

Collection Agencies Act

CHAPTER 77 OF THE REVISED STATUTES, 1989

as amended by

2014, c. 34, s. 2; 2014, c. 39, s. 2; 2018, c. 43, s. 1



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An Act Respecting Collection Agencies

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Short title

1 This Act may be cited as the *Collection Agencies Act*. R.S., c. 77, s. 1.

Interpretation

2 In this Act,

(a) “collection agency” means a person, other than a collector, who deals with a debtor for the purpose of obtaining or arranging for payment of money owing to another person, or who holds out to the public that he provides such a service or any person who sells or offers to sell forms or letters represented to be a collection system or scheme;

(b) “collector” means a person employed, appointed or authorized by a collection agency to solicit business or collect debts for the agency or to deal with or trace debtors for the agency;

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- (c) “licence” means a valid and subsisting licence granted under this Act;
- (d) “Minister” means the Minister of Service Nova Scotia;
- (e) “Registrar” means the person appointed as Registrar for the purposes of this Act. R.S., c. 77, s. 2; 2014, c. 34, s. 2.

Act does not apply

3 This Act shall not apply to any barrister or firm of barristers of the Supreme Court. R.S., c. 77, s. 3.

Registrar

4 (1) The Minister shall appoint a Registrar who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar’s stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar’s duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 2.

Prohibition

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

(a) carry on business as a collection agency unless he is the holder of a licence as a collection agency; or

(b) act as a collector unless he is the holder of a licence as a collector of a licensed collection agency.

(2) A licensed collection agency shall not carry on business in a name other than the name in which it is registered or invite the public to deal at a place other than that authorized by the license. R.S., c. 77, s. 5.

Application for licence

6 (1) Every application for a licence shall be made to the Registrar upon a form provided by him and shall be accompanied by the fee prescribed in the regulations.

(2) Every applicant or person acting on behalf of an applicant may be required by the Registrar to verify by affidavit or otherwise the statements made by him in the application.

(3) An applicant for a licence as a collection agency shall file with the Registrar as part of the application

(a) two copies of each form of agreement that the collection agency uses or proposes to use when entering into agreement with persons for whom he acts;

(b) two copies of each form or form letter that the collection agency uses or proposes to use in making demands for the collection of debts; and

(c) a bond as prescribed by the regulations.

(4) The agreement referred to in subsection (3) shall set out particulars of the fees charged or proposed to be charged by the collection agency. R.S., c. 77, s. 6.

Address for service

7 (1) Every applicant for a licence shall state in the application an address for service in the Province, and any notice under this Act or the regulations shall for all purposes be sufficiently served if delivered or sent by registered mail to that address or to the address for service stated or shown in a notice given pursuant to subsection (2).

(2) Every licensee shall notify the Registrar in writing of any change in his address for service. R.S., c. 77, s. 7.

Agency represented by collector

8 (1) Every application for a licence as a collector shall be accompanied by a statement in writing given by a licensed collection agency that the applicant, if granted a licence, is authorized to act as a collector representing that collection agency.

(2) A licence issued to a collector shall indicate thereon the name of the collection agency who furnished the statement required under subsection (1) and on whose behalf the collector is authorized to act as a collector. R.S., c. 77, s. 8.

Deemed agent

9 A collector who is the holder of a licence is deemed to be authorized by the collection agency specified in the licence to act for or on behalf of that collection agency. R.S., c. 77, s. 9.

Notice of termination of representation

10 (1) Where a collector ceases to represent a collection agency, the collection agency shall forthwith give notice in writing to the Registrar that the col-

lector has ceased to represent him and the receipt of such notice by the Registrar shall operate as a termination of the licence of the collector.

(2) A collection agency which fails to give the notice mentioned in subsection (1) within five days after the collector has ceased to represent him is guilty of an offence. R.S., c. 77, s. 10.

Transfer prohibited

11 The transfer of the licence of a collector from one collection agency to another is prohibited. R.S., c. 77, s. 11.

New application

12 Where a collector whose licence is terminated is appointed by another collection agency or is re-appointed by the collection agency with whom he was previously licensed, the collector shall make a new application to the Registrar for a licence. R.S., c. 77, s. 12.

Restrictions on licence

13 (1) The Registrar may

(a) grant a licence; or

(b) where a licence is already granted, by notice to the licensee, make the licence subject to such terms, conditions and restrictions as are prescribed by the Governor in Council.

(2) Every licensee shall comply with the terms, conditions and restrictions to which his licence is subject. R.S., c. 77, s. 13.

Expiry of licence

14 Unless previously terminated or cancelled, every licence expires at midnight on the thirtieth day of April of each year. R.S., c. 77, s. 14.

Suspension or cancellation

15 (1) The Registrar may suspend or cancel a licence where he is satisfied that the licensee

(a) has violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject;

(b) has made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the Registrar pursuant to Section 6;

(c) is guilty of misrepresentation, fraud, or dishonesty, false or misleading advertising; or

(d) has demonstrated his incompetency, unfitness, or untrustworthiness to carry on the business in respect of which his licence was granted.

(2) Where a bond filed under this Act is terminated, the licence of the collection agency shall automatically be suspended and shall remain so suspended until the collection agency files with the Registrar a new bond in the amount and form required.

(3) Where the licence of a collection agency is suspended or cancelled, the licences of all collectors of the collection agency shall be automatically terminated. R.S., c. 77, s. 15.

Further information

16 The Registrar may at any time require further information or material to be submitted by an applicant for a licence or by a licensee within a specified time and may require verification by affidavit or otherwise of any information or material so submitted or previously submitted. R.S., c. 77, s. 16.

Appeal

17 (1) A person who is dissatisfied with a decision of the Registrar under this Act may, within thirty days from the date of the decision, appeal to a judge of the county court who may upon hearing the appeal, which shall be heard in accordance with the *Summary Proceedings Act*, by order do any one or more of the following things:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms and conditions;
- (d) vary the decision appealed against;
- (e) refer the matter back to the Registrar for further consideration and decision;
- (f) award costs of the appeal;
- (g) make such other order as to him seems just.

(2) The appeal shall be by notice of appeal and a copy thereof shall be served upon the Registrar not less than ten days before the day on which the motion is returnable.

(3) On the hearing of an appeal any evidence taken before the Registrar and certified by him may, with leave of the judge hearing the appeal, be read and shall have the like force and effect as if the witness were there examined and any party affected by the appeal may call witnesses and adduce evidence whether or not the witnesses were called or the evidence adduced at the hearing before the Registrar either as to the credibility of witnesses or as to any other fact material to the inquiry.

(4) An appeal shall lie to the Appeal Division of the Supreme Court from a decision of the county court upon any question of law but such appeal can only be taken by leave of a judge of the Appeal Division given upon a petition presented to him within thirty days after the rendering of the decision and upon such terms as the said judge may determine, and notice of such petition shall be given to the Registrar at least two clear days before the presentation of such petition.

(5) Where leave to appeal has been granted the appeal shall be brought by notice served on the Registrar within ten days after the leave to appeal has been granted, and the notice shall contain the names of the parties, the date of the decision appealed from and such other particulars as the judge granting leave to appeal may require. R.S., c. 77, s. 17.

Further application

18 A further application for a licence may be made upon new or other evidence being produced where it is clear that material circumstances have changed. R.S., c. 77, s. 18.

Records and accounts

19 Every holder of a collection agency's 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; and

(b) maintain a trust account in a chartered bank, credit union or trust company, and deposit all money received on behalf of a client in the trust account. R.S., c. 77, s. 19.

Prohibitions

20 (1) No collection agency or collector shall

(a) collect or attempt to collect for a creditor money in excess of the amount owing by the debtor to the creditor;

(b) collect or attempt to collect money for a creditor without first satisfying itself that the money is owing by the debtor to the creditor;

(c) make any charge against a person for whom it acts in addition to those contained in the agreement with that person;

(d) send any telegram or make any telephone call, for which the charges are payable by the addressee or the person to whom the call is made, to a debtor for the purpose of demanding payment of a debt;

(e) communicate with a debtor when the latter has notified him in writing to communicate with his legal adviser;

(f) communicate verbally with a debtor unless he has previously sent him a notice in writing;

(g) use any form or form of letter to collect or attempt to collect money from a debtor unless a copy of the form or form of letter is filed with the Registrar;

(h) use, without lawful authority, any summons, notice, or demand or other document expressed in language of the general style or purport of any form used in any court in the Province, or printed or written or in the general appearance or format of any such form;

(i) in any way threaten, abuse or intimidate a debtor either orally or in writing to induce a person to pay a debt;

(j) make telephone calls or personal calls or written communications of such nature or with such frequency as to constitute harassment of the debtor, his spouse or any member of his family;

(k) make telephone calls or personal calls for the purpose of demanding payment of a debt

(i) on a Sunday, or

(ii) on any other day except between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon;

(l) give, by implication, inference or statement, directly or indirectly, any false or misleading information to any person that may be detrimental to a debtor, his spouse or any member of his family;

(m) give, or threaten to give, by implication, inference or statement, directly or indirectly, to the person who employs a debtor, his spouse or any member of his family information that may adversely affect the employment or employment opportunities of the debtor, his spouse or any member of his family;

(n) make a demand by telephone, by personal call or by writing for payment of an account without indicating the name of the creditor with whom the account was incurred, the balance of the account and the identity and authority of the person making the demand;

(o) except to obtain the debtor's address, communicate with the employer, acquaintances, friends, relatives or neighbours of the debtor except in the case of a person who is surety for the debtor; or

(p) commence or continue an action for the recovery of a debt in the name of the collection agency or collector as plaintiff unless such debt has been assigned to the collection agency or collector, as the case may be, in good faith by instrument in writing for valuable consideration and notice of such assignment has been given to the debtor.

(2) Notwithstanding any agreement to the contrary between a debtor and a creditor, any charges made or incurred by a collection agency or made or incurred by a creditor in employing a collection agency to collect the debt shall

be deemed not to be a part of the amount owing by the debtor and shall not be recoverable by the creditor or by the collection agency acting on behalf of the creditor. R.S., c. 77, s. 20.

Investigation

21 (1) The Registrar, or any person authorized by him in writing, may investigate and inquire into any matter the investigation of which he deems expedient for the due administration of this Act.

(2) The person making an investigation may at all reasonable times demand the production of and inspect all or any of the books, documents, papers, correspondence and records of the person in respect of whom the investigation is being made, and any person who has the custody, possession or control of any such books, documents, papers, correspondence or records shall produce them and permit the inspection thereof by the person making the investigation.

(3) For the purposes of subsection (1), the Registrar or any person designated in writing by him may at any reasonable time enter upon the business premises of the collection agency to make an investigation. R.S., c. 77, s. 21.

Services of unlicensed agent or collector

22 (1) No person shall knowingly engage or use the services of a collection agency that is not licensed under this Act.

(2) No collection agency shall employ a collector or appoint or authorize a collector to act on its behalf unless the collector is licensed under this Act. R.S., c. 77, s. 22.

Offence

23 A person who

- (a) does anything that is prohibited by this Act or the regulations;
- or
- (b) omits to do anything that is required by this Act or the regulations to be done,

is guilty of an offence against this Act. R.S., c. 77, s. 23.

Penalty

24 (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 one hundred dollars nor more than one thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

(2) Notwithstanding subsection (1), where the person convicted of an offence under this Act or the regulations is a collection agency, the maximum penalty may be increased to ten thousand dollars. R.S., c. 77, s. 24.

Evidence of carrying on business

25 Where in a prosecution for an offence under this Act it is alleged that the accused carried on the business of a collection agency without being the holder of a licence, evidence of one transaction is *prima facie* evidence that the accused carried on such business. R.S., c. 77, s. 25.

Certificate of Registrar

26 A certificate under the hand of the Registrar stating that

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

is without proof of the office or signature of the Registrar admissible in evidence as *prima facie* proof of the facts stated in the certificate for all purposes in any action, proceeding or prosecution. R.S., c. 77, s. 26.

Limitation period

27 A prosecution for an offence under this Act or the regulations may not be commenced more than three years after the later of

- (a) the date on which the offence was committed; and
- (b) the date on which evidence of the offence first came to the attention of the Registrar. 2018, c. 43, s. 1.

Regulations

28 The Governor in Council may make regulations

- (a) governing applications for licences or renewal of licences and prescribing terms and conditions of licences;
- (b) requiring the payment of fees on application for licences or renewal of licences and prescribing the amount thereof;
- (c) prescribing forms for the purposes of this Act and providing for their use;
- (d) requiring and governing the maintenance of trust accounts by collection agencies and prescribing the money that shall be held in trust and the terms and conditions thereof;
- (e) requiring and governing the books, accounts and records that shall be kept by collection agencies and requiring the accounting and remission of money to creditors in such manner and times as are prescribed, including the disposition of unclaimed money;
- (f) requiring collection agencies or any class thereof to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

- (g) requiring collection agencies to make returns and furnish information to the Registrar;
- (h) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (i) prohibiting the use of any particular method in the collection of debts;
- (j) prescribing the procedures and matters that a collection agency or collector must follow to satisfy itself that money demanded of a debtor is owing by the debtor to the creditor;
- (k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S., c. 77, s. 28.

Regulations Act

29 The exercise by the Governor in Council of the authority contained in Section 28 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 77, s. 29.
