



BILL NO. 107

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

**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,
to Ensure the Respectful Collection
and Responsible Management of Debt**

CHAPTER 40
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 6, 2012**

The Honourable John M^{ac}Donell
Minister of Service Nova Scotia and Municipal Relations

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

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Be it enacted by the Governor and Assembly as follows:

- 1** This Act may be cited as the *Debt Collection and Management Reform (2012) Act*.

COLLECTION AGENCIES ACT

2 The title of Chapter 77 of the Revised Statutes, 1989, *An Act Respecting Collection Agencies*, is amended by adding “and Debt Management” immediately after “Collection”.

3 Section 1 of Chapter 77 is amended by adding “and Debt Management” immediately after “Collection” in the first line.

4 Section 2 of Chapter 77, as amended by Chapter 8 of the Acts of 1998, Chapter 3 of the Acts of 2003 (Second Session) and Sections 44 and 45 of this Act, is further amended by

- (a) striking out “he” in the fifth line of clause (a) and substituting “it”;
- (b) adding “, but does not include a debt management agency” immediately after “scheme” in the last line of clause (a);
- (c) striking out “a person” in the first line of clause (b) and substituting “an individual”;
- (d) adding immediately after clause (b) the following clauses:
 - (ba) “debt management agency” means a person, other than a debt management agent, who carries on the activities of offering or undertaking to act for a debtor in the Province in arrangements or negotiations with the debtor’s creditors or receiving money from a debtor for distribution to the debtor’s creditors in consideration of a fee, commission or other remuneration that is payable by the debtor;
 - (bb) “debt management agent” means an individual employed, appointed or authorized by a debt management agency to act for or deal with debtors;

and

(e) striking out “Consumer Affairs” in the first and second lines of clause (d) and substituting “Service Nova Scotia and Municipal Relations”.

5 Section 3 of Chapter 77 is repealed and the following Section substituted:

3 This Act does not apply to

- (a) any barrister or firm of barristers of the Supreme Court of Nova Scotia; or
- (b) any other person or class of persons exempted by the regulations.

6 Chapter 77 is further amended by adding immediately after Section 3 the following Section:

3A (1) This Act prevails over any agreement to the contrary, whether verbal or written, express or implied.

(2) Any waiver or release by a person of the rights, benefits, protections or remedies under this Act and any agreement that in any way limits or abrogates or in effect limits or abrogates any such right, benefit, protection or remedy is void.

7 (1) Subsection 4(2) of Chapter 77 is amended by striking out “him” in the second line and substituting “the Registrar”.

(2) Section 4 of Chapter 77 is amended by adding immediately after subsection (2) the following subsection:

(3) The Registrar may issue the following classes of licence:

- (a) collection agency licence;
- (b) collector’s licence;
- (c) debt management agency licence;
- (d) debt management agent’s licence.

8 Section 5 of Chapter 77 is repealed and the following Section substituted:

5 (1) Except as may be otherwise permitted under this Act or the regulations, no person or individual shall carry on the activities of

- (a) a collection agency unless the person holds a collection agency licence;
- (b) a debt management agency unless the person holds a debt management agency licence;
- (c) a collector unless the individual holds a collector’s licence; or
- (d) a debt management agent unless the individual holds a debt management agent’s licence.

(2) No person may hold both a collection agency licence and a debt management agency licence.

(3) No individual may hold both a collector's licence and a debt management agent's licence.

(4) A collection agency shall not carry on the activities of a collection agency in a name other than the name shown on its licence nor invite the public to deal at a place other than that authorized by its licence.

(5) A debt management agency shall not carry on the activities of a debt management agency in a name other than the name shown on its licence nor invite the public to deal at a place other than that authorized by its licence.

(6) A collection agency or debt management agency shall direct a debtor to

(a) make payments at or otherwise communicate through the place authorized by its licence; or

(b) deal directly with the creditor of the debt.

(7) No collection agency shall conduct collection agency activity except at the place authorized by the licence and unless the activity is entered on the systems of the collection agency.

(8) No debt management agency shall conduct debt management agency activity except at the place authorized by the licence and unless the activity is entered on the systems of the debt management agency.

9 Chapter 77 is further amended by adding immediately after Section 5 the following Section:

5A (1) No person shall represent itself as carrying on the activities of

(a) a collection agency unless the person holds a collection agency licence; or

(b) a debt management agency unless the person holds a debt management agency licence.

(2) No individual shall represent himself or herself as carrying on the activities of

(a) a collector unless the individual holds a collector's licence; or

(b) a debt management agent unless the individual holds a debt management agent's licence.

10 (1) Subsection 6(1) of Chapter 77 is amended by striking out "him" in the second line and substituting "the Registrar"; and

(2) Subsection 6(3) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by

(a) adding "collection agency" immediately after "a" the first time it appears in the first line;

(b) striking out “as a collection agency shall file with” in the first and second lines and substituting “shall deliver to”;

(c) striking out “two copies” in the first line of clause (a) and substituting “one copy”;

(d) striking out “he” in the last line of clause (a) and substituting “the collection agency”;

(e) striking out “two copies” in the first line of clause (b) and substituting “one copy”; and

(f) adding “or other form of security” immediately after “bond” in the first line of clause (c).

11 Chapter 77 is further amended by adding immediately after Section 6 the following Section:

6A (1) An applicant for a debt management agency licence shall deliver to the Registrar as part of the application

(a) one copy of each form of agreement that the debt management agency uses or proposes to use when entering into an agreement with a debtor, unless the form or content of the agreement is as prescribed by the regulations; and

(b) a bond or other form of security as prescribed by the regulations.

(2) The agreement referred to in clause (1)(a) must

(a) contain cancellation rights as prescribed by the regulations; and

(b) set out particulars of the fees charged or proposed to be charged by the debt management agency.

12 Subsection 7(2) of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by striking out “his” in the second line and substituting “the licensee’s”.

13 Section 8 of Chapter 77 is amended by adding immediately after subsection (2) the following subsections:

(3) Every application for a debt management agent’s licence shall be accompanied by a statement in writing given by a licensed debt management agency that the applicant, if granted a licence, is authorized to act as a debt management agent representing that debt management agency.

(4) A licence issued to a debt management agent shall indicate thereon the name of the debt management agency that furnished the statement required under subsection (3) and on whose behalf the debt management agent is authorized to act as a debt management agent.

14 Section 9 of Chapter 77 is amended by

- (a) adding “(1)” immediately after the Section number; and**
- (b) adding the following subsection:**

(2) A debt management agent who is the holder of a licence is deemed to be authorized by the debt management agency specified in the licence to act for or on behalf of that debt management agency.

15 (1) Subsection 10(1) of Chapter 77 is amended by striking out “him” in the fourth line and substituting “the collection agency”.

(2) Subsection 10(2) of Chapter 77 is amended by striking out “him” in the third line and substituting “it”.

(3) Section 10 of Chapter 77 is further amended by adding immediately after subsection (2) the following subsections:

(3) Where a debt management agent ceases to represent a debt management agency, the debt management agency shall forthwith give notice in writing to the Registrar that the debt management agent has ceased to represent the debt management agency and the receipt of such notice by the Registrar shall operate as a termination of the licence of the debt management agent.

(4) A debt management agency that fails to give the notice required by subsection (3) within five days after the debt management agent has ceased to represent it is guilty of an offence.

16 Chapter 77 is further amended by adding immediately after Section 10 the following Section:

10A (1) No action may be brought by a collection agency, debt management agency, collector or debt management agent against a debtor for the enforcement of an agreement unless the collection agency, debt management agency, collector or debt management agent was licensed under this Act at the time that the debtor entered into the agreement.

(2) Subsection (1) does not apply if the collection agency, debt management agency, collector or debt management agent is exempted pursuant to Section 3.

17 Section 11 of Chapter 77 is amended by

- (a) adding “(1)” immediately after the Section number; and**
- (b) adding the following subsection:**

(2) The transfer of a licence of a debt management agent from one debt management agency to another is prohibited.

18 Section 12 of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by

- (a) adding “(1)” immediately after the Section number;**
- (b) striking out “with whom he was previously licensed” in the third line and substituting “for whom the collection agent was previously authorized to act”; and**
- (c) adding the following subsection:**

(2) Where a debt management agent whose licence is terminated is appointed by another debt management agency or is re-appointed by the debt management agency for whom the debt management agent was previously authorized to act, the debt management agent shall make a new application to the Registrar for a licence.

19 Subsection 13(2) of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by striking out “his” in the second line and substituting “the licensee’s”.

20 (1) Subsection 15(1) of Chapter 77, as amended by Chapter 8 of the Acts of 1998, Chapter 3 of the Acts of 2003 (Second Session) and Sections 44 and 45 of this Act, is further amended by

- (a) striking out “he” in the second line and substituting “the Registrar”;**
- (b) striking out “his” in the last line of clause (a) and substituting “the licensee’s”;**
- (c) striking out “his” in the second line of clause (b) and substituting “the licensee’s”;**
- (d) striking out “him” in the third line of clause (b) and substituting “the licensee”;**
- (e) adding “or 6A” immediately after “6” in the last line of clause (b);**
- (f) striking out clause (d) and substituting the following clause:**
 - (d) has demonstrated incompetency, unfitness or untrustworthiness to carry on the activities in respect of which the licensee’s licence was granted.

(2) Subsection 15(2) of Chapter 77 is repealed and the following subsection substituted:

(2) Where a bond or other form of security filed under this Act is terminated, the licence of the collection agency or debt management agency is automatically suspended and remains suspended until the collection agency or debt management agency files with the Registrar a new bond or other form of security in the amount and form required.

(3) Subsection 15(3) of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by striking out “shall be” in the last line and substituting “are”.

(4) Section 15 of Chapter 77, as amended by Chapter 8 of the Acts of 1998, Chapter 3 of the Acts of 2003 (Second Session) and Sections 44 and 45 of this Act, is further amended by adding immediately after subsection (3) the following subsection:

(4) Where the licence of a debt management agency is suspended or cancelled, the licences of all debt management agents of the debt management agency are automatically terminated.

21 (1) Subsection 17(1) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by

(a) striking out “county court” in the third line and substituting “Supreme Court of Nova Scotia”; and

(b) striking out “him” in the first line of clause (g) and substituting “the judge”.

(2) Subsection 17(3) of Chapter 77 is amended by striking out “him” in the second line and substituting “the Registrar”.

(3) Subsection 17(4) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further 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”;

(c) striking out “Appeal Division” in the fourth line and substituting “Nova Scotia Court of Appeal”; and

(d) striking out “him” in the fifth line and substituting “the judge”.

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

19 (1) Every collection agency and debt management agency shall keep proper records and books of account showing money received and money paid out, including a receipt book, cash book, client ledger, debtor ledger and journal or equivalent electronic accounting records satisfactory to the Registrar.

(2) In accordance with the regulations, every collection agency and debt management agency shall acknowledge, by means of receipt, any payments, agreements or transactions made by or on behalf of debtors.

23 Chapter 77 is further amended by adding immediately after Section 19 the following Sections:

19A (1) A collection agency is the trustee of any money collected on behalf of another person.

(2) A debt management agency is the trustee of any money received from a debtor for distribution to the debtor’s creditors.

(3) Every collection agency and debt management agency shall maintain a trust account in a bank in the Province and shall deposit into the trust account all of the money collected on behalf of another person or received from a debtor for distribution to the debtor's creditors, without making any deduction, within three days of collecting or receiving the money.

(4) Notwithstanding subsection (3), the Registrar may

(a) authorize a collection agency or debt management agency to maintain its trust account in a financial institution of a class approved by the Registrar, which is located outside the Province; and

(b) prescribe the time within which the money referred to in subsection (3) must be deposited into the trust account.

19B (1) No collection agency or debt management agency may deposit any money into the trust account it maintains pursuant to Section 19A except money collected or received from a debtor.

(2) No collection agency or debt management agency may withdraw money from a trust account it maintains pursuant to Section 19A except for the purpose of

(a) paying a creditor money received on behalf of that creditor;

(b) paying the fees, commissions and disbursements to which the collection agency or debt management agency is entitled;

(c) returning money collected from a debtor by a debt management agency if the debt management program is rejected by the creditor or cancelled;

(d) correcting an error caused by money being deposited to the trust account by mistake; or

(e) making a disposition, in accordance with the regulations, of money that is unclaimed or cannot be returned to a debtor.

(3) A collection agency or debt management agency that pays creditors from money withdrawn from its trust account shall do so in the manner prescribed by the regulations and must provide the creditor with a statement containing such information as prescribed by the regulations.

24 Subsection 20(1) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by

(a) adding immediately after clause (b) the following clauses:

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

(bb) collect or attempt to collect money from a person who is not liable for the debt;

(b) striking out clause (d) and substituting the following clause:

(d) send any communication or make any call, for the purpose of demanding a debt, for which the collection agency or collector elects to make the charges payable by the recipient;

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

(e) continue to communicate with or continue to collect or attempt to collect money from

(i) a person, if that person has informed the collection agency or collector that he or she is not the person sought by the collection agency or collector, unless the collection agency or collector first takes all reasonable precautions to ensure that that person is the person sought by the collection agency or collector,

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

(iii) a debtor, if 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;

(d) 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";

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

(f) adding "any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor, the debtor's employer or any person who has guaranteed to pay the debt of the debtor" **immediately after "debtor" in the second line of clause (i);**

(g) striking out "his spouse or any member of his family" in the last line of clause (j) and substituting "any member of the debtor's family or household, any relative, neighbour, friend or acquaintance of the debtor, the debtor's employer or any person who has guaranteed to pay the debt of the debtor";

(h) striking out clause (k) and substituting the following clause:

(k) unless requested by the person being contacted, contact by telephone, personal call or electronic means or otherwise attempt to contact a person in relation to the collection of a debt

(i) on a Sunday or any other day designated by the regulations,

(ii) on any day other than a day referred to in subclause (i) except between the hours of eight o'clock in the morning and nine o'clock in the evening,

(iii) on any day that falls during a consecutive seven-day period in which the collection agency or collector acting on behalf of the same creditor has contacted the person three times, or

(iv) at such other times as may be prescribed by the regulations;

(i) striking out clause (l) and substituting the following clauses:

(l) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings, lien or garnishment;

(la) indicate to the debtor or any other person contacted for the purpose of collecting a debt that the collection agency or collector is a legal collector, litigation specialist, part of a law firm or the legal department of a business, including a legal department of the collection agency itself or of the creditor of the debt;

(j) striking out “, his spouse or any member of his family” in the third and fourth and in the sixth and seventh lines of clause (m) and substituting in each case “or any member of the debtor’s family or household”;

(k) adding immediately after clause (m) the following clause:

(ma) publish or threaten to publish, either in print or through electronic means, a debtor’s failure to pay;

(l) add immediately after clause (n) the following clause:

(na) where using an automated call system, fail to provide a contact number for the debtor to call when leaving a message;

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

(o) communicate or attempt to communicate with any member of a debtor’s family or household or any relative, neighbour, friend or acquaintance of a debtor, unless

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

(ii) the collection agency or collector does not have the debtor’s home address or personal telephone number and the contact is for the sole purpose of obtaining the debtor’s home address or personal telephone number, or

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

(oa) communicate or attempt to communicate with a debtor’s employer, unless

(i) the employer has guaranteed to pay the debt of the debtor and the contact is in respect of that guarantee,

(ii) the contact is solely for the purpose of confirming the debtor’s employment status, business title or business address and occurs only once, or

(iii) the contact is authorized in writing by the debtor;

(ob) directly or indirectly communicate to a debtor an intention to proceed with any legal action for which

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

(ii) there is no lawful authority;

(n) striking out the period at the end of clause (p) and substituting “; or”; and

(o) adding the following clause:

(q) 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 proceeding be commenced, unless the collection agency first gives notice to the debtor that the collection agency or collector intends to commence the proceeding or recommend that a proceeding be commenced.

25 Chapter 77 is further amended by adding immediately after Section 20 the following Section:

20A (1) No debt management agent shall collect or attempt to collect a debt without providing in all contacts and correspondence with the debtors and creditors

(a) the agent’s name as shown on the debt management agent’s licence; and

(b) the name of the debt management agency as shown on the debt management agency licence.

(2) No debt management agency or debt management agent shall

(a) collect from a debtor any amount greater than that prescribed by the regulations pursuant to subsection (6) for acting for the debtor in making arrangements or negotiating with the debtor’s creditors on behalf of the debtor or receiving money from the debtor for distribution to the debtor’s creditors;

(b) make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as final settlement without the prior express consent of the creditor;

(c) fail to provide any person for whom the debt management agency or debt management agent acts with a written report on the status of that person’s account in accordance with the regulations;

(d) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings, lien or garnishment;

(e) charge a fee for a dishonoured cheque unless provision for the fee was included in the agreement with the debtor;

(f) charge or receive any fee in the form of a promissory note or other negotiable instrument other than a cheque or bank draft;

(g) lend money or provide credit to a debtor for whom the debt management agency or agent is acting or offering to act;

(h) offer, pay or give any gift, bonus, premium, reward or other compensation to a debtor for entering into an agreement;

(i) directly or indirectly collect any fee for referring, advising, procuring, arranging for or assisting a debtor in obtaining any extension of credit from a lender, creditor or service provider;

(j) make a claim for breach of contract against a debtor who cancels an agreement;

(k) fail to inform a debtor within thirty days after a creditor has notified the debt management agency that the creditor has decided not to participate in or has withdrawn from a debt management program;

(l) communicate information about a debt or the existence of a debt with any person except the debtor, a guarantor of the debt, the debtor's representative or the creditor of the debt; or

(m) enter into an agreement with a debtor without first providing such information as may be prescribed by the regulations.

(3) No debt management agency may charge any fee, commission or disbursement for its services except in accordance with this Act and the regulations.

(4) No debt management agency may collect or retain from a debtor any fee, commission or disbursement for its services unless before providing the service it has

(a) entered into a written agreement signed by the debt management agency and the debtor to provide the service; and

(b) delivered a copy of the agreement required under clause (a) to the debtor.

(5) The content or form of the agreement referred to in clause (4)(a) may be prescribed by the regulations.

(6) No debt management agency shall charge a debtor any fee, commission or disbursements unless the fee, commission or disbursement has been determined in accordance with the regulations and does not exceed the maximum amount prescribed by the regulations.

26 (1) Subsection 21(1) of Chapter 77 is amended by

(a) striking out "him" in the second line and substituting "the Registrar";
and

(b) striking out "he" in the third line and substituting "the Registrar".

(2) Subsection 21(3) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session), is further amended by

(a) striking out "him" in the second line and substituting "the Registrar";
and

(b) adding “or debt management agency” immediately after “agency” in the last line.

(3) Section 21 of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by adding immediately after subsection (3) the following subsections:

(4) For the purpose of subsection (1), a collection agency or debt management agency that maintains records outside the Province may request the permission of the Registrar to produce its records for inspection at a place outside the Province.

(5) Where a collection agency or debt management agency makes a request under subsection (4) and permission is granted by the Registrar, the cost of carrying out the inspection, including all necessary and reasonable travel expenses, must be paid by the collection agency or debt management agency.

27 (1) Subsection 22(1) of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by adding “or debt management agency” immediately after “agency” in the second line.

(2) Section 22 of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by adding immediately after subsection (2) the following subsection:

(3) No debt management agency shall employ a debt management agent or appoint or authorize a debt management agency to act on its behalf unless the debt management agent is licensed under this Act.

28 Chapter 77 is further amended by adding immediately after Section 22 the following Sections:

22A (1) No person licensed under this Act may produce, distribute or publish any false, misleading or deceptive statements in any written, oral or visual advertisement, circular, program or other advertising medium.

(2) Where any person licensed under this Act is making false, misleading or deceptive statements in any written, oral or visual advertisement, circular, program or other advertising medium, the Registrar may order the immediate cessation of such statements.

22B (1) A debtor may cancel an agreement referred to in subsection 20A(4) under the circumstances described in the regulations.

(2) A debt management agency shall not cancel an agreement referred to in subsection 20A(4) except under the circumstances described in the regulations.

(3) Where an agreement is cancelled pursuant to subsection (1) or (2), the debt management agency shall, within fifteen days, return to the debtor any money held in trust for the benefit of the debtor, less any amount paid to a creditor prior to the cancellation of the agreement and any fees permitted by the regulations.

29 Section 23 of Chapter 77 is amended by

- (a) striking out “or” at the end of clause (a);**
- (b) striking out the comma at the end of clause (b) and substituting “; or”; and**
- (c) adding the following clause:**
 - (c) fails to comply with an order of the Registrar given under this Act,

30 (1) Subsection 24(1) of Chapter 77 is repealed and the following subsection substituted:

(1) A person who is guilty of an offence against this Act or the regulations is liable on summary conviction to a fine of not less than five hundred dollars nor more than twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(2) Subsection 24(2) of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by

- (a) adding “or debt management agency” immediately after “agency” in the third line; and**
- (b) striking out “ten” in the last line and substituting “three hundred”.**

31 Section 25 of Chapter 77 is amended by

- (a) striking out “business” in the second line and substituting “activities”;**
- (b) adding “or debt management agency” immediately after “agency” in the third line; and**
- (c) striking out “business” in the last line and substituting “activity”.**

32 Section 26 of Chapter 77, as amended by Chapter 8 of the Acts of 1998 and Section 44 of this Act, is further amended by striking out clauses (a), (b) and (c) and substituting the following:

- (a) a collection agency, debt management agency, collector, debt management agent or other person named in the certificate was or was not licensed under this Act;
- (b) a licence was granted to a collection agency, debt management agency, collector or debt management agent; or
- (c) the licence of a collection agency, debt management agency, collector or debt management agent was suspended, cancelled, terminated or reinstated,

33 Section 27 of Chapter 77, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by

- (a) striking out “shall” in the second line and substituting “may”; and**
- (b) striking out “two” in the second line and substituting “three”.**

34 Chapter 77 is further amended by adding immediately after Section 27 the following Section:

27A A debtor may recover in any court of competent jurisdiction any money paid contrary to this Act or the regulations.

35 Section 28 of Chapter 77, as amended by Chapter 8 of the Acts of 1998, Chapter 3 of the Acts of 2003 (Second Session) and Sections 44 and 45 of this Act, is further amended by

(a) adding “, or requiring forms to be in a form specified by the Registrar,” immediately after “Act” in the second line of clause (c);

(b) adding immediately after clause (c) the following clause:

(ca) prescribing a standard form of agreement or content of an agreement, including cancellation rights, for the purpose of Section 6A;

(c) adding “and debt management agencies” immediately after “agencies” in the second line of clause (d);

(d) adding immediately after clause (d) the following clauses:

(da) governing deposits into and withdrawals from trust accounts;

(db) governing dispositions of money that is unclaimed or cannot be returned to a debtor for the purpose of clause 19B(2)(e);

(dc) governing the manner in which collection agencies or debt management agencies pay creditors from money withdrawn from trust accounts for the purpose of subsection 19B(3);

(dd) governing the information to be provided to a creditor in a statement pursuant to subsection 19B(3);

(e) adding “and debt management agencies” immediately after “agencies” in the second line of clause (e);

(f) striking out “unclaimed money” in the fifth and sixth lines of clause (e) and substituting “money that is unclaimed or cannot be returned to a debtor”;

(g) adding immediately after clause (e) the following clauses:

(ea) prescribing the form and contents of records of collection agencies and debt management agencies;

(eb) prescribing the form, content and manner of delivery of receipts;

(h) striking out clause (f) and substituting the following clauses:

(f) requiring collection agencies and debt management agencies or any class thereof to deliver a bond or other form of security to the Registrar in such form and terms and with such collateral security as are prescribed by the regulations, and providing for the forfeiture of bonds or other forms of security and the disposition of the proceeds;

(fa) exempting any person or class of person from the application of this Act;

(i) adding “and debt management agencies” immediately after “agencies” in the first line of clause (g);

(j) adding “, and respecting the time and manner for providing the information” immediately after “Registrar” in the last line of clause (g);

(k) adding after clause (h) the following clauses:

(ha) prescribing the information that must be disclosed to a debtor by a debt management agency for the purpose of clause 20A(1)(m) before entering into an agreement with the debtor;

(hb) prescribing the form and manner in which information must be disclosed to a debtor by a debt management agency before entering into an agreement with the debtor;

(l) striking out “in the collection of debts” in the last line of clause (i) and substituting “or practice by collection agencies or debt management agencies”;

(m) adding immediately after clause (i) the following clause:

(ia) prescribing days and times when a person may not be contacted in relation to the collection of a debt for the purpose of clause 20(1)(k);

(n) striking out “or collector” in the second line of clause (j) and substituting “, debt management agency, collector or debt management agent”;

(o) adding immediately after clause (j) the following clauses:

(ja) respecting advertising by collection agencies, debt management agencies, collectors and debt management agents;

(jb) prescribing the form and contents of the written report on the status of a person’s account for the purpose of clause 20A(2)(c);

(jc) respecting the circumstances under which a debtor may cancel an agreement for the purpose of subsection 22B(1);

(jd) respecting the circumstances under which a debt management agency may cancel an agreement for the purpose of subsection 22B(2);

(je) respecting the form and manner in which a debtor may notify a debt management agency of the cancellation of an agreement;

(jf) respecting the form and manner in which a debt management agency shall notify a debtor of the cancellation of an agreement;

(jg) respecting the fees, commissions and disbursements that may be charged by a debt management agency;

(jh) respecting fees permitted pursuant to subsection 22B(3);

(ji) respecting the circumstances in which debt management agency fees, commissions and disbursements apply;

(jj) respecting the methods of calculating debt management agency fees, commissions and disbursements and the maximum amounts that may be charged;

(jk) defining any word or expression used but not defined in this Act;

36 Section 29 of Chapter 77 is amended by striking out “shall be” in the second line and substituting “is”.

37 All existing collection agency and collectors’ licences expire ninety days after the coming into force of this Act if the licensee is engaged in activities that require a debt management agency licence or debt management agent licence.

CONSUMER CREDITORS’ CONDUCT ACT

38 Section 2 of Chapter 91 of the Revised Statutes, 1989, the *Consumer Creditors’ Conduct Act*, is amended by striking out “his” in the last line of clause (c) and substituting “the person’s”.

39 Section 3 of Chapter 91, as amended by Chapter 3 of the Acts of 2003 (Second Session) and Section 45 of this Act, is further amended by striking out “Consumer Affairs” in the second line and substituting “Service Nova Scotia and Municipal Relations”.

40 Section 4 of Chapter 91 is amended by

(a) striking out “owed” in the second line of clause (a) and substituting “owing”;

(b) adding immediately after clause (a) the following clauses:

(aa) collect or attempt to collect money in excess of the amount owing by the borrower to the creditor;

(ab) collect or attempt to collect money from a person who is not liable for the debt;

(c) striking out clause (c) and substituting the following clause:

(c) send any communication or make any call, for the purpose of demanding a debt, for which the creditor elects to make the charges payable by the recipient;

(d) striking out clause (d) and substituting the following clause:

(d) continue to communicate with or continue to collect or attempt to collect money from

(i) a person, if that person has informed the creditor that he or she is not the person sought by the creditor, unless the creditor first takes all reasonable precautions to ensure that that person is, in fact, the person sought by the creditor,

(ii) a borrower, if the borrower has notified the creditor in writing to communicate only with the borrower’s legal adviser and an address for the legal adviser has been provided, or

(iii) a borrower, if the borrower has notified the creditor by registered mail that the debt is in dispute and requests that the creditor take the matter to court;

(e) striking out “in the Province” in the fourth line of clause (e);

(f) adding “, any member of the borrower’s family or household, any relative, neighbour, friend or acquaintance of the borrower, the borrower’s employer or any person who has guaranteed to pay the debt of the borrower” immediately after “borrower” in the first line of clause (f);

(g) striking out “the borrower” in the second line of clause (f) and substituting “a person”;

(h) striking out “his spouse or any member of his family” in the last line of clause (g) and substituting “any member of the borrower’s family or household, any relative, neighbour, friend or acquaintance of the borrower, the borrower’s employer or any person who has guaranteed to pay the debt of the borrower”;

(i) striking out clause (h) and substituting the following clause:

(h) unless requested by the person being contacted, contact by telephone, personal call or electronic means or otherwise attempt to contact a person in relation to the collection of money or possession of property

(i) on a Sunday or any other day designated by the regulations,

(ii) on any day other than a day referred to in subclause (i) except between the hours of eight o’clock in the morning and nine o’clock in the evening,

(iii) on any day that falls during a consecutive seven-day period in which a creditor has contacted the person three times, or

(iv) at such other times as may be prescribed by the regulations;

(j) add immediately after clause (h) the following clause:

(ha) where using an automated call system, fail to provide a contact number for the borrower to call when leaving a message;

(k) striking out clause (i) and substituting the following clause:

(i) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings, lien or garnishment;

(l) striking out “, his spouse or any member of his family” in the second and in the last lines of clause (j) and substituting in each case “or any member of the borrower’s family or household”;

(m) adding “or herself” immediately after “himself” in the second line of clause (k);

(n) striking out the period at the end of clause (k) and substituting a semi-colon; and

(o) adding immediately after clause (k) the following clauses:

(l) publish or threaten to publish, either in print or through electronic means, a borrower’s failure to pay;

(m) communicate or attempt to communicate with any member of a borrower's family or household or any relative, neighbour, friend or acquaintance of a borrower, unless

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

(ii) the creditor does not have the borrower's home address or personal telephone number and the contact is for the sole purpose of obtaining the borrower's home address or personal telephone number, or

(iii) the borrower has requested that the creditor discuss the debt with that person;

(n) communicate or attempt to communicate with the borrower's employer, unless

(i) the employer has guaranteed to pay the debt of the borrower and the contact is in respect of that guarantee,

(ii) the contact is solely for the purpose of confirming the borrower's employment status, business title or business address and occurs only once, or

(iii) the contact is authorized in writing by the borrower;

(o) directly or indirectly communicate to a borrower an intention to proceed with any legal action for which there is no lawful authority.

41 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, protections or remedies under this Act and any agreement which in any way limits or abrogates or in effect limits or abrogates any such right, benefit, protection or remedy is void.

42 (1) Subsection 5(1) of Chapter 91 is amended by

(a) striking out "penalty of not more than two" in the fifth and sixth lines and substituting "fine of not less than five hundred dollars nor more than twenty-five"; and

(b) adding "or the regulations" immediately after "Act" in each case in the second and in the fourth lines.

(2) Subsection 5(2) of Chapter 91 is amended by striking out "twenty-five" in the last line and substituting "three hundred".

(3) Subsection 5(3) of Chapter 91 is amended by striking out "one year" in the second line and substituting "three years".

43 Chapter 91 is further amended by adding immediately after Section 5 the following Section:

6 (1) The Governor in Council may make regulations

(a) prescribing other days and times when a person may not be contacted in relation to the collection of money or possession of property for the purpose of clause 4(h);

(b) defining any word or expression used but not defined in this Act;

(c) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

GENERAL

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

45 Chapter 3 of the Acts of 2003 (Second Session), *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*, is repealed.

46 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
