

House of Representatives
Supplementary Order Paper

Tuesday, 15 April 2014

**Credit Contracts and Financial Services Law
Reform Bill**

Proposed amendment

Carol Beaumont, in Committee, to move the following amendment:

Clause 63

In *new section 124(h)*, after “the amount payable” (page 99, line 24), insert “and the rate of interest payable”.

Explanatory note

This Supplementary Order Paper amends the Credit Contracts and Financial Services Law Reform Bill by amending *new section 124* to specifically include the rate of interest in the matters to which a court must have regard. This will give the court a clear mandate to take into account the actual rate of interest when considering whether a contract is oppressive. The reason for this is that section 11(2)(b)(i) of the Credit Contracts Act 1981 (CCA) reads “whether the finance rate for the contract, or any amount payable by the debtor..., is oppressive”. This undoubtedly covered unscrupulous rates of interest. However, the term “finance rate” does not exist in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) as interest and fees are dealt with separately. Accordingly, this term (finance rate) was not carried over to section 124(b)(i) of the CCCFA. This section reads “whether the amount payable by the debtor...is oppressive...”. The fees portion of the finance rate was inserted as subpart 6 of Part 2 of the CCCFA while the interest rate portion was removed altogether. This wording is not clear. If read on the basis of the principle of statutory interpretation *expressio unius est exclusio alterius*, the words could be read as not including the actual rate of interest when a court is determining whether a contract is oppressive. Although in recent cases the court has assumed that it can take the rate of interest

into account, the proposed wording will leave the court in no doubt and could serve as a deterrent to lenders charging unscrupulous rates of interest.
