



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

March 10, 2025

Ministry of Public and Business Service Delivery and Procurement
Consumer Policy and Liaison Branch

Via email: consumerpolicy@ontario.ca

To Whom It May Concern,

**Re: Consumer Protection Act, 2023: Consultation on Phase 1 Regulatory Proposals
(Proposal 24-MPBSDP026)**

This is the Law Commission of Ontario's (LCO) submission to the Ministry of Public and Business Service Delivery and Procurement *Consumer Protection Act, 2023* Consultation on Phase 1 Regulatory Proposals (Consultation 2025).

The LCO is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex and important legal policy issues. Through this work, the LCO promotes access to justice, evidence-based law reform and public debate. More information about the LCO is available at www.lco-cdo.org.

The LCO recently completed a major law reform and consultation project about improving consumer protection in Ontario's digital marketplace. As a result, we can make independent and thoughtful recommendations about CPA 2023 and consumer protection for online contracts. Our report is attached as **Appendix A**.

The LCO's submission to Consultation 2025 begins with three general comments.

First, the LCO agrees with the Ministry's Consultation 2025 document that "The CPA is the primary piece of legislation that sets out rules for consumer protection in Ontario... [and] governs most personal and household transactions made by consumers." Accordingly, CPA reforms and regulations must be adopted to protect the millions of consumers in Ontario who rely on the digital marketplace on a daily basis.

Second, it is widely acknowledged that many consumers and small businesses remain greatly disadvantaged in Ontario's digital marketplace. Simply stated, there is not an even playing field in which Ontario consumers feel protected or Ontario businesses can compete fairly.

Finally, the LCO believes that many of the regulations proposed in Consultation 2025 are important but do not go far enough to protect Ontario's online consumers and businesses. As a result, the LCO is recommending additional regulatory reforms above and beyond those proposed in the consultation paper, including:

- Regulations that target specific online contracting practices that exploit consumers and small business.
- Eliminating the CPA's monetary threshold unless explicitly exempt by regulation.
- Improving consumer protections against unilateral contract changes.
- Improving notice and disclosure for online consumers.
- Prohibiting the use of "dark pattern" practices designed to deceive Ontario's consumers.
- Including stronger protections against unfair or unconscionable online practices.
- Including stronger enforcement by government and remedies for consumers.

Our submission is organized as follows:

1. The LCO Consumer Protection Project
2. The risks of online contracting for consumers and small businesses
3. Emerging strategies to improve consumer protection in the digital marketplace
4. The LCO's response to the questions in Consultation 2025
5. Additional recommendations for consideration in future proposed regulations

The LCO thanks the MPBSDP for the opportunity to comment on these important and timely regulations. The LCO welcomes the opportunity to discuss our recommendations with provincial government representatives should you wish to do so.

Sincerely,

Nye Thomas
Executive Director, Law Commission of Ontario

cc LCO Board of Governors
LCO Consumer Protection in the Digital Marketplace Advisory Group

1. The LCO's Consumer Protection Project

The LCO's project is the most comprehensive study of online consumer protection issues in Canada.

Our *Final Report* was released in May 2024. It included 32 recommendations to improve consumer protection in the Ontario's digital marketplace.¹ The report relies on LCO's extensive research in Canada and across comparative jurisdictions.

The LCO consulted broadly on these issues, including 14 formal consultation sessions with businesses, lawyers, academics, government officials, and advocates for vulnerable groups (including persons with disabilities, youth, older Ontarians, and racialized and linguistic communities). The LCO also engaged the MPBSDP at several points throughout this process.

The LCO commends the province for incorporating several LCO recommendations into CPA 2023, including:

- Expanding the right to cancel contracts if notice/disclosure do not comply with the CPA.
- Adding a "discoverability doctrine" for unfair terms and practices.
- Limiting business' ability to unilaterally amend, extend or renew contracts without express consumer consent.
- Prohibiting contractual terms or punitive actions that limit online reviews.
- Expanding some forms of consumer remedies.
- Enacting more penalties and fines, including new administrative fines court-ordered penalties.

These provisions will improve consumer protection in Ontario, improve clarity and compliance for business, and ensure greater accountability and transparency for consumer rights in Ontario.

The provincial government can further improve consumer protection in Ontario by adopting comprehensive and thoughtful regulations.

2. The Risks of Online Contracting for Consumers and Small Businesses

The LCO's research and consultations confirm online consumer contracting raises several risks for Ontario's consumers and online business:

- **Online Consumer Consent May Be Illusory**

Academic research and practical experience prove that "terms of service" (ToS) contracts are often long, unread, and not understood by many consumers. Most consumers and small businesses simply do not understand how these contracts work, gain no benefit from them, and are unable to assess their risks and benefits. As a result, consent to digital ToS is effectively illusory.

- **Digital Notice and Disclosure May Not Protect Consumer Interests**

Many traditional consumer protection strategies – such as consumer notice and disclosure – do not effectively protect Ontarian's interests in the digital marketplace. ToS contracts often change frequently

and unilaterally, further limiting meaningful notice to consumers. Ontarians may face hundreds of changes across dozens of ToS for products and services each year.

- **Online Consumers Often Have Few Options and Cannot Negotiate**

ToS contracts are often presented to Ontarians as “take it or leave it” propositions, with few realistic options. Proprietary digital formats and apparently “free” online services and platforms can “lock-in” Ontarians to specific products and services. Ontarians lack effective means to review or negotiate contractual terms and conditions and may have few incentives to file consumer complaints.

- **Deceptive “Dark Patterns” May Undermine Notice and Consent**

“Dark patterns” are subtle or invisible (“dark”) design practices used in contracts, software, and user interfaces to “pattern” or “steer, deceive, coerce, or manipulate consumers into making choices that often are not in their best interests.”² “Dark patterns” may include “frictionless” sign-up practices that minimize notice of risks to the consumer; consent boxes and user settings that default to opt-in; unclear toggle and preference options; and settings buried deep within multi-layered menus or websites.³

- **Consumers in Ontario Using No-Cost and Low-Cost Services May Not Be Protected**

Many digital services are provided on a low-cost or no-cost basis to the consumer. Ontarians may not be protected in these transactions because the CPA’s \$50 monetary threshold is not met.⁴ Yet it is *because* these services are free that consumers and small businesses are *most* in need of protection. For instance, consumers and small businesses are often unable to cancel “free” contracts because they are dependent on or forced to use a service. As a result, a right to cancel such a contract has little to no regulatory impact on unfair practices.

- **ToS May Restrict Legal Remedies and Access to Justice**

Notwithstanding consumer protection legislation, ToS terms may aim to restrict consumer’s ability to seek legal remedies. ToS may include terms stating that disputes are governed by foreign laws or must be initiated in foreign jurisdiction. Many ToS also specify that disputes must be resolved through internal dispute resolution mechanisms or binding arbitration, or that class action rights are waived. In addition, there is need to improve consumer access to justice.

- **The Need for a Better Environment for Business**

The 2020 and 2023 Ontario CPA Consultation Papers acknowledge how updated consumer protection legislation is to the benefit of both consumers and businesses.⁵ Consumer protection legislation establishes baseline requirements for transparency, dispute resolution, jurisdiction, and regulatory compliance. This fosters a more competitive playing field for businesses, avoids a race to the bottom, and improves consumer confidence.⁶

Many businesses believe consumer protection reform will assist them identify and manage legal risks, mitigate reputational risks, improve customer satisfaction, promote fair competition, and promote regulatory compliance in the digital marketplace.⁷ Many businesses are also concerned about unfair competition if regulatory obligations are not enforced on less scrupulous suppliers.⁸

3. Emerging Strategies to Improve Consumer Protection in the Digital Marketplace

Many consumers and businesses around the world are facing the same consumer issues as Ontarians. The LCO has learned there is an emerging consensus around updated principles and proposals to improve consumer protection in the digital marketplace. These are sometimes described as being part of a “new consumer agenda” which has gained significant momentum in the United States, European Union, and United Kingdom.⁹

Ontarians can learn from these experiences and draw upon the broad range of law reform options that have been implemented elsewhere. For example, many jurisdictions have modernized consumer protection legislation and regulations to:

- Update consumer notice and disclosure requirements for digital ToS.
- Update lists of potentially deceptive or unconscionable contractual terms.
- Address so-called “dark patterns” in online contracting that undermine consumer consent.
- Prohibit a range of contracting practices or create set standard terms for practices that may exploit consumers.
- Improve oversight, accountability, and access to justice, including more proactive and systemic enforcement of consumer protection legislation.

4. LCO’s Recommendations for CPA 2023 Regulatory Reform

The following sections set out the LCO’s recommendations and discussion in response to questions in Consultation 2025. This section includes both answers to specific proposals and recommendations for where the proposals should be supplemented with further regulations to ensure the CPA 2023’s effectiveness.

5. Consultation 2025, Chapter 2: Contract and Pre-Disclosure Requirements for Most Contracts

Consultation 2025, Chapter 2: General Contract Rules			
Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 2 Questions 1-2, 4-7	The LCO commends proposed regulations in <i>Consultation 2025</i> that adopt several recommendations made by the LCO to improve notice and consent, including the proposed requirements that would require upfront and prominent disclosure of certain “key information” of importance to consumers.	<p>The LCO recommends adopting boxes at the top of contract to prominently display the “key information” most relevant to consumers, such as hidden fees and price escalation clauses.</p> <p>Consultation 2025 adopts this principle, albeit in just two specific instances.</p>	<p><i>Consultation 2025</i> at Appendix C.</p> <p><i>LCO Final Report</i> at ch. 4.3 and recs 4-6.</p>
Ch. 2 Questions 1-2, 4-7	The LCO recommends clarifying the regulations to pre-emptively disclose the average “potential cumulative” or “total potential payment obligations” of services contracted through online means.	<p><i>Consultation 2025</i> proposes to require disclosure of “total potential payment obligations” in narrow circumstances, including “price escalation clauses” and including a “description of each additional charge or fee that applies or may apply” for certain delivery fees.</p> <p>The LCO believes the principle of disclosing “total potential payment obligations” is essential to improving notice in digital contracts given the multiple and unique “hidden fees” typical to online products and services.</p>	<p>Consultation 2025 Ch. 2 (F), Appendix C, s 2 para 5.</p> <p><i>LCO Final Report</i> at ch. 4.2 and rec 3.</p>

The LCO commends proposed regulations in Consultation 2025 that adopt several recommendations made by the LCO to improve notice and consent, including the proposed requirements that would require upfront and prominent disclosure of certain “key information” of importance to consumers, such as hidden fees and price escalation clauses (refer to Consultation 2025 at Appendix C, and LCO *Final Report* at chapter 4.3 and recommendations 4-6).

The LCO further responds to the consultations questions as below.

Proposals in section F, Purchase-Cost-Plus Leases & Price Escalation Clauses

Proposals in Appendix C

In response to Chapter 2, section F, question 2, the LCO confirms the need for “other contract requirements or pre-disclosure requirements that the ministry should consider for the core set of contract rules to better protect consumers.”

In addition to the proposed “core set” of regulations addressing price escalation clauses (section F), and further to disclosure including a “description of each additional charge or fee that applies or may apply” (Appendix C, s 2 para 5) the LCO recommends clarifying the regulations to also pre-emptively disclose the average “potential cumulative” or “total potential payment obligations” of services contracted through online means. This would align with LCO *Final Report* chapter 4.2 and recommendation 3.

Much like hidden price escalation clauses or drip pricing, many services and products contracted online are presented at a low-cost or no-cost basis to the user during the signup and ToS consent process. Additional costs are then embedded in the product. These costs often flow from a confusing and variable mix of obscured fees which may be imposed to:

- unlock core or essential functions;
- access additional content;
- access cloud services and functionality, often through indefinite subscriptions;
- disable unwanted or nuisance advertisements;
- lock content behind “loot boxes” or other randomized rewards for performing tasks (like watching ads or getting others to sign up); or
- induce subscriptions to unlock or fulfill any of the above.

This mechanism deceives the consumer during the notice and consent process. It also facilitates the coercive practice of “platform lock-in” to get consumers to sign-up, as well as sign-up friends and workplaces to adopt the service as a shared standard. This “network effect” acts as an anti-competitive business model to assert market dominance. Market dominance typically leads to the imposition of greater or additional charges and undercuts the competitiveness of smaller businesses and local innovation.

Consumers are generally unaware of these effects at the time of sign-up, and it greatly undermines the potential for informed notice or meaningful consent.

These contracting practices have attracted huge fines in the EU and USA (see for example LCO *Final Report* at chapter 4.2 and 5.3).

And even with indefinite term contracts that may be canceled at any time, individual consumers act on the “fear of missing out” or are compelled to use a product as so many other friends, businesses, workplaces, and even public institutions and public services require their use as a precondition to access.

In the spirit of improving consumer notice and cost transparency, Consultation 2025 proposes two improvements:

- 1) at Chapter 2 section F, to disclose “price escalation clauses” that show consumers expected costs, and
- 2) to introduce at Appendix C, s. 2 para 5 “A description of each additional charge or fee that applies or may apply.”

With regard to the first proposal, price escalation clauses are an important disclosure. But as mentioned above, they’re only one of the many kinds of potentially hidden charges digital marketplace consumers may be confronted with.

The second disclosure is similarly defined too narrowly. The examples which illustrate proposed regulations at Appendix C s. 2 para 5 suggest disclosing “additional charges or fees” as those akin to delivery and administrative fees “including customs duties, brokerage fees, tax charges, service fees, administrative fees and any termination fees.” To be blunt, these are “old economy” charges that, while important to disclose, no longer constitute the whole story. In the digital age, and as described above, there are many other such hidden or cumulative fees which should also be disclosed up front and in total to consumers.

The LCO made several final recommendations to improve notice, disclosure and consent among consumers (see LCO *Final Report* at chapters 4.3 and 4.6, and LCO recommendations 4-6, 13-15). The provision of “key information” upfront and prominently, including cumulative or “total potential payment obligations” based on the experience of an average user, is widely recognized as an important consumer protection and necessary to providing adequate notice.

In this regard, it is significant that Consultation 2025 at Chapter 6 proposes a regulation that clarifies the requirement to calculate the “total potential payment obligations” to determine the appropriate monetary trigger to activate CPA protections. Clarifying that disclosure of “total potential payment obligations” associated with using a free or low-cost product contracted to online could help bridge what is currently a significant notice gap in consumer protection in the digital marketplace. Consumers

unaware of this cumulative cost or of their rights in relation to it are otherwise bereft of protections that would be afforded under the CPA, including:

- Pre-disclosure requirements;
- Cooling-off periods and consumer remedies including associated cancellation rights; and
- Contract amendment rules.

Another analogous example is the Consultation 2025 proposal for upfront “total potential payment obligations” disclosures of “Purchase-Cost-Plus Leases” rental contracts like those for home water heaters. That Consultation 2025 proposes to define and regulate the “total amount payable by the consumer” in such cases both confirms the consumer rights imperative at play alongside the legislative ability to define and adopt “total potential payment obligations” for fees hidden. This is conceptually identical to what the LCO proposes should protect for online contracts to digital products and services.

Finally, the LCO notes that other leading jurisdictions in Canada are beginning to address this gap. In February 2025, for instance, the government of British Columbia introduced Bill 4, the *Business Practices and Consumer Protection Amendment Act, 2025*.¹⁰ The Bill, in part, would require businesses to provide important contract terms up front, including improved remedies for consumers related to renewal, cancellation, return and refund policies. These provisions are particularly targeted at online transactions.

Accordingly, the LCO recommends that regulations reflect an obligation to provide upfront disclosure of expected or average “cumulative” or “total potential payment obligations” modeling that consumers who regularly use the product are generally likely to pay. For more detailed information, refer to the LCO *Final Report* at chapter 4.2.

6. Consultation 2025, Chapter 3: Contract Amendments and Continuations

Consultation 2025, Chapter 3: Contract Amendments and Continuations			
Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 3 Questions 1-4, 6, 8	The LCO commends the proposed regulation in <i>Consultation 2025</i> that would adopt several recommendations made by the LCO, including the proposed requirement for express consent by default where unilateral amendments have a material impact on the obligations of the consumer or supplier; and where unilateral amendments may be made in “good faith” to correct routine issues (like updated contact information).	For certain kinds of contract <i>Consultation 2025</i> proposes to require express consent where contracts are unilaterally amended with a material impact on the consumer and further proposes to allow unilateral changes for routine matters. Both principles were recommendations made in LCO’s <i>Final Report</i> .	<i>Consultation 2025</i> at ch. 3.A-D. <i>LCO Final Report</i> ch. 4.3 and recs 4-6.
Ch. 3 Questions 1-4, 6, 8	There are also areas where the proposed regulation does not go far enough to protect consumers. For example, the LCO recommends providing consumers with additional information necessary when deciding to accept or decline a contract amendment or continuation, including more “key information,” plain language explanation of the proposed changes (in addition to just the “effects” of it), and protecting vulnerable consumer through age-appropriate design codes, defining the exploitation of “age” an unconscionable practice, and identifying the failure to accommodate as an unconscionable practice.	Consultation 2025 proposes to make a limited amount of information available to consumers when deciding whether to accept or decline a contract amendment. The LCO made extensive recommendations about other information and approaches that would improve on this commitment in our <i>Final Report</i> .	<i>Consultation 2025</i> ch 3.A-D. <i>LCO Final Report</i> ch. 4.3, 5.1-5.4, and recs 4-6, 16-17, 18-20, and 21-23

Consultation 2025, Chapter 3: Contract Amendments and Continuations

Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 3 Question 13	The LCO commends the proposed regulations in <i>Consultation 2025</i> that would adopt several recommendations made by the LCO to improve notice and consent, including the proposed requirement for “A plain language explanation of the effects of the proposed amendments or continuation.”	<p>Consultation 2025 proposes to introduce a “plain language” requirement to explain the effect of contract amendments.</p> <p>The LCO made several recommendations where introduction of a plain language requirement would greatly improve the notice and consent functions of CPA 2023.</p>	<p><i>Consultation 2025</i> at Appendix D.</p> <p><i>LCO Final Report</i> chapter 5.1 and recs 16-17.</p>
Ch. 3 Question 13	The LCO commends the proposed regulations in <i>Consultation 2025</i> that would adopt several recommendations made by the LCO to regulate “dark pattern” software and product design.	<p>“Dark patterns” design software to intentionally frustrate consumer choice, for example, simple cancelation functions.</p> <p><i>Consultation 2025</i> proposes a regulation that would require a supplier to “specify a means for the consumer to respond to the supplier’s notice,” i.e., to cancel the contract.</p>	<p><i>Consultation 2025</i> at various sections of Appendix D.</p> <p><i>LCO Final Report</i> ch. 4.5 and recs 10-12.</p>
Ch. 3 Question 13	The LCO commends the proposed regulation that would establish an affirmative consumer right to exercise “their right to accept, decline or terminate a consumer contract” in a way that is “easy for the consumer to use and involve no cost.” The LCO recommends more detail be added to the regulation.	The LCO’s <i>Final Report</i> highlighted many dark patterns that could be prohibited, including using “call trees” and obscured website functions to make it harder to cancel.	<p>Consultation 2025 at ch 3.G.(ii).</p> <p><i>LCO Final Report</i> ch 4.5 and recs 10-12.</p>

Consultation 2025, Chapter 3: Contract Amendments and Continuations

Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 3 Question 13	The LCO also recommends that regulations also specifically prohibit additional certain “dark pattern” practices designed to obscure and frustrate consumer choice and illustrate these in a non-exhaustive list of such practices.	<p><i>Consultation 2025</i> proposes to define one “dark pattern” that obscures a consumers right to easily cancel contracts.</p> <p>The LCO notes jurisdictions including the EU and US FTC define and enforce a much longer list of “dark pattern” practices and that Ontario should do the same.</p>	<p><i>Consultation 2025</i> at ch 3.G, ch. 9.</p> <p><i>LCO Final Report</i> ch 4.5 and recs 10-12.</p>

The LCO commends the proposed regulations in Consultation 2025 that would adopt several recommendations made by the LCO to improve notice and consent, including the proposed requirement for “A plain language explanation of the effects of the proposed amendments or continuation” (Consultation 2025 at Appendix D; *LCO Final Report* chapter 5.1 and recommendations 16-17).

The LCO further commends the proposed regulation in Consultation 2025 that would adopt several recommendations made by the LCO, including the proposed requirement for express consent by default where unilateral amendments have a material impact on the obligations of the consumer or supplier; and where unilateral amendments may be made in “good faith” to correct routine issues (like updated contact information) (Consultation 2025 at chapter 3.A-D; *LCO Final Report* chapter 4.3 and recommendations 4-6).

The LCO additionally commends the proposed regulations in Consultation 2025 that would adopt several recommendations made by the LCO to regulate “dark pattern” software and product design that obscures or frustrates the awareness and ability of consumers to exercise choice. This includes the proposed regulation that where a consumer may terminate a contract the supplier must “specify a means for the consumer to respond to the supplier’s notice,” i.e., to cancel the contract (at several subsections of Appendix D; *LCO Final Report* chapter 4.5 and recommendations 10-12).

The LCO finally commends the additional proposal at section G (ii) related to another form of “dark pattern” design. This proposal recognizes that “suppliers may create unreasonable barriers for a consumer to contact the supplier when they propose or provide notice to amend or continue a consumer contract” such as a “call tree” or “websites or apps that require a consumer to advance

through excessive screens to exercise their decision.” The proposal would remedy this intentionally frustrated functionality through an affirmative consumer right to exercise “their right to accept, decline or terminate a consumer contract” in a way that is “easy for the consumer to use and involve no cost.”

The LCO further responds to the consultations questions as below.

Proposals in section A, Express Consent as the Default Option Proposals in section B, C and D, Amendments by Notice

In response to questions 1 and 6, the LCO affirms there is “other important information that should be shared with consumers before they decide to accept or decline a contract amendment or continuation” and that there are other factors to better “equip consumers with sufficient information to choose whether to accept the amendment or terminate the contract.”

The regulatory proposals in Chapter 3 and sections A-D would be improved by adopting more of the LCO recommendations targeting improved notice and disclosure. This includes the following recommendations made in the LCO’s *Final Report* (summarized in that report at Appendix A):

- **LCO Recommendations 4-6:** These recommendations would require that unilateral contractual amendments and notices preface and prominently disclose “key information” most relevant to providing consumers with effective notice and meaningful information to consent. Regulations should prescribe such key information, require that it be prominently disclosed at the top of any such notice, be communicated in plain language, and include easily actionable options for consumers to opt-in or out without obstruction or delay. In LCO Final Report at Chapter 4.3, we note this regime has long been operationalized in the European Union under their Unfair Commercial Practices Directive which regulates by listing the kinds of “key information” consumers should receive.
- **LCO Recommendations 16-17:** In Consultation 2025 the proposed “plain language explanation of the effects of the proposed amendments or continuation” should not just explain the “effects” of the “*proposed amendments or continuation*” as this amounts to little more than explaining the *outcome*, which is cancellation. Instead, the proposed regulation should more broadly require “plain language explanation of the proposed amendments and the effects of the proposed amendments or continuation.” This broader approach ensures consumer get a readable explanation of what is being changed and why, before they may more properly weight the effects of the change and whether to continue the contract. This would also include “key information” as described above. More detailed information about this proposal is in LCO *Final Report* at chapter 5.1.
- **LCO Recommendations 18-20 and 21-23:** The LCO also expressed considerable concern for the unique vulnerability of some consumers, including children, older consumers in Ontario, and members of linguistic and cultural communities. Simply stated, these groups have communication barriers that make notice and consent model purely one-sided in favor of the supplier. The LCO makes several recommendations to improve this, and which would be

implemented through regulations. This includes development of age-appropriate design codes (as has been adopted in leading jurisdictions including California); identifying “age” as a prohibited and unconscionable criterion for deceptive and exploitative contracting practices; requiring “plain language” translations of key information; and identifying the failure to accommodate under Ontario’s Human Rights Code as an “unconscionable practice.” More information about this proposal is in LCO *Final Report* at chapters 5.2-5.4.

Crucially, the LCO *Final Report* crystalizes how consumers are burdened by “consent spam” that imposes an impossible contractual burden that most consumers simply can’t or have practical ability to contend with. This desensitizes consumers to contractual changes and renders the notice and consent process *proforma*.

The LCO and consumers understand that in many practical matters online contracting is illusory, including express consent, amendment by notice, and the ability to cancel indefinite contracts. Consumers are in a relationship of dependency with many products. What consumers want are protections from systematically exploitative practices that can harm all consumers.

The LCO’s support for improved express consent and amendment by notice regimes is thus bracketed by the broad need to increase regulatory protections from the variety of well-known exploitative practices that should not be cloaked behind contracts or a monetary threshold that exempts free products from protection. Such practices include dark pattern software design; a new class of unconscionable activity specific to online contracting; mass data harvesting; and other practices. These are all outline in LCO *Final Report* at Chapter 4, and particularly through the following regulatory recommendations:

- **LCO Recommendations 1-2:** targeted regulations specific to issues with online contracts;
- **LCO Recommendation 3:** eliminating the monetary threshold for online consumer contracts;
- **LCO Recommendations 7-9:** prohibiting deceptive, unfair or unconscionable practices associated with online contracting; and
- **LCO Recommendations 10-12:** prohibiting “dark pattern” design practices in online contracting.

Proposals in section G, Overarching Additional Rules

Proposals in section G (ii), Consumer Response to Amendment or Continuation

Proposals in chapter 9, Barriers to Contract Cancellation

The LCO confirms that consumers and small businesses are frequently frustrated by the difficulty in canceling unwanted services and online contracts. The LCO further confirms findings expressed by the MPBSDP in Consultation 2025 that the intentionally obscured ability of consumers to cancel contracts fosters exploitative phenomenon including hidden fees, escalation pricing, drip pricing, and subscription traps (at Chapter 9).

It is therefore commendable that Consultation 2025 aims to address the specific instance of cancellation and proposes to regulate such practices with requirements defining the ease and prominence with which consumers should be able to avail themselves of such functions.

This is, however, part of a broader problem. The obscured or hidden means by which consumer might cancel an online contract or service is just one of over a dozen well known, well studied, and much criticized “dark pattern” design practices that exploit consumers through online contracting. The regulatory proposals in Chapter 3.G, and in Chapter 9, would therefore better and more effectively respond to the needs of consumers and small businesses by adopting more of the LCO recommendations targeting dark pattern design.

The regulations proposed in Consultation 2025 should be amended to reflect LCO recommendations 10-12 made in the LCO’s *Final Report*. These recommendations would require that regulations prohibit additional “dark patterns” designed to obscure and frustrate consumer choice and illustrate these in a non-exhaustive list of such practices. LCO’s *Final Report* highlights how leading organizations enumerate and regulate a list of specific and well-studied dark pattern practices in online contracting, including the Organization for Economic Cooperation and Development (OECD), the European Union, and the US Federal Trade Commission. These practices are regulated in the EU under their *Unfair Commercial Practices Directive* and are subject to guidance published (and enforced under) the *US Federal Trade Commission Act*. Regulated dark pattern practices include consumer hostile design including:

- Tricking consumers into thinking registration is required when it isn’t;
- Inducing consumer to share information about friends, colleagues and other connections when this isn’t necessary (such as “share your address book”);
- Gameification (where certain functions can only be “earned” through repeated use of a platform, often to get more advertising views);
- False hierarchies that prioritize information hostile to the consumer interest over better options they may have;
- Ads disguised as legitimate content to induce views, clicks and shares;
- Nagging, including constant reminders to provide unwanted consent, renew, subscribe, etc.; or
- Sneaking items, fees or warranties into a basket of purchases.

Consumers in Ontario are not protected from exploitative activities like these. The LCO believes consumers in Ontario’s digital marketplace should enjoy the same protections, remedies and reasonable enjoyment of products as is enjoyed by consumers elsewhere.

A more consistent approach across jurisdictions will also make the competitive environment fairer for small businesses. Clarity in Ontario’s regulations will also help good operators who want to compete on providing the best customer experience and not those who profit by exploiting the weaknesses of consumers. Aligning Ontario’s regulations with those elsewhere will also help businesses avoid breaches that risk incurring significant enforcement fines in those jurisdictions.

7. Consultation 2025, Chapter 6: Proposed Application

Consultation 2025, Chapter 6: Proposed Application (Monetary Thresholds and Exemptions)			
Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 6 Question 1	The LCO commends proposed regulations that adopt several recommendations made by the LCO to improve monetary thresholds, including the proposed requirement clarifying that the monetary threshold is met for recurring cumulative payments.	Consultation 2025 would clarify that “cumulative payments” over time could satisfy the \$50 monetary threshold for various consumer protections to kick in. LCO proposed the same.	<i>Consultation 2025</i> at Ch. 6.A. <i>LCO Final Report</i> at ch. 4.2.
Ch. 6 Question 2	The LCO commends the additional proposal to drop the monetary threshold where there is a “right to cancel a contract for late delivery or performance” from a cumulative threshold of \$50 down to \$0.01.	<i>Consultation 2025</i> reflects the LCO’s recommendation that the monetary threshold be eliminated (as British Columbia ash done).	<i>Consultation 2025</i> at Ch. 6.B. <i>LCO Final Report</i> at ch. 4.2.
Ch. 5 Question 2	The LCO recommends that regulations suspend the monetary threshold for “online” services.	Because many online services are provided on a free or low-cost basis, and thus below the monetary threshold of the CPA 2023, consumers do not enjoy the protection of many provisions of the Act like disclosure requirements, cooling-off periods, and the contract amendment rules. Eliminating the monetary threshold would close an unbalanced and inequitable loophole that exempts many of the largest online platforms from observing these consumer rights.	<i>Consultation 2025</i> at Ch. 6.B. <i>LCO Final Report</i> at Ch. 4.2 and rec 3.

The LCO commends proposed regulations in Consultation 2025 that adopt several recommendations made by the LCO to improve monetary thresholds, including the proposed requirement clarifying that the monetary threshold is met for recurring cumulative payments (Consultation 2025 at Ch. 6, LCO *Final Report* at chapter 4.2).

The LCO further commends the additional proposal to drop the monetary threshold where there is a “right to cancel a contract for late delivery or performance” from a cumulative threshold of \$50 down to \$0.01. This evidently acknowledges a need for such protections and remedies to be more universally available to consumers in the digital marketplace (Consultation 2025 at Ch. 6.B).

The LCO further responds to the consultations questions as below.

Proposals at section A, Monetary Threshold Relating to Consumer Contract Rules

In response to question 1, the LCO wishes to submit the following “comments or concerns with the ministry’s proposals for the Part III monetary threshold.”

As clarified in the LCO’s *Final Report*, it is essential that consumers enjoy the full protection of the CPA 2023 and regulations regardless of the monetary threshold (see *Final Report* at Ch. 4.2, and LCO recommendation 3). This is for the simple fact that consumers in the digital marketplace are routinely confronted with a business model rather unique to the digital marketplace. This is where services, software, apps and platforms are freely provided to consumers, while suppliers make their money through business-to-business activities largely invisible to the consumer but hugely consequential to them. Such means include advertising, targeted advertising, targeted and variable maximal pricing, consumer data harvesting and selling, targeted content and messaging, buy and sell services, and other such business-to-business services.

Concurrent with the consumers ignorance of these practices, the negotiating imbalance between consumers, small businesses, and digital marketplace suppliers has rarely ever been more one-sided. In many cases, consumers and small businesses are “locked-in” to using products whether they find the terms of service or conditions under which the business operates objectionable or not. This has obvious downsides for consumers and contributes to an anti-competitive playing field for Ontario’s small businesses. It also rewards businesses for profiting off activities which may be profitable but not in the consumers interest (or indeed, that of society generally).

The consequences are significant. Because of the monetary threshold, consumers of digital goods provided on a low-cost or free basis are bereft of protections that would be afforded under the CPA, including:

- Pre-disclosure requirements, which as discussed above, are essential to informing consumers and meaningful notice and consent;

- Cooling-off periods and consumer remedies including associated cancellation rights; and
- Contract amendment rules, which as discussed above, happen frequently in online contracts and are often one-sided.

Other Canadian jurisdictions including British Columbia do not have a minimum monetary threshold to enjoy the full protection of their consumer protection legislation. Yet the BC Act apparently remains viable and is not generally known to be onerous to small or large businesses alike. Indeed, recent amendments proposed in February 2025 by the BC government aim to further expand access to justice for all consumers by giving consumers the ability to use the Civil Resolution Tribunal to affordably and efficiently seek damages for a breach under their consumer protection legislation.¹¹

Consistent with our analysis and recommendations in our Final Report, the LCO therefore recommends once again that regulations suspend the monetary threshold for “online” services.

It is notable that Consultation 2025 at Chapter 6 makes significant reference to the importance of calculating “total potential payment obligations” as part of the monetary threshold for triggering protections under the CPA. In the alternative, a regulation requiring the disclosure of “total potential payment obligations” associated with using a free or low-cost online product could help bridge what is currently a significant gap in consumer protection in the digital marketplace. Defining the “total potential payment obligations” could also include, for example, the unique means by which online consumers are monetized, the value of which could trigger the necessarily threshold. Estimates have been made, for instance, that each Facebook user is worth roughly around \$450 to the value of Meta’s stock.

The LCO also acknowledges there is also some hesitancy to potentially imposing contractual requirements in routine transactions. As noted in Consultation 2025, there is no interest in imposing contracts on transactions “like buying a magazine from a convenience store... because they are simple “cash and carry” transactions” (at p 10). In this circumstance, the LCO suggests clarifying regulations such that where a contract is voluntarily provided by a supplier (such as for any website, app, platform, etc.) and even in the case of a low-cost or free product, the protections under the CPA apply. This would regulate sophisticated products like apps and platforms and other online contracts who voluntarily rely on imposed contracts while leaving routine “cash and carry” transactions without any additional burden.

8. Consultation 2025, Chapter 7: Increasing Transparency

Consultation 2025, Chapter 7: Increasing Transparency			
Consultation Question #	LCO Response	Explanation	Cross-References
Ch. 7 Questions 1-2	The LCO commends the <i>Consultation 2025</i> proposed regulations that would improve transparency, enforcement and access to justice for consumers, including the proposed regulation to expand the “Consumer Beware List” by including notices of proposal, reporting on investigations under more consumer statutes, and increasing the length of time information is posted.	Consultation 2025 makes an effort to improve access to justice and enforcement by making more investigations public and posting this information for longer period of time. While commending this modest initiative, the LCO notes that “more and better information” is among the weakest forms of access to justice the CPA 2023 could contemplate.	<i>Consultation 2025</i> at Ch. 7.A-C.
Ch. 7 Questions 1-2	The LCO recommends several actions that would meaningfully improve the reach and efficacy of protections and rights under the CPA and as identified in LCO’s Final Report.	The LCO made extensive recommendations to improve access to justice, including recs 24-25 (directing the MPBSDP to do more investigations and issue more fines); rec 31 (establishing an arms-length consumer assistance organization); and recs 26-27 (increasing fines).	<i>Consultation 2025</i> at Ch. 7.A-C. <i>LCO Final Report</i> at recs 24-27 and 31.

The LCO commends the Consultation 2025 proposed regulations that would improve transparency, enforcement and access to justice for consumers, including the proposed regulation to expand the “Consumer Beware List” by including notices of proposal, reporting on investigations under more consumer statutes, and increasing the length of time information is posted (*Consultation 2025* at Ch. 7.A-C).

Providing information to consumers can be helpful. It is also helpful for consumers and businesses alike to more transparently see how regulatory, investigatory, and enforcement actions are being taken on their behalf. The LCO emphasizes this in LCO recommendation 32, which would establish a terms of service registry to make contracts more transparent, easily accessible, available for academic study, and to facilitate enforcement. Other jurisdictions, including California and consumer affairs offices of the US

federal government, have found such registries effective in enhancing consumer protection (see LCO Final Report at chapter 6.6).

But as noted consistently throughout the LCO's *Final Report*, the modernization of consumer protection law relies less on "more and better information" in favor of regulating unfair practices, and in providing more effective access to justice for consumers to live their rights. Consumers are overwhelmed by information. They need more action.

The LCO therefore makes several additional recommendations that would dramatically improve the reach and efficacy of protections and rights under the CPA. These include the following recommendations as they appear in LCO's *Final Report*:

- **LCO Recommendations 24-25:** These recommendations would direct the MPBSDP and Consumer Protection Ontario to increase the use of investigations and systemic investigations, issue more consent agreements (including fines) and issue more proactive interpretive guidance. These proposals are discussed in more detail in LCO *Final Report* at chapter 6.1.
- **LCO Recommendation 31:** This recommendation proposes establishing an Ontario consumer assistance organization, modelled on proposed legislation including Bill 122, *Ontario Consumer Watchdog Act, 2023* and organizations like Quebec's Option Consommateurs. This proposal is detailed in LCO Final Report chapter 6.6.
- **LCO Recommendations 26-27:** The LCO is pleased to see Consultation 2025 clarify that the Ministry will consider "additional regulatory proposals in the future" including "administrative penalties." Whereas transparency measures have some regulatory impact, administrative fines have considerably more. The LCO is aware CPA 2023 increases the maximum fines applicable to certain consumer contracts. However, the LCO recommends a more nuanced approach and the appropriateness of defining this in regulation. See LCO Final Report chapter 6.4.

9. Additional Recommendations for Consideration in Future Regulations

Consultation 2025 is clear that other areas of CPA 2023 may have additional regulations proposed in a subsequent consultation phase.

The LCO understands there is likely to be an opportunity later in 2025 to comment on potential regulatory reforms and other initiatives.

Notwithstanding this opportunity, the LCO would like to make clear the need to prioritize other key recommendations flowing from the LCO's *Final Report*.

These are as follows:

- **Prohibiting Deceptive, Unfair or Unconscionable Online Practices:** CPA 2023 mostly continues the list of deceptive, unfair or unconscionable practices from CPA 2002. As the LCO highlight in *Final Report* chapter 4.4 and as are reflected in recommendations 7-9, this list should be expanded to specifically enumerate a range of false, misleading, or deceptive representations and unconscionable acts that take place in the digital marketplace.
- **Forward looking regulatory proposals as discussed above:** this includes consideration of LCO recommendations introduced above, including:
 - Expanded administrative fines and penalties;
 - Protecting older online consumers;
 - Defining an age-appropriate design code;
 - Increased investigations;
 - Expanded requirements for plain language communication and notices;
 - Prohibiting “dark pattern” designs; and
 - Regulating the delivery of “key information” in various contexts, including online contract formation and amendment.

¹ More information about the LCO's Consumer Protection in the Digital Marketplace project, including our comprehensive public *Consultation Paper* (June 2023) and *Final Report* (May 2024) is available online: <https://www.lco-cdo.org/digitalmarketplace>.

² Organization for Economic Cooperation and Development (OECD), *Dark Commercial Patterns* (October 2022), at 7, online: <https://www.oecd.org/digital/dark-commercial-patterns-44f5e846-en.htm> (OECD Dark Patterns).

³ The OECD identifies 24 distinct forms of “dark pattern” design techniques. See OECD, *Dark Commercial Patterns* (October 2022), at 53, online: <https://www.oecd.org/digital/dark-commercial-patterns-44f5e846-en.htm>.

⁴ See for example CPA s. 13, 14.

⁵ Ministry of Government and Consumer Services, *Improving Ontario's Consumer Protection Act: Strengthening Consumer Protection in Ontario* (December 2020), at 12, online: <https://www.ontariocanada.com/registry/view.do?language=en&postingId=35387>; and Ontario, *Modernizing Consumer Protection in Ontario Strengthening the Consumer Protection Act* (Ministry of Public and Business Service Delivery, February 2023), at 3, online: <https://www.ontariocanada.com/registry/view.do?postingId=43452&language=en>.

⁶ *Improving Ontario's Consumer Protection Act: Strengthening Consumer Protection in Ontario* at 2.

⁷ Business surveys demonstrate “risk to regulatory compliance” as a leading concern among digital platforms. See Bain & Company, “Top 5 Business Challenges: For the First Time Regulatory Compliance Becomes a Top 5 Concern for US Companies” (February 2018), online: <https://twitter.com/bainalerts/status/961214714939363328>. In the Canadian context see Toronto Star, “This is how Canada should deal with Big Tech” (October 13, 2020), online: <https://www.thestar.com/opinion/contributors/2020/10/13/this-is-how-canada-should-deal-with-big-tech.html>.

⁸ Ministry of Public and Business Service Delivery, “Consultation on Modernizing Consumer Protection in Ontario: Strengthening the Consumer Protection Act” Session 2 Business Leaders (March 8, 2023), notes on file with the LCO.

⁹ See generally, European Commission, *The New Consumer Agenda* (2020), online: https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/consumer-strategy_en.

¹⁰ On February 25, 2025, the British Columbia government introduced Bill 4, the *Business Practices and Consumer Protection Amendment Act, 2025* (online: https://www.leg.bc.ca/parliamentary-business/overview/43rd-parliament/1st-session/bills/1st_read/gov04-1.htm). For a summary see Attorney General of British Columbia, “Stronger consumer protections coming for people in BC” (February 25, 2025), online: <https://news.gov.bc.ca/releases/2025AG0013-000139>.

¹¹ See British Columbia, Bill 4, the *Business Practices and Consumer Protection Amendment Act, 2025* (online: https://www.leg.bc.ca/parliamentary-business/overview/43rd-parliament/1st-session/bills/1st_read/gov04-1.htm). For a summary see Attorney General of British Columbia, “Stronger consumer protections coming for people in BC” (February 25, 2025), online: <https://news.gov.bc.ca/releases/2025AG0013-000139>.