



28 February 2017

Katch Koch
Cc. Standing Committee on Social Policy
Room 1405, Whitney Block
Queen's Park, Toronto, ON
M7A 1A2

Re: CARP – 2017 BILL 59, *Putting Consumers First Act (Consumer Protection Statute Law Amendment Act)*, 2016.

Please find attached CARP's submission regarding Bill 59. We comment on unsolicited goods or services, and deceptive business practices.

CARP is a national, non-partisan, non-profit organization that advocates for financial security and improved health care for Canadians as we age. With over 300,000 members and nearly 50 chapters across Canada, CARP works closely with all levels of government and collaborates with other organizations to advocate on health and financial issues. CARP enlists its members' voices to increase its clout to most effectively advocate for its priorities.

Thank you for your kind consideration.

Sincerely,

[Original Signed]

Wanda Morris
VP of Advocacy

[Original Signed]

Marissa Semkiw
Director of Advocacy



Summary

CARP understands that the government has a critical role to play in balancing business interests with consumer protection. A thriving market place is critical to a thriving economy *and* individuals must be protected from scams, frauds and unethical business practices.

As such, CARP's recommendations for Bill 59 fall under two broad consumer protection categories: unsolicited goods or services, and deceptive business practices.

Unsolicited goods or services

CARP concludes that both business and consumer interests would be best served by a total ban on door-to-door sales for all products over a set limit; we suggest \$1,000. Some jurisdictions have introduced bans on door-to-door sales without undue adverse consequences. CARP further advocates for stronger protections. We believe that these will not only help our members, but support legitimate businesses to flourish.

As a minimum, we believe the government should:

1. Prohibit the distribution of all marketing materials which are misleading, in the form of printed materials and phone calls;
2. Provide appropriate remedies for the restitution of individuals who are solicited in breach of legislation;
3. Ensure the "burden of proof" of such breach is on businesses, not the customer;
4. Require the decoupling of billing for all non-utility services, and
5. Increase discipline by imposing fines for all offenses, not just egregious cases.

Investor Protection

A 2015 Morningstar global report rated the competitiveness of fees and costs paid by Canadian investors as 25th – out of 25 countries rated. With a D-minus rating, our closest competitors for worst in class performance are Japan and China with D grades. In response, CARP calls on the government to:

1. Eliminate compensation-related conflicts of interest by introducing a best interest standard that puts small investors first;
2. Eliminate embedded fees, and
3. Empower regulatory agencies like the Investment Industry Regulatory Organization of Canada (IIROC) to collect fines they levy by introducing appropriate legislation.



Unsolicited Goods and Services

Poll Results

CARP polled its members to determine support for a prohibition on door-to-door sales and the responses were clear: nearly 90% of respondents who had an opinion were in favour of such a law in their own province. Furthermore, over 95% of CARP members polled believe that predatory door-to-door sales is an issue for seniors, and over 90% of our members do not believe that governments across our country have done enough to address the issue.

Recommendation

CARP concludes that both business and consumer interests would be best served by a total ban on door-to-door sales for all products over a set limit, say \$1,000.

Some jurisdictions have introduced bans on door-to-door sales without undue adverse consequences. As a result, CARP further advocates for stronger protections. We believe that these will not only help our members, but support legitimate businesses to flourish.

As a minimum, we believe the government should:

1. Prohibit the distribution of all marketing materials which are misleading, including distributed literature and phone calls;
2. Provide appropriate remedies for the restitution of individuals who are solicited in breach of legislation;
3. Ensure the “burden of proof” of such breach is on businesses, not the customer;
4. Require the decoupling of billing for all non-utility services, and
5. Increase discipline by imposing fines for all offenses, not just egregious cases.

Outlaw bait and switch tactics

Recommendation: Prohibit the distribution of misleading marketing materials.

CARP encourages the committee to adopt legislation that not only bans direct door-to-door sales over \$1,000, but also minimizes fraud risks to seniors from bait and switch tactics.

CARP believes that the regulation of door-to-door sales should include not only direct knocking but also “bait and switch” tactics such as distributing flyers or other marketing materials that purport to provide other services but are in reality a means of initiating a door-to-door sale.



If an individual makes a telephone requesting someone come to examine a malfunctioning furnace or fix a hot water heater, and the service visit ultimately leads to the sale of new equipment, this is legitimate. Whether the customer's call is prompted by a flyer, the yellow pages or an Internet search is irrelevant.

However, if an individual receives a visit because they called in response to a flyer saying they "might not be compliant with regulation x" or "could be losing money because of y" and subsequently makes a purchase, the person has been caught by bait and switch tactics and any resulting sale should be governed by this legislation.

Ensure restitution

Recommendation: Provide appropriate remedies for the full restitution of individuals who are solicited in breach of legislation.

CARP believes that in the event protective legislation is breached, a consumer should receive full restitution; they must be returned to their previous status or better. For example, if an individual is duped into purchasing a replacement for their perfectly good 5-year old water heater, that sale must be reversed and the individual's purchase price refunded or financing contract cancelled. If their pre-existing hot water heater has already been taken away, then it must be returned or replaced with one that is equivalent or better to the one removed. Thus the hardship of replacing the functioning heater will fall not to the customer but to the company who acted quickly to lock in its unethical sale.

Burden of Proof

Recommendation: Ensure the "burden of proof" of any breach of legislation is on the business, not the customer.

CARP believes that in the event of a Ministry of Government and Consumer Services investigation, the 'burden of proof' must always be on the business, not the consumer. The customer does not have to prove that they were misled; the business must prove that they were not. If a consumer files a complaint, the burden/responsibility to provide evidence of e-mail exchanges, phone records, etc. must fall on the business.

In the event that the company is unable to provide this evidence, they should be deemed to be in contravention of the act and penalized accordingly.

Decoupling of Bills

Recommendation: Increase discipline by imposing fines for all offenses, not just egregious cases.



CARP believes that independent businesses should not be allowed to bundle their billings with those of utilities. To be clear, CARP is not opposed to businesses outsourcing their billing, but the financing of any purchase should be clearly shown on a separate invoice from that of the utility payment itself. CARP is concerned that when bundling is allowed, customers lose the legitimate recourse of refusing to pay an inappropriate bill out of fear of having their heat, electricity or other utility services terminated.

Discipline

Recommendation: Increase discipline by imposing fines for all offenses, not just egregious cases.

CARP understands that notwithstanding disciplinary options that are available; fines are only levied in the most egregious cases. CARP strongly encourages the parties responsible to levy fines broadly for all offenses and to escalate fines quickly for repeated offenses. Customer protection is dependent on swift and robust punishment of breaches of legislation.

Investor Protection

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Recommendation

CARP calls on the government to:

1. Eliminate compensation-related conflicts of interest by introducing a best interest standard that puts small investors first;
2. Eliminate embedded fees, and
3. Empower regulatory agencies like the Investment Industry Regulatory Organization of Canada (IIROC) to collect fines they levy by introducing appropriate legislation.

Best Interest Standard

Recommendation: Eliminate compensation-related conflicts of interest by introducing a best interest standard that puts small investors first.

CARP strongly encourages the committee to take immediate steps to improve the cost to Canadians of investment advice, and to introduce a fiduciary standard that governs the investor-advisor relationship. A best interest standard will require



financial advisors to put the financial returns of their clients ahead of their own compensation. Should such a standard be introduced, an advisor could not sell a client a high-priced mutual fund – with a significant commission - when a more competitively priced version is on offer. Or sell a product with a trailer fee simply to lock in years of commission payments.

Countries from the United States to Australia have embraced the idea of a best interest standard. It's time Canada does too.

Embedded Fees

Recommendation: Eliminate embedded fees

Canadians currently pay among the highest mutual fund fees in the world. What's worse is too many investors are simply unaware of the fees they pay on their investments. Although the implementation of new rules known as CRM2 will improve transparency, embedded fees must be eliminated to ensure investors are empowered to act with full information.

Fine Collection

Recommendation: Empower regulatory agencies like the Investment Industry Regulatory Organization of Canada (IIROC) to collect fines they levy by introducing appropriate legislation.

CARP calls on the committee to take immediate steps to ensure that regulatory authorities like IIROC have the capacity to collect fines they levy, and thus better protect vulnerable investors. Currently, there are \$30 million in unpaid fines in Canada, stretching back 10 years, with \$20 million owing in Ontario alone. This is unacceptable. No one should have to lose a dime because of flawed law enforcement. Unless there are consequences for rule breakers, rules will continue to be broken and small investors will continue to suffer.

CARP

February 28, 2017