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c 71 Collection Agencies Act

Ontario

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CHAPTER 71

The Collection Agencies Act

1. 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;

(c) "Department" means the Department of Financial and Commercial Affairs;

(d) "Director" means the Director of the Consumer Protection Division of the Department;

(e) "Minister" means the Minister of Financial and Commercial Affairs;

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

(g) "registered" means registered under this Act;

(h) "Registrar" means the Registrar of Collection Agencies;

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

(j) "Tribunal" means The Commercial Registration Appeal Tribunal established under The Department of Financial and Commercial Affairs Act. 1968-69, c. 11, s. 1.

2. 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 Business 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;

(f) to an isolated collection made by a person whose usual business is not collecting debts for other persons; or

(g) to a person providing counselling services in respect of consumer credit and receiving public money under The Consumer Protection Bureau Act for the purpose.

Registrar 3.—(1) There shall be a Registrar of Collection Agencies who shall be appointed by the Lieutenant Governor in Council.

Duties of Registrar (2) The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him by or under this Act under the supervision of the Director. 1968-69, c. 11, s. 3.

Registration 4.—(1) No person shall carry on the business of a collection agency or act as a collector unless he is registered by the Registrar under this Act.

Name and place of business (2) A registered 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 registration. 1968-69, c. 11, s. 4.

Use of name to collect debts 5. No creditor shall deal with his debtor for payment of the debt except under the name in which the debt is lawfully owing or through a registered collection agency. 1968-69, c. 11, s. 5.

Registration 6.—(1) An applicant is entitled to registration or renewal of registration except where,

(a) his financial responsibility or record of past conduct is such that it would not be in the public interest for the registration or renewal to be granted;
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(b) where the applicant is a corporation, its financial responsibility or the record of past conduct of the corporation or its officers or directors is such that it would not be in the public interest for the registration or renewal to be granted; or

c) the applicant is or proposes to be in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. 1968-69, c. 11, s. 6.

7.—(1) The Tribunal may, upon the application of the Registrar, suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 8 if he were an applicant, or where the registrant is in breach of a condition of the registration.

(2) Notwithstanding subsection 1, the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. 1968-69, c. 11, s. 7.

8.—(1) Where the Registrar refuses to issue or renew a registration or applies to the Tribunal to suspend or revoke a registration, he shall serve notice upon the applicant or registrant, together with written reasons for his refusal or for the proposed suspension or revocation, and the applicant or registrant may, by written notice served upon the Registrar and the Tribunal within fifteen days after the service of the notice of refusal or proposed suspension or revocation, require a hearing by the Tribunal.

(2) Where the Registrar refuses to renew a registration, the applicant shall be deemed to continue to be registered until an order is made by the Tribunal or until the time for requiring a hearing by the Tribunal expires, whichever occurs first.

(3) The Tribunal shall fix a date for the hearing and shall serve notice of the hearing on the parties at least ten days before the day fixed.

(4) The notice of hearing shall contain,

(a) a statement of the time and place of the hearing;

(b) a statement of the statutory power under which the hearing is being held;

(c) a reference to the rules of procedure applicable to the hearing;

(d) a concise statement of the issues; and
(e) a statement that, if a party who has been duly notified does not attend at the hearing, the Tribunal may proceed in his absence and he is not entitled to notice of any further proceedings. 1968-69, c. 11, s. 8.

Parties
9.—(1) The Registrar, the applicant or registrant and any other person specified by the Tribunal are parties to the hearing.

(2) If a person who has been duly notified of a hearing does not attend, the Tribunal may proceed in his absence. 1968-69, c. 11, s. 9.

Adjournment
10.—(1) A hearing may be adjourned from time to time by the Tribunal on reasonable grounds,

(a) on its own motion; or

(b) on the motion of any party to the hearing.

Subpoenas
(2) The Tribunal may, in the prescribed form, command the attendance before it of any person as a witness.

Oaths
(3) The Tribunal may require any person,

(a) to give evidence on oath at a hearing; and

(b) to produce such documents and things as the Tribunal requires.

(4) An applicant or registrant giving evidence under oath before the Tribunal shall be advised of his right to object to answer any question under section 9 of The Evidence Act and section 5 of the Canada Evidence Act.

(5) The Tribunal may admit evidence not given under oath.

Offences
(6) Any person who, without lawful excuse,

(a) on being duly summoned as a witness before the Tribunal, makes default in attending; or

(b) being in attendance as a witness before the Tribunal, refuses to take an oath legally required by the Tribunal to be taken, or to produce any document or thing in his power or control legally required by the Tribunal to be produced by him, or to answer any question to which the Tribunal may legally require an answer; or

(c) does any other thing that would, if the Tribunal had been a court of law having power to commit for contempt, have been contempt of that court, is guilty of an offence punishable under subsection 7.
(7) The Tribunal may certify an offence under subsection 6 to the High Court and that court may thereupon inquire into the offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1968-69, c. 11, s. 10.

11. Any party may be represented before the Tribunal by counsel or agent. 1968-69, c. 11, s. 11.

12.—(1) Any witness may be represented before the Tribunal by counsel or agent, but at the hearing the counsel or agent may only advise the witness and state objections under the provisions of the relevant law.

(2) Where a hearing is in camera, a counsel or agent for a witness shall be excluded except when that witness is giving evidence. 1968-69, c. 11, s. 12.

13. At a hearing before the Tribunal, any party may call and examine his witnesses, cross-examine opposing witnesses and present his arguments and submissions. 1968-69, c. 11, s. 13.

14.—(1) All hearings shall be open to the public except where the Tribunal finds that,

(a) public security may be involved; or

(b) intimate financial or personal circumstances of any person may be disclosed,

in which case the Tribunal shall hold the hearing as to any such matters in camera.

(2) Notwithstanding the exceptions mentioned in clauses a and b of subsection 1, the Tribunal may, if in its opinion the public interest so requires, proceed without regard to such exceptions. 1968-69, c. 11, s. 14.

15. Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Tribunal within a reasonable time after the matter in issue has been finally determined. 1968-69, c. 11, s. 15.

16.—(1) The Tribunal may consider in reaching its decision any facts and information that are within its knowledge and that have not been introduced in evidence.

(2) The Tribunal shall notify all parties to a proceeding of any facts or information referred to in subsection 1 and shall, before reaching its decision, give the parties an opportunity to contest before it any such facts or information.
(3) The Tribunal shall cause a notice containing a statement of such facts or information to be served upon all the parties. 1968-69, c. 11, s. 16.

17. All oral evidence received by the Tribunal shall be taken down in writing and together with,

(a) the notice of hearing;
(b) any rulings or orders made in the course of the proceedings of the Tribunal;
(c) any written submissions received by the Tribunal; and
(d) the decision and the reasons therefor,

form the record. 1968-69, c. 11, s. 17.

18.—(1) The Tribunal may, after the hearing,

(a) where the hearing is an appeal from a decision of the Registrar, by order confirm or alter the decision of the Registrar or direct the Registrar to do any act the Registrar is authorized to do under this Act and as the Tribunal considers proper and for this purpose the Tribunal may substitute its opinion for that of the Registrar;
(b) where the hearing is an application for suspension or revocation of a registration, dismiss the application or order that the registration be suspended or revoked, and the Tribunal may attach such terms and conditions to its order or to the registration as it considers appropriate.

(2) The final decision of the Tribunal, including the reasons therefor, shall be in writing.

(3) The reasons for the final decision shall contain,

(a) the findings of fact on the evidence and any information or knowledge used in reaching the decision;
(b) any agreed findings of fact; and
(c) the conclusions of law based on the findings mentioned in clauses a and b.

(4) The Tribunal shall cause to be served on the parties a copy of its final decision, including the reasons therefor, and a notice stating the rights of appeal. 1968-69, c. 11, s. 18.

19. A certified copy of the final decision of the Tribunal, exclusive of the reasons therefor, may be filed in the office of the Registrar of the Supreme Court whereupon it shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1968-69, c. 11, s. 19.
20. — (1) Any party to the hearing before the Tribunal may appeal from the decision of the Tribunal to the Court of Appeal, and the practice and procedure as to the appeal and proceedings incidental thereto are the same mutatis mutandis as upon an appeal from the High Court.

(2) The Minister may designate counsel to assist the court upon the hearing of an appeal under this section.

(3) An appeal under this section may be made on questions of law or fact or both and the court may confirm or alter the decision of the Tribunal or direct the Registrar or the Tribunal to do any act the Registrar or the Tribunal is authorized to do under this Act and as the court considers proper, and the court may substitute its opinion for that of the Registrar and the Tribunal and may exercise the same powers as it exercises on an appeal from a judge of the High Court. 1968-69, c. 11, s. 20.

21. An order of the Tribunal refusing to renew or suspending or revoking a registration shall take effect immediately, but the Tribunal may grant a stay until the order becomes final. 1968-69, c. 11, s. 21.

22. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. 1968-69, c. 11, s. 22.

23. — (1) Where the Registrar receives a complaint in respect of a collection agency and so requests in writing, the collection agency shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

(2) The request under subsection 1 shall indicate the nature of the inquiry involved.

(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 registrant to make an inspection in relation to the complaint. 1968-69, c. 11, s. 23.

24. — (1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts are being complied with.

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as a collection agency while unregistered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4. 1968-69, c. 11, s. 24.
Powers on inspection

25.—(1) Upon an inspection under section 23 or 24, the person inspecting,

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person being inspected; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause a that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

Admissibility of copies

(2) Any copy made as provided in subsection 1 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original. 1968-69, c. 11, s. 25.

Investigations

26.—(1) Where, upon a statement made under oath, it appears probable to the Director that any person has,

(a) contravened any of the provisions of this Act or the regulations; or

(b) committed an offence, under the Criminal Code (Canada) or under the law of any jurisdiction, that is relevant to his fitness for registration under this Act,

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulations or the commission of such an offence has occurred and the person appointed shall report the result of his investigation to the Director.

(2) Notwithstanding subsection 1, the Minister may by order appoint one or more persons to make an investigation into any matter to which this Act applies and the person appointed shall report the result of his investigation to the Minister.

(3) For the purpose of any investigation ordered under this section, any person appointed to make the investigation may at any reasonable time enter upon the business premises and may investigate, inquire into and examine the affairs of the person in respect of whom the investigation is being made and into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and
payments to, by, on behalf of or in relation to or in connection with such person and into any property, assets or things owned, acquired or alienated in whole or in part by such person or by any person acting on behalf of or as agent for such person, and no person shall withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the investigation.

(4) Any person making an investigation under this section may, upon giving a receipt therefor, remove any document or record relating to the person whose affairs are being investigated and that relate to the subject-matter of the investigation, for the purpose of making a copy of such document or record, provided that such copying is carried out with reasonable dispatch and the document or record in question is promptly thereafter returned to the person whose affairs are being investigated.

(5) Any copy made as provided in subsection 4 and purporting to be certified by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original document or record.

(6) The Minister or Director may appoint any expert to examine documents, records, properties and matters of any person whose affairs are being investigated under this Act.

(7) The investigator may, in the prescribed form, command the attendance before him of any person as a witness and subsections 2 to 6 of section 10 and section 12 apply to the investigator and the witness in the same manner as to the Tribunal and witnesses before it.

(8) No person, without the consent of the Minister, shall disclose, except to his counsel, any information or evidence obtained in the course of an investigation made under this section or the name of any witness examined or sought to be examined in such investigation. 1968-69, c. 11, s. 26.

27. Where, upon the report of an investigation made under subsection 1 of section 26, it appears to the Director that a person may have,

(a) contravened any of the provisions of this Act or the regulations; or

(b) committed an offence, under the *Criminal Code* (Canada) or under the law of any jurisdiction, that is relevant to his fitness for registration under this Act,

the Director shall send a full and complete report of the investigation, including the report made to him, any transcript of evidence and any material in the possession of the Director relating thereto, to the Minister. 1968-69, c. 11, s. 27.
Order to refrain from dealing with assets

28.—(1) The Director may,

(a) after an investigation of any person has been ordered under section 26; or

(b) where criminal proceedings or proceedings in respect of a contravention of any Act or regulation are about to be or have been instituted against a person that in the opinion of the Director are connected with or arise out of the business in respect of which such person is registered or required to be registered,

in writing or by telegram, direct any person having on deposit or under control or for safe-keeping any assets or trust funds of the person referred to in clause a or b to hold such assets or trust funds or direct the person referred to in clause a or b to refrain from withdrawing any such assets or trust funds from any other person having any of them on deposit, under control or for safe-keeping or to hold such assets or trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the Bankruptcy Act (Canada), The Judicature Act, The Corporations Act, The Business Corporations Act or the Winding-up Act (Canada), or until the Director revokes such direction or consents to release any particular asset or trust fund from the direction, but, in the case of a bank or loan or trust company, the direction only applies to the offices, branches or agencies thereof named in the direction.

(2) Subsection 1 does not apply where the person referred to in clause a or b of subsection 1 files with the Director,

(a) a personal bond accompanied by collateral security;

(b) a bond of a guarantee company approved under The Guarantee Companies Securities Act; or

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

in such form, terms and amount as the Director determines.

(3) Any person in receipt of a direction given under subsection 1, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

(4) In any of the circumstances mentioned in clause a or b of subsection 1, the Director may in writing or by telegram notify any registrar of deeds or master of titles that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be
registered against the lands mentioned therein and has the same
effect as the registration of a certificate of *lis pendens* except that
the Director may in writing revoke or modify the
notice. 1968-69, c. 11, s. 28.

29.—(1) Every collection agency shall, within five days after the event, notify the Registrar in writing of,

(a) any change in its address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership;

(c) any commencement or termination of employment of a collector.

(2) Every collector shall, within five days after the event, notify the Registrar in writing of,

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

(b) any commencement or termination of his employment.

(3) The Registrar shall be deemed to be notified under subsections 1 and 2 on the date on which he is actually notified or, where the notification is by mail, on the date of mailing. 1968-69, c. 11, s. 29.

30.—(1) The Registrar may at any time require a collection agency to provide him with copies of any letters, forms, forms
letters, notices, pamphlets, brochures, advertisements, contracts, agreements or other materials used or proposed to be used by the collection agency in the course of conducting its business.

(2) The Registrar may alter, amend, restrict or prohibit the use of any of the materials referred to in subsection 1, that in his opinion are harsh, false, misleading or deceptive, and sections 8 to 20 apply to the decision of the Registrar and the decision shall take effect immediately, but the Tribunal may grant a stay until the Registrar’s decision becomes final.

(3) Every collection agency shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the proprietor or officer of the collection agency and certified by a person licensed under *The Public Accountancy Act*. 1970, c. 373

(4) The information contained in a financial statement filed under subsection 3 is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. 1968-69, c. 11, s. 30.
31. 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) 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;
(c) receive or make an agreement for the additional payment of any money by a debtor of a creditor for whom the collection agency acts, either on its own account or for the creditor and whether as a charge, cost, expense or otherwise, in consideration for any forbearance, favour, indulgence, intercession or other conduct by the collection agency;
(d) deal with a debtor in a name other than that authorized by the registration. 1968-69, c. 11, s. 31.

32. Every collector shall immediately notify his employer when any moneys are collected by him in the course of his employment. 1968-69, c. 11, s. 32.

33.—(1) No person shall knowingly engage or use the services of a collection agency that is not registered 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 registered under this Act. 1968-69, c. 11, s. 33.

34. Where, in the opinion of the Registrar, a collection agency is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material and sections 8 to 20 apply to the order and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final. 1968-69, c. 11, s. 34.

35.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Department.
(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing.

(3) Notwithstanding subsections 1 and 2, the Tribunal may order any other method of service in respect of any matter before the Tribunal. 1968-69, c. 11, s. 35.

36.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Court of Appeal from an order made under subsection 1. 1968-69, c. 11, s. 36.

37.—(1) Every person who, knowingly,

(a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with any order, direction or other requirement made under this Act; or

(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein.

(3) No proceeding under this section shall be instituted except with the consent of the Minister.

(4) No proceeding under clause a of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

(5) No proceeding under clause b or c of subsection 1 shall be commenced more than two years after the time when the subject-matter of the proceeding arose. 1968-69, c. 11, s. 37.
38. A statement as to,

(a) The registration or non-registration of any person;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Director; or

(d) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, document or material, purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1968-69, c. 11, s. 38.

39. The Lieutenant Governor in Council may make regulations,

(a) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;

(b) requiring the payment of fees on application for registration or renewal of registration 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 moneys 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 moneys 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) prescribing further procedures respecting the conduct of matters coming before the Tribunal;

(j) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;

(k) prohibiting the use of any particular method in the collection of debts. 1968-69, c. 11, s. 39.