, having heard the different opinions on it, I think it should be amended to say “rental” instead of “lease,” then, just to keep the language consistent, because there is a difference between a rental and a lease. That's why there are different sections regarding rentals and leases. I would suggest that that might clarify that issue—and then there are some other questions I have as well.

The Chair (Mr. Garfield Dunlop): Are you making an amendment to this motion?

Mr. Jagmeet Singh: Yes. I'm making an amendment that if the direct agreement—I don't know how to word it, but maybe one amendment should be that “Right of termination, lease” should be “... termination, rental.”

Then, “If the direct agreement provides for the rental of the water heater or other goods, the consumer may....” The rest is fine—as long as “lease” is replaced with the word “rental.”

The Clerk of the Committee (Mr. Trevor Day): The headings are not amendable and they will be changed by leg. counsel more editorially, depending on—

Mr. Jagmeet Singh: That's fine, then.

The Clerk of the Committee (Mr. Trevor Day): So your point is on 8? You would like to strike the word “lease” in the first line and replace it with the word “rental”?

Mr. Jagmeet Singh: Yes, that's my amendment. I can explain it, and then people can vote on it.

The Chair (Mr. Garfield Dunlop): Everyone understand? Okay. We've got a motion here right now by Mr. Singh to make an amendment to Mr. McDonell's motion. Mr. McDonell.

Mr. Jim McDonell: Can I ask Mr. Wood the significance of that and if it's what I think the intention is? I just wonder, is that getting beyond the scope of this bill? Because you're not allowed to talk about “lease.” There's some point—well, you answer first, and then I'll maybe clarify my points after.

Mr. Michael Wood: I find I'm in a difficult situation here because perhaps what I said earlier was in disagreement with ministry counsel. I don't have the benefit of being able to do a computer search of the Consumer Protection Act or the regs right now in front of me. I don't see any definition of either “rental” or “lease” in the Consumer Protection Act. There is a definition of “lease” in part VIII of the Consumer Protection Act. It doesn't appear to say that there is a difference between that and “rental.”

I would think that if you have an agreement whereby the person who is paying the rent has the right to acquire title to the goods at the end of the agreement, that has to be spelled out in the agreement. So I find I really can't comment on what the effect of this would be.

Mr. Jim McDonell: Okay.

The Chair (Mr. Garfield Dunlop): Okay. We've got a motion moved by Mr. Singh. Are there any further comments on the motion?

Mr. Jim McDonell: Maybe I'd just ask a question: Is the intent here to exclude idea of the lease where you would own the unit after so many years? Is that the intent? Or it would always just be a straight rental and you'd never own it? If that's the case, is that what the intent of this bill is? I thought there was some point in time when there was a buyout clause. There has to be something that allows the consumer to eventually get out of something without paying a huge penalty.

1440

Mr. Jagmeet Singh: So actually, I strongly—

The Chair (Mr. Garfield Dunlop): Mr. Singh, could I ask Mr. Hartung to make a comment on this, please?

Mr. Jagmeet Singh: Yes, for sure.

Mr. Neil Hartung: There's certainly variation in the marketplace as to what transaction you're entering into. You could have both: You lease it for a certain amount of time, and you own it at the end; or you rent it in perpetuity, but you have the right to return it when it stops working. I don't think that you'll be able to clearly get either one basket or the other with the drafting here. Part of the reason that my ministry relies so heavily on regulations is because there isn't a single business model out there that we're trying to regulate. There are various facets to how the particular industry is operating. I think that's what you're experiencing here and trying to get an answer to. There is no one single reduction that we can do on this fraction. There's multi-faceted business models out there.

Mr. Jim McDonell: I guess I can see where you're coming from, but one of the issues we heard was that people could have the same unit in their basement for years and years—10 or 15 years. They always find that when they want to get out of the agreement, they have to buy a new one, basically, to get out. I think that we're looking at something that actually puts an end date—not that you can't continue on month-by-month. That's just good business. But there must be some day in the agreement that the consumer is not penalized for finally saying, “I've been in the house 20 years, and I think I want

to try something else.” Right now, that’s an issue. If you come in with direct sales, all of a sudden it becomes an issue, but it’s not for all the sales. We’re just wondering how you—

Mr. Neil Hartung: Even on a lease, you can own the vehicle at the end of the lease if you lease to own, or you can just give it back and walk away and not buy it. I think there’s that same kind of variation in the water heater market. You have some people who are renting HVAC systems—not water heaters per se, but an expensive furnace—and they’re choosing to lease that as a financing matter; whereas other people, not so much in the HVAC area but in the water heater area, are renting that water heater with a view that they never want to own it. To give that water heater free and clear to the consumer once its economic life is over—I don’t know that you’re doing them any great favour either, particularly if their agreement was that once it’s at the end of its economic life, the supplier will come in and swap in a new one.

Mr. Jim McDonell: I think all we’re saying, though, is that there is a time frame that if you decide to get out of it, you can get out without a penalty, but if you choose to leave it there, just like—I know people with cell-phones who were on the contract, and they just keep going month-to-month because they’re happy with what they have. The same thing would apply here. What it does allow is if you want to get out after X number of years, 10 or 15 years, at least you’re not forced to pay for damages on something that really should be beyond its life. It would be like asking for someone with the first Apple that came out and saying, “You want a new one, but we’re going to make you pay for the old one because there’s no termination clause.”

Mr. Neil Hartung: I just cycle back to what I said earlier, which is there are a lot of different business models out there, and there are a lot of different agreements with consumers. To focus in on one, you’re going to miss some stuff that exists in the other permutations of the model.

The Chair (Mr. Garfield Dunlop): Okay, I want to get to the point where we’re getting a vote on Mr. Singh’s amendment. Have we got any more comments on that?

Mr. Jagmeet Singh: Yes.

The Chair (Mr. Garfield Dunlop): I’m sorry; on your amendment to—

Mr. Jagmeet Singh: On my amendment, yes, thank you. My purpose for the amendment, just to answer Mr. McDonell’s question, was that I just want to keep the language clear so we know that we’re dealing with rentals, and then leases are dealt with separately. But now, having heard—it’s somewhat of a blurry area. I wanted to keep it clear so that we knew we were dealing with rentals, and then a lease would be dealt with—this entire act would apply to leases in terms of the protection.

But when it comes to cancellation component, I actually agree with Mr. McDonell about the cancellation. I don’t want my amendment to undermine the purpose of

what Mr. McDonell wanted. I just wanted to be consistent in terms of the language.

The Chair (Mr. Garfield Dunlop): Are you withdrawing the amendment?

Mr. Jagmeet Singh: It sounded a bit like it, didn’t it? I don’t think it’s undermining it. Perhaps Mr. Wood or Mr. Hartung—maybe just Mr. Wood, actually, because you wrote this actual motion. If I replace the word “lease” with “rental,” is that undermining the purpose of what this subsection 8 is achieving?

Mr. Michael Wood: In my opinion, it is not undermining the purpose.

Mr. Jagmeet Singh: It’s not undermining it? Okay. Then I stand with my amendment, because it’s for clarity purposes.

The Chair (Mr. Garfield Dunlop): Are the members ready to vote on this amendment, first of all?

Mr. Grant Crack: Yes, Mr. Chair.

The Chair (Mr. Garfield Dunlop): On Mr. Singh’s amendment to Mr. McDonell’s motion: Those in favour? Those opposed? I’ll go with the amendment for now. The amendment carries.

On the overall motion by Mr. McDonell: Any more comments on it, as amended?

Those in favour of the motion—you’ve got a comment?

Mr. Jim McDonell: Yes.

Mr. Grant Crack: We called the vote.

The Chair (Mr. Garfield Dunlop): I’m calling the vote now. Those in favour of—

Interjection.

The Chair (Mr. Garfield Dunlop): Did I hear “recorded vote”?

The Clerk of the Committee (Mr. Trevor Day): Yes.

The Chair (Mr. Garfield Dunlop): Okay. A recorded vote. Those in—

Mr. Jagmeet Singh: I still have more questions. I thought I could ask another question before going on.

Interjections.

The Chair (Mr. Garfield Dunlop): I’m calling the question on this one. All those in favour of Mr. McDonell’s motion?

Ayes

McDonell, Milligan.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): That motion does not carry.

Mr. McDonell, you have a second—I assume you’re removing 0.11.1?

Mr. Jim McDonell: Let me just get back to the—

The Chair (Mr. Garfield Dunlop): Withdrawn? You had the replacement motion on top that you made.

Mr. Jim McDonell: Sorry, yes.

The Chair (Mr. Garfield Dunlop): Okay, so there's no section 2—there's no new section.

We'll now go to schedule 2, section 4. We have an NDP motion by Mr. Singh. That's 0.11.1.

Mr. Jagmeet Singh: Just a moment's indulgence, please. Mr. Chair, just to speed things up, I may be in a position to withdraw this motion. I just need a couple of minutes of recess. I may be withdrawing it and we'll be able to move on, but I just need a couple of minutes to confirm that this is not a redundant motion.

The Chair (Mr. Garfield Dunlop): What did you ask for?

Mr. Jagmeet Singh: Just a couple of minutes of recess so I can confirm whether or not I'm going to proceed with this motion.

The Chair (Mr. Garfield Dunlop): Okay, we'll have a five-minute recess. Can we agree to a—

Mrs. Donna H. Cansfield: I actually wanted to defer this motion.

The Chair (Mr. Garfield Dunlop): Pardon me?

Mrs. Donna H. Cansfield: I'd like to defer the motion, Chair.

The Chair (Mr. Garfield Dunlop): Sorry. The motion has not even been moved at this point.

Mr. Jagmeet Singh: That would achieve the same thing; I don't mind. I could move it and if you want to defer it, it achieves the same goal. I just want to look it over. Either way, if we defer it, I might just withdraw it on the next date. Deferring is fine with me. Whatever everyone agrees with, I'm happy with.

The Chair (Mr. Garfield Dunlop): Maybe it would be better if you deferred. Could we ask you to defer?

Mr. Jagmeet Singh: Sure. So I have to move it and then we defer. Is that the right process? I'll move it; it's sort of lengthy to read out, but okay.

I move that subsection 43(1) of the Consumer Protection Act, 2002, as set out in subsection 4(2) of schedule 2 to the bill, be struck out and the following substituted:

“Cancellation: cooling-off period

“(1) A consumer may, without any reason, cancel a direct agreement at any time from the date of entering into the agreement until,

“(a) in the case of a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed, 20 days, or such other period as is prescribed, after,

“(i) the consumer has received the written copy of the agreement,

“(ii) the supplier has confirmed with the consumer, in accordance with the prescribed requirements, after entering into the agreement that the consumer has agreed to enter into the agreement, and

“(iii) the supplier has met all the requirements for entering into the agreement; or

“(b) in the case of all other direct agreements, 10 days after the consumer has received the written copy of the agreement.

“Person doing confirmation

“(1.1) The person who contacts the consumer on behalf of the supplier for the purpose of making the confirmation described in clause (1)(a) shall not be the same person who enters into the agreement with the consumer on behalf of the supplier.

“No contacting the consumer

“(1.2) Except for making the confirmation described in clause (1)(a), a supplier that has entered into a direct agreement with a consumer shall not initiate any contact with the consumer during the period during which the consumer is entitled to cancel the agreement under subsection (1).”

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I ask that this motion be deferred.

The Chair (Mr. Garfield Dunlop): Okay, we're deferring this one. Thank you very much.

We'll now go to PC motion 0.12. That's Mr. McDonell.

Mr. Jim McDonell: Thank you, Chair. I move that section 4 of schedule 2 to the bill be amended by adding the following subsection:

“(3) Section 43 of the act is amended by adding the following subsection:

““Waiver by consumer

““(1.1) A consumer under a direct agreement may waive the right described in clause (1)(a) by giving notice to the supplier.””

We just think that consumers have the right to waive that. There will be times he's having some issues. I know the thought would be that if he has a repair, he'll always be calling somebody back in, but lots of times that's when you want to look around. You may contact or look in the newspaper or the phone book and find out—or give somebody a call that turns out to be a direct sale because now they come out to the home to give you an estimate. So I think that, if you have to repair—your unit is down and you want it fixed—you should have the option to go wherever you want. I think the legislation, without allowing you to opt out of the 20-day period, is really kind of—it gets dangerous for somebody that wants to come in and place it up front.

The Chair (Mr. Garfield Dunlop): Okay. Further debate? Mr. Dhillon?

Mr. Vic Dhillon: Thank you, Chair. We will not be supporting this, as such waivers of cooling-off periods are not permitted anywhere in the consumer law as administered by the Ministry of Consumer Services.

The Chair (Mr. Garfield Dunlop): Further questions? Mr. McDonell?

Mr. Jim McDonell: I just find it hard to believe that if, really, they've got an issue and they're without service, that you'd be expected to go in and install a unit knowing that, by any whim, the customer could ask for it to be removed and you're on the hook for all costs and all damages and putting it back. I think there has to be some right for the consumer to ask that. You know, he's waiving his right; I think the verification calls that are to be put in place, although we don't see them here in the legislation, would be directed in such a way that they

would ensure that the consumer knew these rights, knew what he was doing and acted in his own best interest.

The Chair (Mr. Garfield Dunlop): Okay. Further debate on this? I'm going to call the question.

Mr. Jagmeet Singh: Just one quick comment.

The Chair (Mr. Garfield Dunlop): Okay, go ahead.

Mr. Jagmeet Singh: Sorry, while there's some logic to the idea of having the consumer make an informed decision, at the end of the day, the purpose of the cooling-off period is to provide protection for the consumer, and we have to make sure we put the consumer's interests first. I believe there are a number of consumer advocates who have said that the cooling-off period is essential. Because of those advocates and because that's the concern around consumer protection—though I see some of the logic behind it, I will have to oppose it.

The Chair (Mr. Garfield Dunlop): I'm going to call the question, then. Those in favour of Mr. McDonell's motion? Those opposed? The motion doesn't carry.

Okay, we'll now go to 0.13. It's probably all we're going to get time for today, if we can get through this one. Mr. McDonell?

Mr. Jim McDonell: Chair, I'd like to call a five-minute recess just to discuss this motion. We have an issue with it that we'd like to talk with leg. counsel on, if that's possible, or at least defer it to the next meeting. We can move on to the next one if that's—

The Chair (Mr. Garfield Dunlop): Well, could we defer it, then, and get one more in?

Mr. Jim McDonell: Sure.

The Chair (Mr. Garfield Dunlop): Okay, we'll defer. Is that okay with everyone if we defer that one?

Mrs. Donna H. Cansfield: I'm sorry, do they have to read it into the—no? Okay.

The Chair (Mr. Garfield Dunlop): Okay. Then we'll go to PC motion 0.14. Mr. McDonell?

Mr. Jim McDonell: I move that section 4 of schedule 2 to the bill be amended by adding the following subsection:

“(3) Section 43 of the act is amended by adding the following subsections:

““Cancellation: billed amount

“(1.1) In the case of a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed, the consumer may cancel the agreement during the 30-day period following his or her receipt of the first bill from the supplier if the billed amount differs from the all-in monthly cost specified in the agreement.

““Same

“(1.2) When a consumer cancels, under subsection (1.1), a direct agreement that requires the supplier to supply a water heater, the supplier,

“(a) shall remove the heater without charge if the consumer so requests;

“(b) shall pay any administration and installation costs incurred by the consumer in making a replacement agreement with another supplier; and

“(c) shall not make any charge to the consumer in connection with the cancelled agreement except a monthly rental charge pro-rated for,

“(i) the time from the date of installation of the heater to the date of cancellation, if a heater was installed under the cancelled agreement, or

“(ii) the time from the effective date of the cancelled agreement to the date of cancellation, if an existing heater was used under the cancelled agreement.”

I'm just looking through my notes here—

The Chair (Mr. Garfield Dunlop): If there's going to be a lot of debate on this particular motion, I'm going to leave it until the next meeting on November 20. If there's not and we're ready to vote now, we'll vote right away. Do you have a fair amount of debate on this?

Mr. Jagmeet Singh: I'm supportive of this one.

The Chair (Mr. Garfield Dunlop): Go ahead.

Mr. Jim McDonell: We just think that the whole premise of this bill is that you're promoting a certain all-in cost. If, for some reason, you get your first billing and the contract is not in agreement with what your decided cost was up front, then I think we're just saying that the consumer can cancel the bill and should be made whole for it. We want to make sure that the contract that is in place is very clear, so that these costs are very clear to the consumer, and it'd be in the best interests of all parties to come to that conclusion.

The Chair (Mr. Garfield Dunlop): Okay. Mr. Singh, you had a comment?

Mr. Jagmeet Singh: No. I just support it. I think it makes sense. It just allows for greater consumer protection.

The Chair (Mr. Garfield Dunlop): Okay. Any of the government members?

Mr. Grant Crack: I'm ready to vote.

The Chair (Mr. Garfield Dunlop): Okay. I'm going to call the vote, then, on this bill.

Mr. Jim McDonell: Recorded vote.

The Chair (Mr. Garfield Dunlop): Recorded vote.

Ayes

Forster, McDonell, Milligan, Singh.

Nays

Cansfield, Crack, Dhillon, Mangat.

The Chair (Mr. Garfield Dunlop): Okay. It changes the format of the bill, and I will not be supporting it, so that does not carry.

With that, ladies and gentlemen, that concludes the meeting for today. We will adjourn until November 20 at 12 o'clock noon, when we will continue on with clause by clause. Thank you very much, everybody.

The committee adjourned at 1458.

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