



# **BILL NO. 11**

*Government Bill*

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*1st Session, 59th General Assembly  
Nova Scotia  
52 Elizabeth II, 2003*

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**An Act to Amend Chapter 77  
of the Revised Statutes, 1989,  
the Collection Agencies Act, and  
Chapter 91 of the Revised Statutes, 1989,  
the Consumer Creditors' Conduct Act**

CHAPTER 3  
ACTS OF 2003 (SECOND SESSION)

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
OCTOBER 30, 2003**

The Honourable Barry Barnet  
*Minister of Service Nova Scotia and Municipal Relations*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

**An Act to Amend Chapter 77  
of the Revised Statutes, 1989,  
the Collection Agencies Act, and  
Chapter 91 of the Revised Statutes, 1989,  
the Consumer Creditors' Conduct Act**

Be it enacted by the Governor and Assembly as follows:

**1** Clause 2(d) of Chapter 77 of the Revised Statutes, 1989, the *Collection Agencies Act*, is amended by striking out "Consumer Affairs" in the first and second lines and substituting "Service Nova Scotia and Municipal Relations".

**2** Chapter 77 is further amended by adding immediately after Section 4 the following Section:

4A The Minister may appoint a person to be Deputy Registrar of Collection Agencies who, at the direction or in the absence or incapacity of the Registrar, may perform the functions and may exercise the powers of the Registrar.

**3** Subsection 6(3) of Chapter 77 is amended by

- (a) striking out "two copies" in the first line of clause (a) and substituting "one copy"; and
- (b) striking out "two copies" in the first line of clause (b) and substituting "one copy".

**4** Section 14 of Chapter 77 is amended by striking out "expires at midnight on the thirtieth day of April of each year" in the second and third lines and substituting

- (a) of a collection agency, expires one year from the last day of the month in which the licence was granted; and
- (b) of a collector, expires on the same day as the expiration of the licence of the collection agency on whose behalf the collector is authorized to act.

**5** Subsection 15(1) of Chapter 77 is amended by adding "or fine a licensee in an amount not exceeding the maximum amount prescribed by regulation" immediately after "licence" in the second line.

**6 (1)** Subsection 17(1) of Chapter 77 is amended by striking out "county court" in the third line and substituting "Supreme Court of Nova Scotia".

**(2)** Subsection 17(4) of Chapter 77 is amended by

- (a) striking out "Appeal Division of the Supreme Court" in the first and second lines and substituting "Nova Scotia Court of Appeal";

(b) striking out "county court" in the second line and substituting "Supreme Court of Nova Scotia"; and

(c) striking out "Appeal Division" in the fourth line and substituting "Nova Scotia Court of Appeal".

7 Section 19 of Chapter 77 is repealed and the following Section substituted:

19 (1) Every holder of a collection agency licence shall

(a) keep proper records and books of account showing money received and money paid out, including a receipt book, cash book, clients ledger, debtors ledger and journal or equivalent machine accounting records satisfactory to the Registrar;

(b) maintain a trust account in a chartered bank, credit union or trust company in Canada and deposit all money received on behalf of a client in the trust account;

(c) credit any interest accrued in a trust account to the debtors whose money is deposited in the account by the collection agency;

(d) within three months after the collection agency's year end, file a report of the trust account with the Registrar;

(e) at the written request of a debtor and within fourteen days of receiving the request, provide the debtor with a statement of account that contains the original balance, the current balance and the payment history of the debtor's account from the time the account has been placed with the collection agency; and

(f) within two business days of a request by the Registrar, provide the Registrar with access in the Province to debtor file records and trust account records.

(2) The report referred to in clause (1)(d) shall be prepared in accordance with the regulations, if any, and signed by an officer of the collection agency.

8 (1) Subsection 20(1) of Chapter 77 is amended by

(a) striking out clause (e) and substituting the following clause:

(e) communicate with a debtor

(i) other than in writing, when the debtor has notified the collection agency in writing to communicate in writing only and has provided an address at which the debtor may be contacted,

(ii) when the debtor or the debtor's legal adviser has notified the collection agency, in writing, to communicate only with the legal adviser and an address for the legal adviser has been provided, or

(iii) when the debtor has notified the creditor and the collection agency by registered mail that the debt is in dispute and requests that the creditor take the matter to court;

(b) striking out "he has previously sent him a notice in writing" in the second and third lines of clause (f) and substituting "at least five days in advance of the first verbal contact with the debtor, the collection agency sends the debtor written notice and, where the debtor claims that the debtor did not receive the notice, the collection agency shall send the written notice to the debtor at an address provided by the debtor";

(c) striking out "in the Province," in the fourth and fifth lines of clause (h);

(d) striking out clauses (i), (j) and (k) and substituting the following clauses:

(i) communicate or attempt to communicate with a debtor, any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor or the debtor's employer

(i) in such a manner or with such frequency as to constitute harassment,

(ii) by using threatening, profane, intimidating or coercive language, or

(iii) by using undue, excessive or unreasonable pressure;

(j) publish or threaten to publish a debtor's failure to pay;

(k) except on the request of the person being contacted, make a telephone call or personal call to the debtor, any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor or the debtor's employer or surety

(i) on a Sunday,

(ii) on a statutory holiday, or

(iii) on any other day, except between the hours of seven o'clock in the morning and nine o'clock in the evening local time of the person being contacted;

and

(e) striking out clause (o) and substituting the following clauses:

(o) except to obtain the debtor's address or telephone number, contact or attempt to contact any member of the debtor's family or household or any relative, neighbour, friend or acquaintance of the debtor unless

(i) the person contacted has guaranteed to pay the debt of the debtor and is being contacted in respect of that guarantee, or

(ii) the debtor has requested that the collection agency discuss the debt with that person;

(oa) collect or attempt to collect a debt without the written authority of the creditor;

(ob) directly or indirectly threaten or state an intention to proceed with any legal action for which

(i) the collection agency does not have the written authority of the creditor, or

(ii) there is no lawful authority;

(oc) unless otherwise authorized in writing by the debtor, contact a debtor's employer more than once, and then only for the purpose of confirming the debtor's employment, business title and business address;

(od) without authorization from the debtor, contact the debtor at the debtor's place of employment unless

(i) the collection agency does not have the home address or telephone number for the debtor, and then only verbal contact at the debtor's place of employment for the sole purpose of requesting the debtor's home phone number or address, or

(ii) attempts by the collection agency to contact the debtor at the debtor's home phone number have not resulted in contact with the debtor, and then only a single verbal attempt to contact the debtor at the debtor's place of employment;

(oe) commence a legal proceeding where there has been an assignment with respect to the collection of a debt, or recommend to a creditor that a legal proceeding be commenced, unless the collection agency first gives notice to the debtor that the collection agency or the collector intends to commence the proceeding or recommend that a proceeding be commenced;

(of) collect or attempt to collect money from a person who is not liable for the debt or, where the person has informed the collection agency that the person is not the debtor, continue to communicate with that person unless the collection agency first takes all reasonable measures to ensure that the person is in fact the debtor;

**(2)** Section 20 of Chapter 77 is further amended by adding immediately after subsection (2) the following subsection:

(3) Any waiver or release by a person of the rights, benefits or protection provided pursuant to this Act or the regulations is void.

**9 (1)** Subsection 21(3) of Chapter 77 is amended by adding ", and any person who has the custody or control of the business premises shall permit the Registrar or the person designated by the Registrar to enter upon the business premises and make the investigation" immediately after "investigation" in the fourth line.

**(2)** Section 21 of Chapter 77 is further amended by adding immediately after subsection (3) the following subsections:

(4) Subject to clause 19(1)(f) and for the purpose of subsection (1), a collection agency that maintains its business records outside the Province may elect to produce the required records for inspection at a place outside the Province.

(5) Where a collection agency makes an election under subsection (4), the cost of carrying out the inspection including all necessary and reasonable travel expenses shall be paid by the collection agency.

**10 (1)** Subsection 24(1) of Chapter 77 is amended by striking out "one" in the fourth line and substituting "two".

**(2)** Subsection 24(2) of Chapter 77 is amended by striking out "ten" in the fourth line and substituting "one hundred".

**11** Section 27 of Chapter 77 is amended by striking out "two" in the second line and substituting "three".

**12** Section 28 of Chapter 77, as amended by Chapter 8 of the Acts of 1998, is further amended by adding immediately after clause (j) the following clauses:

- (ja) respecting the annual report of the trust account required by Section 19;
- (jb) prescribing the maximum amount the Registrar may fine a licensee under Section 15;

**13** Sections 3 to 15 of Chapter 8 of the Acts of 1998, the *Business Efficiency (1998) Act*, are repealed.

**14** Section 3 of Chapter 91 of the Revised Statutes, 1989, the *Consumer Creditors' Conduct Act*, is amended by striking out "Consumer Affairs" in the second line and substituting "Service Nova Scotia and Municipal Relations".

**15** Section 4 of Chapter 91 is amended by

- (a) adding immediately after clause (a) the following clause:
  - (aa) collect or attempt to collect money in excess of the amount owing by the borrower to the creditor;
- (b) striking out clause (d) and substituting the following clause:
  - (d) communicate with a borrower
    - (i) other than in writing, when the borrower has notified the creditor in writing to communicate in writing only and has provided an address at which the borrower may be contacted, or
    - (ii) where the borrower or the borrower's legal adviser has notified the creditor, in writing, to communicate only with the legal adviser and an address for the legal adviser has been provided;
- (c) striking out "in the Province," in the fourth line of clause (e); and
- (d) striking out clauses (f), (g) and (h) and substituting the following clauses:
  - (f) communicate or attempt to communicate with a borrower, any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower or the borrower's employer for the purpose of demanding payment of money or to induce the borrower to deliver up possession of property
    - (i) in such a manner or with such frequency as to constitute harassment,

- (ii) by using threatening, profane, intimidating or coercive language, or
  - (iii) by using undue, excessive or unreasonable pressure;
- (g) except on the request of the person being contacted, make a telephone call or personal call to the borrower, any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower or the borrower's employer or surety
- (i) on a Sunday,
  - (ii) on a statutory holiday, or
  - (iii) on any other day, except between the hours of seven o'clock in the morning and nine o'clock in the evening local time of the person being contacted,
- for the purpose of demanding payment of money or the possession of property;

(h) except to obtain the borrower's address or telephone number, contact or attempt to contact any member of the borrower's family or household, or any relative, neighbour, friend or acquaintance of the borrower unless

- (i) the person contacted has guaranteed to pay the debt of the borrower and is being contacted in respect of that guarantee, or
- (ii) the borrower has requested that the creditor discuss the debt with that person;

(ha) directly or indirectly threaten or state an intention to proceed with any legal action for which there is no lawful authority;

(hb) unless otherwise authorized in writing by the borrower, contact a borrower's employer more than once, and then only for the purpose of confirming the borrower's employment, business title and business address;

(hc) collect or attempt to collect money from a person who is not liable for the debt or, where the person has informed the creditor that the person is not the borrower, continue to communicate with that person unless the creditor first takes all reasonable measures to ensure that the person is in fact the borrower;

(hd) publish or threaten to publish a borrower's failure to pay;

**16** Chapter 91 is further amended by adding immediately after Section 4 the following Section:

4A Any waiver or release by a person of the rights, benefits or protection provided pursuant to this Act is void.

**17** This Act comes into force on such day as the Governor in Council orders an declares by proclamation.

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