

In the Matter of an Appeal by Financeit Canada Inc.
pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3

AND

In the Matter the Decision by Consumer Programs, Service Alberta and Red Tape Reduction to
issue Financeit Canada Inc. a Director's Order pursuant to section 157 of the *Consumer
Protection Act*, RSA 2000, c C-26.3 on September 24, 2024

DECISION OF THE APPEAL BOARD

Appeal Board: Christopher Davison (Chair)

Caren Mueller (Board Member)

Megan Perry (Board Member)

Representatives: Mr. Tommy Gelbman and Saliha Haq: For the Appellant Financeit Canada
Inc. ("Financeit")
Mr. Joseph O'Kurley: For the Respondent, the Director of Fair Trading (as
delegated) ("the Director")

NATURE OF APPEAL

1. On September 24, 2024, the Director imposed an order on Financeit and any employee, representative or agent of Financeit, pursuant to s. 157 of the *Consumer Protection Act*, RSA 2000, c C-26.3 ("*CPA*").
2. In summary, the Director found that Financeit had violated s.31(2) and 35 of the CPA, and ss. 8 and 13 of the *Cost of Credit Disclosure Regulation*, Alta Reg 198/1999 ("*CCDR*"). The Director then ordered Financeit to ensure all written direct sales contracts and loan agreements include the terms required by the CPA and CCDR, and to ensure that within 15 days after a direct sales contract is cancelled, the consumer is refunded all money paid.
3. Financeit has appealed the Director's order.

DECISION

4. For the following reasons, the Appeal Board ("Board") finds:
 - a. A breach of s. 35(l)(ii) of the *CPA* and s. 13(1)(b) of the *CCDR* is not established on a balance of probabilities;
 - b. Breaches of s. 35(l)(ii) of the *CPA* and s. 8(1)(a), s. 8(1)(m) and s. 8(1)(n) of the *CCDR* are established on a balance of probabilities;
 - c. A breach of s. 35(l)(ii) of the *CPA* and s. 8(1)(b) of the *CCDR* is not established on a balance of probabilities;
 - d. A breach of s. 31(2) of the *CPA* is established on a balance of probabilities;
 - e. An order under s. 157 of the *CPA* should be imposed on Financeit Canada Inc. The Appeal Board Confirms the Director's Order dated September 24, 2024.
 - f. No decision is made as to costs.

JURISDICTION AND STANDARD OF REVIEW

5. On September 24, 2024, the Director imposed an order on Financeit pursuant to s. 157 of the *CPA*.
6. On October 23, 2024, Financeit appealed the Director's order pursuant to s. 179(1)(d) of the *CPA*. They provided a letter to the Director which we consider to be a Notice of Appeal as required under s. 4 of the *Appeal Board Regulation*, Alta Reg 195/1999 ("*APBR*").
7. On November 14, 2024, the Board was appointed pursuant to s. 179(2) of the *CPA*.
8. On March 14, 2025, the Board provided a Notice of Hearing to the parties, pursuant to s. 6 of the *APBR*.
9. A hearing was held on April 25, 2025 via Zoom videoconference.
10. At the request of the parties, the Board allowed the parties to provide written submissions after the hearing. The Director provided submissions on April 30, 2025. Financeit provided response submissions on May 6, 2025. The Director provided reply submissions on May 9, 2025. On May 13, 2025, Financeit requested the opportunity to also provide reply

submissions. The Board allowed further reply submissions, which Financeit provided May 16, 2025.

11. This appeal is a new trial of the issues that resulted in the Director's order (s. 179(8) of the *CPA*). This means, at all times, the onus is on the Director to prove these allegations. The Board will make all findings of fact regarding these issues based on the evidence before us; for our purposes, the Director's findings are nothing more than allegations.
12. The Board may vary, quash, or confirm the Director's order (s. 179(6) of the *CPA*).

PRELIMINARY MATTERS

13. During the hearing, Financeit entered two exhibits. After reviewing the parties' written submissions, the Board noted they both referred to documents that were not in evidence. After seeking further submissions, on May 15, 2025, the Board entered into evidence eight additional exhibits. Financeit's exhibits were then labelled A1 to A10 as described in Appendix C of Financeit's written submissions.
14. In their submissions, the Director alleged breaches of ss. 35(l)(ii), 62(1), 63(1)(b), 77 and 84 of the *CPA*, as well as ss. 8 and 13 of the *CCDR*.
15. As this is a new trial of the issues that lead the Director's order (s. 179(8) of the *CPA*), the Board will limit its determinations to breaches alleged on the Director's order i.e. s.31(2) and 35 of the *CPA*, and s. 8 and 13 of the *CCDR*.
16. We also note that if a person breaches s. 35(l)(ii) of the *CPA* and s. 8 of the *CCDR*, they are by necessity also breaching ss. 62(1) and 77 of the *CPA*. Similarly, if a person breaches s. 35(l)(ii) of the *CPA* and s. 13 of the *CCDR*, they are by necessity also breaching ss. 62(1) and 84 of the *CPA*. It is therefore unnecessary and redundant to consider all these breaches.
17. We find that s. 63(1)(b) of the *CPA* is not a section which describes a breach per se, but rather describes a standard of sufficiency for all disclosure required under Part 9 of the *CPA*.

ISSUES

18. Issue (1) Does the evidence establish a breach of s. 35(l)(ii) of the *CPA* and s. 13 of the *CCDR*?

19. Issue (2) Does the evidence establish a breach of s. 35(l)(ii) of the *CPA* and s. 8 of the *CCDR*?
20. Issue (3) Does the evidence establish a breach of s. 31(2) of the *CPA*?
21. Issue (4) Should an order under s. 157 of the *CPA* be imposed on Financeit?

ANALYSIS – Issues 1 and 2

Issue (1) Does the evidence establish a breach of s. 35(l)(ii) of the *CPA* and s. 13 of the *CCDR*?

Issue (2) Does the evidence establish a breach of s. 35(l)(ii) of the *CPA* and s. 8 of the *CCDR*?

Relevant Legislation

22. Section 35(l)(ii) states that all written direct sales contracts which extend credit must include a disclosure statement required under Part 9 of the *CPA*. A “direct sales contract” is defined as a consumer transaction that is a contract for services which exceed \$25 and takes place somewhere other than the supplier’s place of business. “Services” are defined to include credit agreements (s. 24(a.1) of the *CPA*; s. 2 of the *Direct Sales Cancellation and Exemption Regulation*, Alta Reg 191/1999; s. 1(1)(k)(iv) of the *CPA*).
23. Direct sales contract requirements apply to all contracts where the supplier or consumer is a resident of Alberta, or where the offer or acceptance is in Alberta. A “supplier” can be a corporation (s. 25(1)(a) and (b) of the *CPA*; s. 1(1)(l) of the *CPA*; s. 28(1)(nn) of the *Interpretation Act*, RSA 2000, c I-8).
24. Disclosure under Part 9 of the *CPA* includes an initial disclosure statement. The initial disclosure statement for open and fixed credit must disclose the information prescribed by the regulations. The initial disclosure statement for any credit agreement other than a mortgage must be provided to the borrower before they enter into the credit agreement (s. 77 and 84 of the *CPA*; s. 64(1)(b) of the *CPA*).
25. Section 13(1)(b) of the *CCDR* states that the initial disclosure statement for an open credit agreement must disclose the minimum periodic payment or the method of determining the minimum periodic payment.

26. Section 8(1)(a) of the *CCDR* states that the initial disclosure statement for a fixed credit agreement must disclose, for a credit sale, a description of the product. "Product" is defined as a good or service but does not include the extension of credit (s. 58(dd) of the *CPA*).
27. Section 8(1)(b) of the *CCDR* states that the initial disclosure statement for a fixed credit agreement must disclose the outstanding balance as of the effective date of the disclosure statement, accounting for every payment made by the borrower on or before the effective date.
28. Section 8(1)(m) of the *CCDR* states that the initial disclosure statement for a fixed credit agreement must disclose the total of all payments to be made in connection with the credit agreement.
29. Section 8(1)(n) of the *CCDR* states that the initial disclosure statement for a fixed credit agreement must disclose the total cost of credit.
30. Where disclosure is required under the *CCDR*, disclosure may be based on an estimate or assumption, if that estimate or assumption is reasonable and clearly identified as an estimate or assumption (s. 3(b) of the *CCDR*).
31. All required disclosure must express the required information clearly, concisely, in a logical order and in a manner that is likely to bring the information to the borrower's attention (s. 63(1)(b) of the *CPA*).

Key Submissions

32. The Director provided the following key submissions:
 - a. The credit agreement between Mr. Wibe and Financeit was subject to the *CCDR*. It is clearly a credit agreement. It did not meet the disclosure requirements. The evidence shows the agreement contains both open and fixed credit elements.
 - b. Financeit breached s. 13(1)(b) of the *CCDR* as the minimum payment section is inconsistent with monthly payments listed elsewhere in the agreement, and inconsistent with what was actually charged to Mr. Wibe. The numbers provided do not meet the requirements of s. 63(1)(b) of the *CPA* as they are not expressed

clearly, concisely, in a logical order and in a manner that is likely to bring the information to the borrower's attention.

- c. Financeit breached s. 8(1)(a) of the *CCDR*. The agreement did not contain a description of the product. It only noted that a description would be provided after the credit agreement was entered into.
- d. Financeit breached s. 8(1)(b) of the *CCDR*. The disclosure statement contained only an estimated amount and did not account for payments made before February 16, 2024.
- e. Financeit breached s. 8(1)(m) and s. 8(1)(n) of the *CCDR*. The disclosure contained only an estimate which would have been unclear to a reasonable consumer as to how that estimate was reached. The "total obligation" exceeded the sum of the "outstanding balance at end of term" plus the "total cost of credit."
- f. Financeit's witness Ms. Mendez and the exhibits establish that Financeit's position is they meet the requirements of the *CCDR* and *CPA* by considering each draw from the credit line a separate transaction. However, the required disclosure is only provided at the time of the release of funds and not before signing the agreement.

33. Financeit provided the following key submissions:

- a. A review of the *CPA*, *CCDR* and loan documents shows that Financeit is in full compliance.
- b. Financeit did not breach section 13(1)(b) of the *CCDR* as the method to calculate the minimum payment was clearly described. The inconsistencies described by the Director relate to the fixed credit portion of the loan and so are not relevant.
- c. Financeit did not breach s. 8(1)(a) of the *CCDR* as the loan agreement identifies that the credit limit is for purchases with the merchant Fluent Solar Ltd. ("the merchant"), and states the loan will be used to purchase installation services and related goods for a home renovation project. Taken together, these terms clearly identify that the loan is intended to finance goods and services in connection with solar panel installation. Additionally, prior to release of funds from the credit limit, the exact goods are described; the Director ignores this disclosure.

- d. It is unreasonable to contend that the consumer Mr. Wibe was unaware of the product being financed. The purpose of s. 8(1)(a) of the *CCDR* is to ensure consumers are informed about the nature of the loan or service being financed. The Director failed to establish that Mr. Wibe did not have that information.
- e. Moreover, the Director sought direction in the past from the Director regarding compliance with s. 8(1)(a) of the *CCDR* and received direction, which it now follows. For the Director to now take the position that Financeit is in contravention without notice is unfair.
- f. Financeit did not breach s. 8(1)(b) of the *CCDR* as the outstanding loan balance at the time the contract was signed was \$0, and the disclosure statement included this fact.
- g. Financeit did not breach s. 8(1)(m) and s. 8(1)(n) of the *CCDR* as estimates are acceptable under s. 3 of the *CCDR*. That the estimate used was the total possible loan balance is a cautious and reasonable approach. If the estimate is too low it would be misleading to the consumer. For the Director's argument to be accepted, the Board would have to find that the consumer is worse off for the estimates used.

Board's Decision

- 34. In summary, the Board finds that, on a balance of probabilities, the agreement between Financeit and Mr. Wibe was a written direct sales contract and therefore s. 35(l)(ii) of the *CPA* applied to it. As this contract was for both open and fixed credit, both s. 8 and s. 13 of the *CCDR* applied. We find that Financeit did not breach s. 13(1)(b) of the *CCDR*. We find that they breached ss. 8(1)(a), 8(1)(m) and 8(1)(n) of the *CCDR*. We find they did not breach s. 8(1)(b) of the *CCDR*.
- 35. The Board finds that, on a balance of probabilities, the credit agreement between Financeit and Mr. Wibe was a written direct sales contract. As the credit agreement was a direct sales contract, s. 35(l)(ii) of the *CPA* applied to it. As the credit agreement was for both open and fixed credit, both s. 8 and s. 13 of the *CCDR* applied. We base these findings on the totality of the evidence including the following evidence and reasoning:

- a. The Director called Ms. Nicki Grant from the consumer investigations unit ("CIU") as a witness. She testified that CIU received a complaint from Mr. Wibe who had entered into an agreement with the merchant for solar panel installation. Mr. Wibe had entered into an agreement with Financeit for credit regarding this installation. She presented documents to the Board regarding Mr. Wibe's transaction.
- b. While Ms. Grant's investigation report states there were 27 total complaints from consumers regarding similar transactions with the merchant and Financeit, she testified 17 complaints were transferred to Edmonton CIU, which she never reviewed. She testified that she reviewed the 10 remaining complaints in detail. However, the only documents provided to the Board were regarding the complaint involving Mr. Wibe. No documents were provided regarding the other complaints.
- c. Ms. Grant testified that Mr. Wibe told the CIU that the merchant's salesperson attended to Mr. Wibe's home which resulted on Mr. Wibe enter into several contracts. These contracts were signed at Mr. Wibe's home in Alberta.
- d. Exhibit D3 is the purchase agreement between the merchant and Mr. Wibe. It showed that Mr. Wibe purchased a solar energy system and installation from the merchant on August 14, 2023. The total purchase price was \$35,850.00.
- e. Financeit called Ms. Clara Mendez, Vice President of operations for Financeit, as a witness. Ms. Mendez described the agreement entered into by Mr. Wibe as multi-stage financing. This agreement is of a type provided by Financeit where a consumer initially applies directly to Financeit for credit, using electronic means. The consumer then qualifies for the credit which is communicated to the consumer using electronic means. The consumer then enters into a credit agreement with Financeit, also using electronic means; the credit agreement provides a credit line to the consumer. Funds from the credit line are released by the consumer to a merchant during a six-month time period. At the end of six months, the balance on the credit line converts to a fixed loan. The multi-stage finance agreement therefore includes both open and fixed credit portions; it is an agreement for both.

- f. Exhibit D4 is the credit agreement between Financeit and Mr. Wibe ("credit agreement"). It conforms to the testimony of Ms. Mendez in terms of describing the loan agreement, the credit line, and then includes a disclosure statement for fixed credit near the end of the agreement. The initial credit line extended to Mr. Wibe was \$40,000. The credit agreement was signed by Mr. Wibe on August 14, 2023.
 - g. Exhibit D2 shows that Financeit is a federal corporation with a head office in Toronto.
 - h. As reviewed above, a direct sales contract is any contract for credit which is for more than \$25, is signed in Alberta, and is not signed at the supplier's place of business. Section 35 of the *CPA* applies to all direct sales contracts.
 - i. The Board finds that the credit agreement between Mr. Wibe and Financeit is a written direct sales contract under the *CPA*. The evidence reviewed above establishes the credit agreement was for credit services of over \$25. Acceptance of the credit agreement was in Alberta which is not at Financeit's place of business in Toronto. As a written direct sales contract where credit was extended, s. 35(1)(ii) of the *CPA* therefore applied to the credit agreement.
 - j. The Board finds that since s. 35(1)(ii) of the *CPA* applied to the credit agreement, credit disclosures were required. As the contract extended both open and fixed credit to Mr. Wibe, the initial credit disclosures under s. 8 and s. 13 of the *CCDR* were required.
 - k. As reviewed above, per s. 64(1)(b) of the *CPA*, the initial disclosures were required to have been provided to the Mr. Wibe before he entered into the credit agreement.
36. The Board finds that, on a balance of probabilities, Financeit did not breach s. 13(1)(b) of the *CCDR*. We base this finding on the totality of the evidence including the following evidence and reasoning:
- a. Page 2 of the credit agreement is entitled "Open Credit for the Purchase Period." It contains a table in which one row is labelled "Minimum Payment." It states "Your minimum regular payment will be **0.40%** of any purchases you made and any

administrative fees charged... Your minimum payment frequency is monthly.” The Board notes 0.40% was bolded on the actual agreement.

- b. Exhibit A2 shows an “authorization to release funds”. This is a document that was generated when Mr. Wibe released funds from his line of credit to the merchant. He released \$14,340 on August 16, 2023. Under “next minimum payment” it states \$57.96.
- c. Exhibit D15 shows the actual amounts that were withdrawn from Mr. Wibe’s account. On September 18, 2023, \$57.96 was withdrawn from his account.
- d. As reviewed above, s. 13(1)(b) of the *CCDR* requires the initial disclosure statement for open credit to disclose the minimum periodic payment or the method of determining the minimum periodic payment.
- e. The Board finds that the credit agreement described a method for calculating Mr. Wibe’s open credit minimum payment. We find it is described clearly, concisely and in a logical order as is required by s. 63(1)(b) of the *CPA*. We also find the use of bolded numbers means it is likely this number was brought to Mr. Wibe’s attention, as is also required under s. 63(1)(b).
- f. Accordingly, the Board finds that Financeit did not breach s. 13(1)(b) of the *CCDR*.
- g. The Director argued that the minimum payment shown is inconsistent with other minimum payments described in the agreement. We do not find this a relevant consideration. The other minimum payments the Director referred to were for the fixed credit portion of the agreement, and we do not find those would be confusing to the consumer or render the disclosure unclear.
- h. The Director argued that the minimum payment actually charged to Mr. Wibe was inconsistent with the method for calculation described in the agreement. We disagree. The amount charged to Mr. Wibe of \$57.96 is approximately 0.40% of the \$14,340 that was released to the merchant. We also note that the payment was withdrawn from Mr. Wibe’s account approximately one month after the funds were released. All of this is consistent with the initial disclosure provided to him on the credit agreement.

37. The Board finds that, on a balance of probabilities, Financeit breached s. 8(1)(a) of the *CCDR*. We base this finding on the totality of the evidence including the following evidence and reasoning:

- a. The credit agreement has a section from pages 12 to 14 entitled “Initial Disclosure Statement for Fixed Credit.” On page 14, under “Description of Goods/Services purchased” it states “A description of the Goods/Services you purchase will be provided in the Authorization to Release Funds.” Mr. Wibe signed this agreement on August 14, 2023.
- b. Exhibit A2 shows an “authorization to release funds”. This is a document that was generated when Mr. Wibe released funds from his line of credit to the merchant on August 16, 2023. Under “request description” it states, “Solar panel installation equipment.”
- c. Ms. Mendez agreed in testimony that the authorization to release funds was provided to Mr. Wibe after the credit agreement was signed.
- d. As reviewed above, s. 8(1)(a) of the *CCDR* requires that the initial disclosure statement for fixed credit must disclose a description of the product. The product in this case is the goods or services purchased by the release of funds, and not the credit itself.
- e. The Board finds that Financeit did not provide a description of the product as required by s. 8(1)(a) of the *CCDR* in the credit agreement. The credit agreement appears to explicitly decline to provide a description and instead states it will be provided later. This cannot meet the requirement for initial disclosure to be provided before the agreement is entered into. The Board notes that s. 3 of the *CCDR* allows disclosure to be based on an estimate or assumption, if that estimate or assumption is reasonable and clearly identified. In this case, there was no attempt to make either an estimate or state an assumption. We therefore find that Financeit has breached s. 8(1)(a) of the *CCDR*.
- f. Financeit argued that several terms of the agreement, taken together, inform the consumer sufficiently of the product. We disagree. The requirements of an initial

disclosure statement cannot be met by information dispersed throughout the contract which the consumer must combine together. This would not meet the requirement that disclosure is clear, concise, logical and expressed in a manner likely to be brought to the borrower's attention. The disclosure would especially be unclear if the consumer had to use information located outside of the section labelled "Initial Disclosure Statement for Fixed Credit."

- g. Financeit argued that the exact description of goods was provided to Mr. Wibe when funds were released to the merchant. We note that since those disclosures were made after the credit agreement was signed, they cannot be considered an initial disclosure that might satisfy the requirements of s. 8 of the *CCDR*.
- h. Financeit argued that it is unreasonable to contend that Mr. Wibe was unaware of the product being financed; the Director failed to establish that Mr. Wibe did not have that information. The Board notes that what Mr. Wibe knew is not a relevant consideration in determining whether Financeit met their initial disclosure obligation under s. 8 of the *CCDR*. The issue is not whether the consumer otherwise had this information. The law is clear that the disclosure statement needs to explicitly provide this information.
- i. Financeit argued that they consulted with the Director regarding compliance with s. 8(1)(a) of the *CCDR* and received direction, which they now follow. The Board notes that exhibit A5 shows emails between Financeit and the Director from 2019 where the Director advised, "There's no expectation that the Financeit contract should spell out the specifics of the renovation. From the sound of it, the loan funds are going directly to the dealer, so there should be a disclosure line with respect to the nature of the product being financed, but it wouldn't need to get into any specifics. A broad approach [sic] the lines of '\$25,000 in financing for services outlined in contract with <DEALER>' or '\$25,000 financing for <DEALER> contract 12345' would likely cover the requirements of ... s. 8 (1)(a) of Cost of Credit Disclosure Reg."
- j. The Board finds that Financeit did not follow this direction. We find that Financeit cannot rely on a defence of due diligence unless they take all reasonable steps to

avoid a breach (*R. v. Sault Ste. Marie*, 1978 Canll 11 (SCC), [1978] 2 SCR 1299 at p. 1325-1326). Reasonable steps would include actually following specific direction on how to avoid the breach.

38. The Board finds that, on a balance of probabilities, Financeit did not breach s. 8(1)(b) of the *CCDR*. We base this finding on the totality of the evidence including the following evidence and reasoning:

- a. As reviewed above, s. 8(1)(b) of the *CCDR* requires that the initial disclosure statement for fixed credit must disclose the outstanding balance at the time of the disclosure statement.
- b. The credit agreement states on page 13 under “outstanding balance as of the date of this statement” a total of \$0.
- c. The Board finds this is an accurate description of the outstanding balance at the time of the disclosure statement. At the time Mr. Wibe signed the credit agreement, he had qualified for a line of credit that had not been used yet. We note that the \$0 amount indicated was not labelled as an estimate, and we note it was not contradicted elsewhere in the agreement.
- d. We therefore find that Financeit did not breach s. 8(1)(b) of the *CCDR*.
- e. The Director argued that the disclosures on February 16, 2024 did not account for the payments made up until that point by Mr. Wibe. We note this is not a relevant consideration regarding an initial disclosure requirement under s. 8 of the *CCDR* as the Board may only consider the disclosures made at the time of the signing of the credit agreement. February 16, 2024 is considerable after August 14, 2023.

39. The Board finds that, on a balance of probabilities, Financeit breached ss. 8(1)(m) and 8(1)(n) of the *CCDR*. We base this finding on the totality of the evidence including the following evidence and reasoning:

- a. Page 1 of the credit agreement states, “The merchant has provided us with an estimate for your project of \$35,850.00. Although you are credit approved up to \$40,000.00, if you only spend the estimated amount, your final loan details will be as described in the table below. If you spend more, the information will change...”

- b. In a later section of the agreement entitled "Initial Disclosure Statement for Fixed Credit" on page 12 under "principal amount" it states "\$40,149.00 (estimated)"; it further states "This is the amount you have drawn on your line of credit..." On page 13 under "outstanding balance at the end of the purchase period" it states "\$40,000.00 (estimated)."
- c. On page 14 under "total obligation" the credit agreement states "\$65,373.95 (estimated)" and under "total cost of credit" it states "\$25,373.95 (estimated)."
- d. As reviewed above, ss. 8(1)(m) and s. 8(1)(n) of the *CCDR* require that the initial disclosure statement for a fixed credit agreement must disclose the total of all payments to be made in connection with the credit agreement and must disclose the total cost of credit.
- e. The Board acknowledges that the credit agreement has disclosed to Mr. Wibe a dollar amount under total obligation and a dollar amount under total cost of credit, and both are clearly labelled as an estimate.
- f. However, we note that under s. 3 of the *CCDR*, Financeit may only rely upon an estimate if that estimate is reasonable. We also note that under s. 63(1)(b) of the *CPA* that the disclosure must be clear and logical. We find that a fair, large and liberal interpretation of these sections means that Financeit may not simply provide any number that is labelled an estimate and be considered in compliance. Regard must be had for the legislative intent found in the preamble to the *CPA* which states that all consumers have "the right to be properly informed about products and transactions." The Board finds that clear, logical and reasonable disclosure requires that these estimated numbers make sense in the context of the entire agreement.
- g. In this case, the credit agreement provides three different estimated total loan amounts upon which these numbers may have been based. We could not determine which was used or why one number was preferred over the others. We find that, in the context of the total agreement and various disclosures, that the disclosure provided was neither clear nor logical. We find that the estimates used were not reasonable as we could not determine the basis upon which they were

made, why one value was used over another, or which estimated value was used in their calculations. We therefore find that Financeit breached both ss. 8(1)(m) and s. 8(1)(n) of the *CCDR*.

- h. We note that if the agreement had a consistent and explained basis for estimates, and if there was better delineation between open and fixed credit initial disclosure in the agreement, we may have found the disclosure to be clear, logical and reasonable.
- i. Financeit argued that the Board will have to find the customer is worse off for the estimates used in order to find a breach. We disagree that an explicit finding that the consumer is worse off is required by law in order to find a breach of these sections. In any event, we do find that any consumer would be left improperly informed by these disclosures. While we agree that the *CCDR* does not prescribe any particular required basis for estimating, the estimates must reasonable and consistent. We do not have a reasonable or consistent basis for estimates within the credit agreement between Financeit and Mr. Wibe, and therefore there are breaches.

CONCLUSION – Issues 1 and 2

- 40. A breach of s. 35(l)(ii) of the *CPA* and s. 13(1)(b) of the *CCDR* is not established on a balance of probabilities.
- 41. Breaches of s. 35(l)(ii) of the *CPA* and s. 8(1)(a), s. 8(1)(m) and s. 8(1)(n) of the *CCDR* are established on a balance of probabilities.
- 42. A breach of s. 35(l)(ii) of the *CPA* and s. 8(1)(b) of the *CCDR* is not established on a balance of probabilities.

ANALYSIS – Issue 3

Issue (3) Does the evidence establish a breach of s. 31(2) of the *CPA*?

Relevant Legislation

- 43. Section 31(2) of the *CPA* states that within 15 days after a direct sales contract is cancelled, the supplier must refund all money paid to the consumer.
- 44. A consumer may, without any reason, cancel a direct sales contract until 10 days after the consumer receives a copy of the written sales contract (s. 27 of the *CPA*).
- 45. If a direct sales contract violates s. 35 of the *CPA*, a consumer may cancel the contract within one year from the date the contract was entered into (s. 28(2)(b) of the *CPA*).
- 46. A direct sales contract is cancelled upon the giving of notice of cancellation to the supplier. A notice of cancellation may be given via any means by which a consumer can provide evidence of the date that the consumer cancelled the direct sales contract (s. 29 of the *CPA*).

Key Submissions

- 47. The Director provided the following key submissions:
 - a. The credit agreement between Mr. Wibe and Financeit was arranged by the merchant and contingent on a direct sales contract with the merchant. Therefore, per s. 30(3), when Mr. Wibe cancelled the direct sales contract with the merchant, he also cancelled the credit contract with Financeit.
 - b. The Director made substantial additional submissions regarding s. 30(3) of the *CPA*.
 - c. As the contract between Mr. Wibe and Financeit violated s. 35 of the *CPA*, he had up to one year to cancel the contract.
 - d. Mr. Wibe contacted Financeit via email on January 29, 2024 to unequivocally cancelled the credit contract.
 - e. Financeit contacted Mr. Wibe on February 23, 2024 and advised him that he had to go through the merchant to cancel the credit agreement.
 - f. Financeit's witness Ms. Mendez admitted in testimony that Mr. Wibe had not been refunded any money prior to December 2024.
 - g. This is a violation of s. 31(2) of the *CPA*.
- 48. Financeit provided the following key submissions:

- a. If the loan agreement complies with s. 35 of the *CPA*, the Director's argument must fail and Financeit did not breach s. 31(2) of the *CPA*.
- b. Mr. Wibe cancelled outside of the 10-day statutory limit.
- c. Financeit made substantial response and reply submissions regarding s. 30(3) of the *CPA*.

Board's Decision

49. The Board finds that, on a balance of probabilities, Financeit breached s. 31(2) of the *CPA*. We base this finding on the totality of the evidence including the following evidence and reasoning:

- a. The credit agreement between Mr. Wibe and Financeit was signed August 14, 2023.
- b. Exhibit A1 shows that on August 16, 2023, Mr. Wibe authorized a release of \$14,340 to the merchant. There was also a \$149 administration fee.
- c. Exhibit D15 shows the actual amounts that were withdrawn from Mr. Wibe's account. Funds were withdrawn on September 18, October 16 and December 18, 2023, and on January 16, February 16, and June 17, 2024.
- d. Exhibit D9 shows that on January 29, 2024, Mr. Wibe emailed Financeit directly and cancelled the credit agreement.
- e. Exhibit D13 shows that on February 23, 2024, Financeit responded to Mr. Wibe and advised him to contact the merchant for a refund.
- f. Ms. Mendez testified that of the ten complaints reviewed by Ms. Grant, one complaint had been withdrawn, and Financeit had refunded all money for the remaining nine. She testified that Financeit provided refunds to all the consumers including Mr. Wibe as of approximately December 2024.
- g. As reviewed above, s. 31(2) of the *CPA* states that within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all the money paid. If the direct sales contract violates s. 35 of the *CPA*, the customer has one year to cancel the contract. The contract may be cancelled by any means that shows a date upon which the cancellation was communicated to the supplier.

- h. As we have found above that Financeit violated s. 35 of the *CPA* via breaches of s. 8(1)(a), s. 8(1)(m) and s. 8(1)(n) of the *CCDR*, Mr. Wibe had one year to cancel the credit agreement. We find that he did cancel the contract via email directly to Financeit on January 29, 2024, and that was within one year of signing the credit agreement on August 14, 2023. We find therefore, per s. 31(2) of the *CPA*, Financeit was required to refund all of the money Mr. Wibe paid within 15 days. We find that Financeit not only did not refund his money as was required within 15 days, they again withdrew money from his account 3.5 months later, and did not fully refund his money for ten months. We therefore find that Financeit breached s. 31(2) of the *CPA*.
- i. We note that both parties have made substantial submissions regarding s. 30(3) of the *CPA* and its impact on the breaches. As we have found that the credit agreement was a direct sales contract between Mr. Wibe and Financeit, and as we have found the breaches of the *CPA* and *CCDR* based on deficiencies within the disclosure made by Financeit towards Mr. Wibe, and as we have found a breach of s. 31(2) based on Mr. Wibe's direct interactions with Financeit, it is unnecessary to consider the application of s. 30(3) of the *CPA*. Section 30(3) of the *CPA* is relevant to the relationship between the merchant, Financeit and Mr. Wibe; however, since we have not been required to consider the role of the merchant to any substantive extent in any of our previous analysis, it is unnecessary to make any findings regarding s. 30(3) of the *CPA*.

CONCLUSION – Issue 3

50. A breach of s. 31(2) of the *CPA* is established on a balance of probabilities.

ANALYSIS – Issue 4

Issue (4) Should an order under s. 157 of the *CPA* be imposed on Financeit?

Relevant Legislation

51. Section 157 of the *CPA* states that if a person has contravened the *CPA* or any of its regulations, the Director may issue an order regarding that person. The order may direct the person to stop engaging in anything described in the order, or to take any measure specified in the order.
52. A person includes a corporation (s. 28(1)(nn) of the *Interpretation Act*).

Key Submissions

53. The Director provided the following key submissions:
- a. Given Financeit's breaches, it is reasonable to order Financeit to ensure that all written direct sales contracts and loan agreements comply with the requirements of the *CPA* and *CCDR*. These terms relate to their breaches and require them to comply with legislation they are already required to comply with.
 - b. Ms. Grant testified that Financeit had been subject to several other investigations and complaints. However, the breaches established regarding the transactions with Mr. Wibe alone are sufficient to justify the Director's order.
 - c. The preamble of the *CPA* recognizes that consumers have the right to be properly informed about products and transactions. For the appellant to not comply with those disclosure requirements and contract cancellation obligations is contrary to the public interest.
 - d. There is indication in the evidence of systemic non-compliance with the *CPA* by Financeit.
 - e. At the hearing, Financeit referred to the Director's order as an extraordinary measure, however there were no new or onerous practical obligations imposed on Financeit. The order simply adds more enforcement consequences if there is continued non-compliance.
54. Financeit provided the following key submissions:
- a. The Director incorrectly referred to Financeit's loan product as complicated and novel. It is not. The structure is not complex and resembles a line of credit.

- b. The Director's order was "interim" and based on an incomplete and inadequate evidentiary record. There are investigations into Financeit that are still ongoing.
- c. On its face, the Director's order is irrational, and unjustified. The Director engaged in an irrational internal reasoning process and made a decision while failing to engage with important facts and arguments.
- d. The loan agreement in question had been vetted and approved by the Director in a 2020 appeal. Also, there was no communication with Financeit prior to the order. Financeit was deprived of the right to respond to the findings of misconduct against it. This appeal process is insufficient to address the unfairness of the Director's process in imposing the order.
- e. The Director is not only asking the Board to affirm the original order, but the manner in which it was made. The question for the Board is whether this record was derived from a procedurally fair process that resulted in sufficient, robust and credible evidence for it to affirm the order. If even one of these criteria is absent, then the Board cannot be satisfied that it has the evidence it needs to affirm the order. If the Board affirms the order, they will have sanctioned the unfair process that led to this appeal.

Board's Decision

55. The Board finds that, on a balance of probabilities, a s. 157 order should be imposed on Financeit. We confirm the Director's order dated September 24, 2024. We base these findings on the totality of the evidence including the following evidence and reasoning:
- a. Ms. Grant testified that all ten cases she reviewed were a standard form direct sales contract between Financeit and different consumers. These agreements were all a nearly identical standard form agreement with different numbers and names filled out. The agreement entered into by Mr. Wibe was the same form agreement.
 - b. Ms. Mendez testified that Mr. Wibe entered into their multi-stage financing agreement, which is a type of consumer credit product that Financeit offers.
 - c. Money was withdrawn by Financeit after Mr. Wibe properly cancelled the agreement, and they did not refund his money for ten months.

- d. The Board finds that Financeit's breaches of s. 35 of the *CPA* and s. 8 of the *CCDR* above are all regarding initial disclosure of a standard form agreement drafted and used with multiple consumers. While we do not know exactly how many consumers and we have only been presented with evidence of a single transaction with a single consumer Mr. Wibe, the evidence reviewed above establishes that this form agreement has been used by multiple consumers. We find there is a public interest in ensuring Financeit's compliance beyond this single transaction. We note that Financeit is in control of the drafting and use of this form contract. We also note that Financeit is a large firm that operates throughout Canada.
- e. We find that the breaches of s. 35 of the *CPA* and s. 8 of the *CCDR* are somewhat serious. Financeit has chosen to create a relatively complex consumer credit product that combines open and closed credit such that most of the initial disclosure must be based on estimates when the consumer enters into the agreement. We find it is complicated for an average consumer. We find Financeit has not taken seriously their obligation to inform consumers clearly, concisely and logically of the details of their product. We do not find the disclosure requirements of part 9 of the *CPA* are particularly onerous on Financeit yet they have failed to properly fulfil those requirements.
- f. We find that the breach of s. 31(2) is more concerning as Financeit received notice from the consumer and did not appear to investigate their obligation but rather forwarded Mr. Wibe back to the merchant. They also continued to withdraw funds from the consumer's account and took an unacceptably long ten months to provide the consumer with the refund he deserved.
- g. As reviewed above, s. 157 of the *CPA* states that if a person breaches the *CPA* or any of its regulations, the Director may impose an order on that person. The order may direct that person to stop engaging in anything described in the order.
- h. We agree with the Director that to impose an order under s. 157 on the terms of the previous order are reasonable given the circumstances. Financeit has been noncompliant so an order directing their compliance is just and fitting. We do not

find this order to be too onerous given the directions of the order bind Financeit to follow legislative obligations that it already has, while at the same time highlighting the specific areas of previous noncompliance that they must improve.

- i. The Board confirms the Director's order as follows:

Financeit Canada Inc. and any employee, representative, or agent of Financeit Canada Inc. must immediately:

- Ensure that all written direct sales contracts and loan agreements include the terms required by the *Consumer Protection Act* including the Cost of Credit Disclosure;
- Ensure that within 15 days after a direct sales contract is cancelled, the consumer is refunded all money paid by the consumer.

- j. Financeit argued that the Director incorrectly referred to Financeit's loan product as complicated and novel. The structure resembles a line of credit. We disagree. If it were just a line of credit, it would be just a line of credit. It is categorically more complex from a consumer perspective, since the terms of the open and fixed portions are mixed within the agreement and the disclosures are almost entirely estimated.
- k. Financeit argued that the Director's order was "interim" and based on an incomplete and inadequate evidentiary record. We note that per s. 179(8) of the *CPA*, this is a new trial based on an appeal of a Director's order. That it is called "interim" or otherwise by the Director is not a relevant consideration as it is an order under s. 157 of the *CPA* and was appealed as such. The alleged adequacy of the investigation is also not relevant; we have properly based our findings on the evidence before us in the context of a new trial. The parties had an opportunity to adduce any evidence they wish. We also note that Financeit failed to provide any criticism of any specific piece of evidence adduced. Notably, they did not object to any particular exhibit or testimony provided by the Director, or otherwise suggest that any evidence was improperly before the Board for our consideration.

- l. Financeit argued that the form of the credit agreement had been vetted and approved by the Director in a 2020 Consumer Services Appeal Board appeal. We disagree. The 2020 appeal decision as well as exhibit A6 show the credit agreement which was involved in the 2020 appeal. The agreement appears to be an exclusively fixed credit agreement and not the multi-stage financing agreement involved in this appeal.
- m. Financeit argued this appeal process is insufficient to address the unfairness of the Director's process in imposing the order. The Director's order is irrational, and unjustified. The Director engaged in an irrational internal reasoning process. The Director is not only asking the Board to affirm the original order, but the manner in which it was made. The question for the Board is whether this record was derived from a procedurally fair process that resulted in sufficient, robust and credible evidence for it to affirm the order. If the Board affirms the order, they will have sanctioned the unfair process that led to this appeal.
- n. The Board disagrees. Financeit appears to have a misunderstanding of what a new trial means in the context of s. 179(8) of the *CPA* and a *CPA* appeal. In this appeal, the Board has made a new decision as a result of a new trial based on the evidence before us. We have no jurisdiction to review the Director's conduct. In confirming the order, we impose our own order on the terms and for the reasons in this decision. We do not assess or review the Director's reasons in coming to our decision, nor do we adopt their reasons in coming to our own. Financeit is incorrect that our process either sanctions or condemns the processes used by the Director; we do neither.
- o. We find the reasoning in *Saskatoon Regional Health Authority and Johnson, 2014 SKQB 266* at paras. 94 and 95 particularly helpful:

[94] The Saskatchewan Court of Appeal considered the nature of an appeal by way of hearing *de novo* in *Green v. College of Physicians and Surgeons of Saskatchewan* (1986), 1986 CanLII 3238 (SK CA), 51 Sask.R. 241, [1986] S.J. No. 723 (QL) (C.A.), a case not cited by either party hereto. Dr. Green was charged with a variety of discipline offences. A full hearing was held at the college level and the charges were found to be well-founded. Green appealed, and

a hearing *de novo* was held as the legislation dictated. The original decision was upheld, and Green unsuccessfully took the matter to the Court of Appeal. At para. 12, Wakeling J.A. stated:

Since the legislation provides no special directions for the appeal tribunal, it is logical that the members would act as any other tribunal involved in a trial *de novo* and form their own conclusion as to the validity of the charge based on the evidence which is presented to them.

[95] The court also spoke to the proposition raised herein by SRHA that the PAT was obligated to defer to the reasonable decision of the Board (para. 37, SRHA brief). At para. 14, Wakeling J.A. said:

It is therefore accepted that it was not for the appeal tribunal to review and consider the report of the discipline committee to determine whether or not their conclusion was correct and whether it should have been accepted by council of the College. Rather, it was its role to independently assess the validity of the charges based upon the evidence which was presented to it. ...[emphasis added]

- p. We find that we are an administrative law appeal board engaging in a new trial, and as there is no special directions for us in the legislation found in s. 179(8) of the CPA, is logical that we act as any other tribunal involved in a trial *de novo* and form our own conclusion as to the validity of the alleged breaches and impose an order based on the evidence which was presented to us.

CONCLUSION – Issue 4

56. An order under s. 157 of the CPA should be imposed on Financeit Canada Inc.

57. The Board Confirms the Director's Order dated September 24, 2024. The Board confirms the wording of the Director's order as follows:

Financeit Canada Inc. and any employee, representative, or agent of Financeit Canada Inc. must immediately:

- Ensure that all written direct sales contracts and loan agreements include the terms required by the *Consumer Protection Act* including the Cost of Credit Disclosure;

- Ensure that within 15 days after a direct sales contract is cancelled, the consumer is refunded all money paid by the consumer.

DECISION SUMMARY

58. A breach of s. 35(l)(ii) of the *CPA* and s. 13(1)(b) of the *CCDR* is not established on a balance of probabilities.
59. Breaches of s. 35(l)(ii) of the *CPA* and s. 8(1)(a), s. 8(1)(m) and s. 8(1)(n) of the *CCDR* are established on a balance of probabilities.
60. A breach of s. 35(l)(ii) of the *CPA* and s. 8(1)(b) of the *CCDR* is not established on a balance of probabilities.
61. A breach of s. 31(2) of the *CPA* is established on a balance of probabilities.
62. An order under s. 157 of the *CPA* should be imposed on Financeit Canada Inc. The Appeal Board Confirms the Director's Order dated September 24, 2024.
63. No decision is made as to costs.

This decision is made with the full agreement of the Appeal Board.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 7th day of June, 2025.



Christopher Davison, Chair

(on Behalf of the Appeal Board)