c 58 Collection Agencies Act

Ontario
CHAPTER 58
The Collection Agencies Act

1. In this Act,

(a) "collection agency" means a person, other than a collector, who carries on the business of collecting debts for other persons or of receiving money periodically from persons for distribution to creditors of such persons in consideration of the payment of a commission or other remuneration, and includes a person who takes an assignment of debts in consideration of such payment;

(b) "collector" means a person employed, appointed or authorized by a collection agency to solicit business or collect debts for the agency;

(c) "licence" means a licence issued under this Act;

(d) "prescribed" means prescribed by this Act or the regulations;

(e) "registrar" means the person designated by the Superintendent to act as registrar for the purposes of this Act and the regulations;

(f) "regulations" means the regulations made under this Act;

(g) "Superintendent" means the Superintendent of Insurance. R.S.O. 1950, c. 56, s. 1; 1953, c. 16, s. 1.

2. The Superintendent shall administer this Act and the regulations and may designate a person to act as registrar. R.S.O. 1950, c. 56, s. 2.

3. No person shall,

(a) carry on the business of a collection agency;

(b) operate a branch office of a collection agency; or

(c) carry on business as a collector,

except under a licence therefor. R.S.O. 1950, c. 56, s. 3.
Every application for a licence as a collection agency shall be made to the registrar upon the form provided by the registrar and shall be accompanied by,

(a) the prescribed fee;

(b) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts;

(c) copies of forms and letters that the collection agency uses or proposes to use in making demands for the collection of money; and

(d) a bond in such amount and form, subject to section 12, as the regulations prescribe.

The bond shall be,

(a) the bond of a guarantee company approved under *The Guarantee Companies Securities Act*;

(b) a personal bond accompanied by collateral security; or

(c) the bond of a guarantor, other than a guarantee company, accompanied by collateral security.

The collateral security shall be negotiable securities of the classes prescribed by the regulations not less in value than the sum secured by the bond, and shall be deposited with the Treasurer of Ontario. R.S.O. 1950, c. 56, s. 4.

Every application for a licence as a collector shall be made to the registrar upon the form provided by the registrar, and shall be accompanied by the prescribed fee and such other information as the registrar requires. R.S.O. 1950, c. 56, s. 5.

The Superintendent, upon the recommendation of the registrar, may issue a licence to any person,

(a) to carry on business as a collection agency;

(b) carrying on business as a collection agency, to operate a branch office thereof; or

(c) to carry on business as a collector,

and every licence and renewal of licence expires on the 31st day of March in each year.
(2) Any licence issued under this Act may be renewed from year to year if application for renewal is made in the prescribed form not later than the 21st day of March before the expiration of the licence or the latest renewal thereof, and every such application shall contain a statement of any change in the facts set out in the application for a licence or any prior application for renewal, and shall be accompanied by the prescribed fee.

(3) The Superintendent may refuse to issue or renew any licence and may suspend or cancel any licence.

(4) The Treasurer of Ontario, upon the recommendation of the registrar, may refund to an applicant for a licence or renewal any fee or part thereof paid by the applicant.

(5) The registrar may reduce the amount of any fee payable for a licence or renewal where any substantial part of the licence period or renewal period has elapsed. R.S.O. 1950, c. 56, s. 6.

7.-(1) Every collection agency shall within ten days notify the registrar in writing of,

(a) any change in its address for service;

(b) any change in its officials or members; and

(c) the commencement and termination of employment of every collector.

(2) Every collector shall within ten days of the event notify the registrar in writing of,

(a) any change in his address for service; and

(b) the commencement and termination of his employment by a collection agency. R.S.O. 1950, c. 56, s. 7.

8. In the event that a collection agency alters or changes any form of agreement or other form or letter, it shall file the form or letter showing the alteration or change made therein with the registrar at least fourteen days before the form or letter is used. R.S.O. 1950, c. 56, s. 8.

9. Every collection agency shall file with the registrar, with every application for a renewal of a licence, a certificate satisfactory to the Superintendent as to its financial condition, signed by the proprietor or an official or member of the
collection agency and by an independent accountant satisfactory to the Superintendent and, in addition thereto, the Superintendent may at any time require a financial statement in any form to be furnished by the collection agency. R.S.O. 1950, c. 56, s. 9.

10. The registrar shall cause all moneys, cheques and money orders in respect of fees to be deposited daily with the Treasurer of Ontario for payment into the Consolidated Revenue Fund. R.S.O. 1950, c. 56, s. 10, amended.

11. This Act does not apply,

(a) to a barrister or solicitor in the regular practice of his profession or to his employees;

(b) to an insurer, agent or broker licensed under The Insurance Act to the extent of the business authorized by such licence or to his employees;

(c) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the Bankruptcy Act (Canada), The Corporations Act, The Judicature Act or the Winding-up Act (Canada) or a person acting under the order of any court;

(d) to a broker or salesman registered under The Real Estate and Business Brokers Act, or an official or other employee of such a broker to the extent of the business authorized by the registration;

(e) to a bank to which the Bank Act (Canada) applies, the Province of Ontario Savings Office, a loan corporation or trust company registered under The Loan and Trust Corporations Act, or an employee thereof in the regular course of his employment; or

(f) to an isolated collection made by a person whose usual business is not collecting debts for other persons. R.S.O. 1950, c. 56, s. 11; 1953, c. 16, s. 2.

12.—(1) Any bond mentioned in section 4 is forfeited and the amount thereof becomes due and owing by the person bound thereby as a debt due the Crown in right of Ontario,

(a) where the collection agency in respect of which the bond is given or any collector or official of the collec-
tion agency has, in connection with its collection business, been,

(i) convicted of any criminal offence,

(ii) convicted of an offence against any provision of this Act or the regulations, or

(iii) a party to civil proceedings in the courts as a result of which judgment has been given against such collection agency, collector or other official for moneys collected for any other person; or

(b) where proceedings by or in respect of the collection agency, including any member of a partnership, in respect of which the bond is given, have been taken under the Bankruptcy Act (Canada) or by way of winding-up, and a receiving order under the Bankruptcy Act (Canada) or a winding-up order has been made,

and such conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest court to which an appeal may be taken.

(2) A bond may be cancelled by any person bound thereunder by giving to the Superintendent at least two months notice in writing of intention to cancel, and it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than two months after the receipt of the notice by the Superintendent.

(3) For the purposes of every act and omission occurring during the period in which a collection agency is licensed or the period prior to cancellation of the bond under subsection 2, every bond shall continue in force and the collateral security, if any, shall remain on deposit for a period of two years after the expiration or cancellation of any licence, or the cancellation of the bond, whichever occurs first. R.S.O. 1950, c. 56, s. 12.

13. Where Her Majesty becomes a creditor of a person in respect of a debt to the Crown arising from section 12, the Superintendent may take such proceedings as he sees fit under the Bankruptcy Act (Canada), The Judicature Act, The Corporations Act or the Winding-up Act (Canada) for the appointment of an interim receiver, custodian, trustee, receiver or liquidator, as the case may be. R.S.O. 1950, c. 56, s. 13.
14. Where a bond secured by the deposit of collateral security with the Treasurer of Ontario is forfeited under section 12, the Lieutenant Governor in Council may direct the Treasurer to sell the collateral security at the current market price. R.S.O. 1950, c. 56, s. 14.

15. The Lieutenant Governor in Council may direct the Treasurer of Ontario,

(a) to assign a bond forfeited under section 12 and transfer the collateral security, if any;

(b) to pay over any moneys recovered under the bond;

(c) to pay over any moneys realized from the sale of the collateral security under section 14,

to any person, or to the Accountant of the Supreme Court in trust for such persons and companies as become judgment creditors of the collection agency bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such collection agency, as the case may be. R.S.O. 1950, c. 56, s. 15.

16. Where a bond has been forfeited under section 12 by reason of a conviction or judgment under clause a of subsection 1 thereof and the Superintendent has not within two years of such conviction or judgment having become final, or of the collection agency in respect of which the bond was furnished ceasing to carry on business as such, whichever occurs first, received notice in writing of any claim against the proceeds of the bond or of such part thereof as remains in the possession of the Treasurer of Ontario, the Lieutenant Governor in Council may direct the Treasurer to pay such proceeds or part thereof to the collection agency, or to any person who upon forfeiture of the bond made any payments thereunder, after first deducting the amount of any expenses that have been incurred in connection with any investigation or otherwise relating to such collection agency. R.S.O. 1950, c. 56, s. 16.

17.—(1) Every collection agency shall without any notice or demand, within thirty days after the receipt of any moneys collected, account for all moneys so received and pay them, less the proper fees of such collection agency, to the person entitled thereto, but when the moneys collected are less than $5, payment to the person entitled thereto shall be made within ninety days.
(2) Every collection agency shall upon demand made by a person entitled to an accounting, or by the Superintendent, account for all moneys received on behalf of such person and pay the moneys, less the proper fees of such collection agency, to such person.

(3) Where a collection agency is unable to locate the person entitled to moneys collected by it within six months after they have been collected, it shall cause the moneys to be paid to the Treasurer of Ontario who may pay the moneys to the person entitled thereto upon satisfactory proof being furnished by the person that he is the person entitled to receive them. R.S.O. 1950, c. 56, s. 17.

18. Every collection agency shall deposit all moneys collected, less the proper earned commission of the collection agency, in a separate trust account in a chartered bank, the Province of Ontario Savings Office or a trust company authorized by law to accept deposits. R.S.O. 1950, c. 56, s. 18.

19. Every collection agency shall keep proper records and books of account showing moneys received and moneys paid out and such books shall include a receipt book, cash book, clients' ledger and journal. R.S.O. 1950, c. 56, s. 19.

20. No collection agency or collector shall,

(a) collect or attempt to collect for a person for whom it acts any moneys in addition to the amount owing by the debtor;

(b) make any charge against a person for whom it acts in addition to those contained in the form of agreement or in the information pertaining to fees filed with the Superintendent;

(c) 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;

(d) enter into any agreement with a person for whom the collection agency acts unless a copy of the form of the agreement is filed with the registrar; or

(e) 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. R.S.O. 1950, c. 56, s. 20; 1953, c. 16, s. 3.
21. Every collector shall immediately notify his employer when any moneys are collected by him in the course of his employment. R.S.O. 1950, c. 56, s. 21.

22. Every collection agency shall keep its licence and the last renewal thereof displayed in a conspicuous place in its office and shall keep every licence for a branch office together with the last renewal thereof displayed in a conspicuous place in the branch office. R.S.O. 1950, c. 56, s. 22.

23. The registrar, or such other person as is directed in writing by the Superintendent, has authority at any time between 9 o'clock in the forenoon and 5 o'clock in the afternoon to enter the premises of a collection agency and examine its books and records. R.S.O. 1950, c. 56, s. 23.

24. A notice of every direction, decision, order or ruling of the Superintendent granting or refusing to grant a licence, or refusing to renew a licence, or suspending or cancelling a licence shall be served upon the collection agency or collector whose licence is thereby affected at the address appearing in the application or upon the records of the registrar. R.S.O. 1950, c. 56, s. 24.

25.—(1) An applicant, collection agency or collector whose licence is affected by a direction, decision, order or ruling referred to in section 24 may, by notice in writing served upon the registrar within thirty days after the mailing of the notice, request a hearing and review by the Superintendent of the direction, decision, order or ruling.

(2) Where a hearing and review are requested under subsection 1, the registrar shall send a notice in writing of the time and place thereof to the person requesting the hearing and review stating the date and place thereof.

(3) Upon a review, the Superintendent may hear such evidence as is submitted to him by the person requesting the review or by any other person that in the opinion of the Superintendent is relevant to the review, but he is bound by the technical rules of evidence, and the oral evidence submitted shall be taken down in writing and, together with such documentary evidence and things as are received in evidence, forms the record.

(4) Upon a review, the Superintendent may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as he deems proper.
(5) Notice of the order made upon a review shall be sent forthwith to the person requesting the review. R.S.O. 1950, c. 56, s. 25.

26.—(1) Where the Superintendent has reviewed a direction, decision, order or ruling under section 25, the person who requested the review may appeal to a justice of appeal of the Supreme Court.

(2) Every appeal shall be by notice of motion served upon the registrar within thirty days after the mailing of the notice under subsection 5 of section 25 and the practice and procedure upon and in relation to the appeal are the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, but the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure that are applicable to appeals taken under this section.

(3) The registrar shall certify to the Registrar of the Supreme Court,

(a) the direction, decision, order or ruling that has been reviewed by the Superintendent;

(b) the order of the Superintendent upon the review, together with any statement of reasons therefor;

(c) the record of the review; and

(d) all written submissions to the Superintendent and other material that in the opinion of the registrar are relevant to the appeal.

(4) The Attorney General may designate counsel to assist the court upon the hearing of an appeal taken under this section. R.S.O. 1950, c. 56, s. 26.

27. Where an appeal is taken under section 26, the court may by its order direct the Superintendent to make such direction, decision, order or ruling or to do such other act as the Superintendent is authorized and empowered to do under this Act or the regulations and as the court deems proper having regard to the material and submissions before it and to the provisions of this Act and the regulations, and the Superintendent shall make such direction, decision, order or ruling or do such act accordingly. R.S.O. 1950, c. 56, s. 27.
28. An order of the court is final and there is no appeal therefrom, but, notwithstanding such order, the Superintendent has power to make any further direction, decision, order or ruling upon new material or where there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to sections 24 to 27. R.S.O. 1950, c. 56, s. 28.

29. Every person who knowingly employs a collection agency not having a licence as required by this Act, or causes or procures letters or notices to be sent or verbal demands to be made upon debtors by a collection agency not having such a licence, is guilty of an offence and on summary conviction is liable to a fine of not more than $200. R.S.O. 1950, c. 56, s. 29.

30. Every collection agency or collector who contravenes any provision of this Act or the regulations for which no other penalty is provided or who fails or neglects to carry out an order or direction of the Superintendent made under this Act is guilty of an offence and on summary conviction is liable to a fine of not more than $200. R.S.O. 1950, c. 56, s. 30.

31. No proceedings under this Act shall be instituted except with the consent or under the direction of the Superintendent. R.S.O. 1950, c. 56, s. 31.

32. The Lieutenant Governor in Council may make regulations,

(a) prescribing the form of licences and renewals and applications therefor;

(b) prescribing the fees payable for licences and renewals, and any other fees in connection with the administration of this Act and the regulations;

(c) requiring collection agencies to make returns and furnish information to the Superintendent;

(d) prescribing the manner of making deposits and regulating the control and disposition thereof;

(e) governing the keeping of records, books, accounting systems and audits;

(f) prescribing the amount and form of bonds to be furnished by collection agencies;
(g) prescribing the classes of negotiable securities that may be accepted as collateral security for a bond;

(h) prohibiting the use of any particular method in the collection of debts;

(i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1950, c. 56, s. 32.