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ONTARIO REGULATION

to be made under the

COLLECTION AGENCIES ACT: A CONSULTATION DRAFT

Amending Reg. 74 of R.R.O. 1990

(GENERAL)

1. (1) Subsection 1 (1) of Regulation 74 of the Revised Regulations of Ontario, 1990 is amended by striking out “provided by the Minister” at the end and substituting “approved by the Registrar”.

(2) Subsection 1 (2) of the Regulation is amended by striking out “provided by the Minister” at the end and substituting “approved by the Registrar”.

(3) Subsection 1 (3) of the Regulation is amended by striking out “provided by the Minister” at the end and substituting “approved by the Registrar”.

(4) Subsection 1 (4) of the Regulation is amended by striking out “provided by the Minister” at the end and substituting “approved by the Registrar”.

2. Subsection 2 (8) of the Regulation is revoked and the following substituted:

(8) The bond referred to in subsection (5) shall be in a form approved by the Registrar.

3. Clause 6 (c) of the Regulation is amended by adding “of the collection agency” after “or other official”.

4. (1) Subsection 13 (1) of the Regulation is amended by striking out “provided by the Minister” and substituting “approved by the Registrar”.

(2) Subsection 13 (9) of the Regulation is amended by striking out “provided by the Minister” at the end and substituting “approved by the Registrar”.

(3) Subsection 13 (10) of the Regulation is revoked and the following substituted:

(10) Every person registered as a collection agency shall operate from a permanent place of business in Ontario that is not a dwelling and that shall be open during normal business hours.

5. Section 16 of the Regulation is amended by striking out “provided by the Minister” and substituting “approved by the Registrar”.

6. Subsection 17 (2) of the Regulation is revoked and the following substituted:

(2) Every collection agency or branch thereof shall maintain in respect of all trust funds that come into its hands a separate trust account in any Ontario branch of a bank, a corporation registered under the *Loan and Trust Corporations Act* or a credit union as defined in the *Credit Unions and Caisses Populaires Act, 1994* authorized by law to accept deposits, and such account shall be designated as the “*Collection Agencies Act Trust Account*” in English and “*Compte en fiducie prévu par la Loi sur les agences de recouvrement*” in French.

7. Section 19.1 of the Regulation is revoked and the following substituted:

19.1 (1) The restriction in subsection 4 (1) of the Act against a person acting as a collector, unless the person is registered by the Registrar under the Act, does not apply to a person employed by a not-for-profit corporation that is a registered charity as defined in the *Income Tax Act* (Canada) and that provides credit counselling services.

(2) Section 11 does not apply to a not-for-profit corporation that is a registered charity as defined in the *Income Tax Act* (Canada) and that provides credit counselling services.

(3) Section 15 does not apply to an officer or director of a not-for-profit corporation that is a registered charity as defined in the *Income Tax Act* (Canada) and that provides credit counselling services.

8. Subsection 19.1.1 (1) of the Regulation is amended by striking out “clauses 20 (a) and (g)” in the portion before clause (a) and substituting “section 21”.

9. Subsection 22 (2) of the Regulation is revoked and the following substituted:

(2) If a debtor or his or her lawyer or licensed paralegal sends a collection agency, by registered mail, a letter requesting that the collection agency communicate only with the debtor’s lawyer or licensed paralegal, and setting out the lawyer or licensed paralegal’s address and telephone number, the collection agency or a collector shall not thereafter contact or attempt to contact the debtor other than through the debtor’s lawyer or licensed paralegal unless the debtor consents to or requests the contact.

10. The Regulation is amended by adding the following sections:

DEBT SETTLEMENT SERVICES AGREEMENTS

26. (1) For the purposes of subsection 16.3 (1) of the Act, a collection agency or collector shall not communicate or cause to be communicated the following representations relating to a debt settlement services agreement:

1. A claim that the services are provided on a non-profit or charitable basis, if they are not.
2. A claim that the collection agency's operations or programs are approved by, or a part of, a program run by the government of Ontario, the government of Canada, or the government of any other jurisdiction outside Ontario, if they are not.
3. Any reference to registration under the Act, other than the collection agency's or collector's registration number under the Act.
4. Any claim of savings or other results for debtors that is not based on typical results.
5. Any claim that misrepresents or exaggerates the services provided under the agreement or the effects or benefits of those services, including but not limited to,
 - i. a claim that using the services will or may deter the efforts of a creditor or agent of a creditor to collect a debt, and
 - ii. a claim that using the services will or may prevent legal action or garnishment of the debtor's wages.

(2) For the purposes of paragraph 4 of subsection (1), typical results means the average results obtained by the collection agency, over a period of at least six months and no longer than 12 months in the preceding calendar year, in respect of all debts that were the subject of a debt settlement services agreement during that period.

(3) A collection agency shall communicate or cause to be communicated the following representations in the circumstances described:

1. If the collection agency has a website, any place on the website that requests a debtor's personal information shall clearly and prominently display the collection agency's registered name, principal business address in Ontario, telephone number, fax number, e-mail address and registration number under the Act, set out as "Ontario Registration # *[insert registration number]*" in English or "N^o d'inscription en Ontario : *[insert registration number]*" in French.
2. If an advertisement is made by or on behalf of a collection agency, the advertisement shall clearly and prominently state the collection agency's registered name and

registration number under the Act set out as “Ontario Registration # *[insert registration number]*” in English or “N^o d’inscription en Ontario : *[insert registration number]*” in French.

27. (1) For the purposes of clause 16.5 (1) (a) of the Act, the following are requirements that a debt settlement services agreement entered into between a collection agency and a debtor is required to meet:

1. For each debt settlement services agreement with a debtor, the collection agency shall indicate which of the following methods of negotiating the settlement of the debtor’s debts the collection agency will pursue:
 - i. The collection agency will put forward to each of the debtor’s creditors a proposed schedule of payments in respect of each debt.
 - ii. The collection agency will put forward to each of the debtor’s creditors, on or before a specified date, an offer to settle the debt with a one-time payment that is less than the amount of the debt.
2. If the collection agency proposes to settle a debtor’s debts by the method described in subparagraph 1 i,
 - i. the agreement shall include the proposed schedule of payments for each debt,
 - ii. the agreement shall specify that the maximum payment or security for payment that the collection agency may require or accept for services provided under the agreement shall be 15 per cent of every payment made by the debtor to a creditor in respect of a debt to which the agreement applies, and
 - iii. the first page of the agreement shall be the document entitled “Repaying Debt and Credit Counselling” and dated **XXX**, which is available on a Government of Ontario website.
3. If the collection agency proposes to settle a debtor’s debts by the method described in subparagraph 1 ii,
 - i. the agreement shall state for each debt the date on which an offer to settle will be made and the amount of the one-time payment that will be offered,
 - ii. the agreement shall specify that the maximum payment or security for payment that the collection agency may require or accept for services provided under the agreement shall be 10 per cent of the amount of each debt,

at the time the agreement is signed, that is settled through the collection agency, and

- iii. the first page of the agreement shall be the document entitled “Settling Debt” and dated **YYY**, which is available on a Government of Ontario website.
4. Unless a termination provision set out in the agreement provides for an earlier termination date, the agreement terminates 18 months after the later of,
 - i. the date the agreement was entered into,
 - ii. the last day on which a payment was made in connection with the agreement, or
 - iii. if any debts to which the agreement applies are settled by or through the collection agency, the last day on which such a settlement occurred.
 5. The agreement shall disclose whether or not the collection agency receives funding from any creditor of a debt to which the debt settlement services agreement applies.
 6. The agreement must include the following information, in addition to the information required under paragraphs 1 to 5:
 - i. The name, address and telephone number of the debtor.
 - ii. The collection agency’s registered name, principal business address in Ontario, telephone number, fax number, e-mail address, website address and registration number under the Act, set out as “Ontario Registration # *[insert registration number]*” in English or “N^o d’inscription en Ontario : *[insert registration number]*” in French.
 - iii. The names of any collectors providing debt settlement services on behalf of the collection agency, their registration numbers under the Act, set out as “Ontario Registration # *[insert registration number]*” in English or “N^o d’inscription en Ontario : *[insert registration number]*” in French, and the names of any other persons who negotiated or concluded the agreement with the debtor.
 - iv. The date on which the agreement was entered into.
 - v. The proposed termination date of the agreement, together with the statement that the termination date is subject to the rule specified in paragraph 4.
 - vi. An itemized list of all services that will be provided under the agreement.

- vii. The details of all the debts to which the agreement applies, including each creditor's name and the amount owed to each creditor, including principal and interest.
- viii. The total amount owed by the debtor to all creditors under the agreement.
- ix. Any restrictions, limitations and conditions under the agreement.
- x. A statement that the debtor is entitled to receive a written report on the performance of the agreement within 15 days after requesting it.
- xi. The date and signature of the debtor, the collection agency and the collector who dealt with the debtor at the time the agreement was signed.

(2) A debt settlement services agreement may be amended, whether or not the agreement provides for amendment, by the express agreement of the debtor and collection agency.

(3) If a debt settlement services agreement is amended, the debtor may, without any reason, cancel the agreement at any time from the date that the amendment is agreed to until 10 days after receiving the written copy of the amended agreement, and subsections 16.7 (3), (4) and (5) of the Act apply to the cancellation.

(4) No amendment of a debt settlement services agreement is effective unless the amendment and the amended agreement meet all the requirements in the Act and this Regulation.

(5) An amendment to a debt settlement services agreement does not retroactively affect rights and obligations acquired by the debtor before the effective date of the amendment, and does not affect any debt that has already been settled under the agreement.

28. (1) A collection agency shall not require or accept any payment or security for payment for its services in respect of a debt owed by a debtor to a creditor until,

- (a) the debtor has entered into an agreement with the creditor regarding the amount to be paid by the debtor to the creditor to settle the debt;
- (b) the debtor has made at least one payment under an agreement mentioned in clause (a); and
- (c) the collection agency has written evidence of the debtor's payment mentioned in clause (b).

(2) If a collection agency provides debt settlement services to a debtor in respect of more than one creditor, the collection agency shall not require or accept payment or security for payment for its services in respect of any given creditor until the conditions mentioned in subsection (1) have been met in respect of the creditor.

(3) The amount that a collection agency may require or accept from a debtor as payment or security for payment for its services in respect of the debt owed to a creditor shall not exceed,

$$A \times B/C$$

where,

- A is the total amount that the collection agency may require or accept for its services in respect of all debts owed to all creditors, as set out in the debt settlement services agreement,
- B is the amount of debt owed to the creditor,
- C is the total amount of debt owed to all of the debtor's creditors.

(4) A collection agency that proposes to negotiate settlement of a debtor's debts using the method described in subparagraph 1 i of subsection 27 (1) may also charge a one-time fee of no more than \$50, which may be charged before the conditions mentioned in subsection (1) have been met in respect of a creditor.

(5) A collection agency may charge a debtor a fee for a dishonoured cheque, but the fee shall not be greater than the actual amount charged to the collection agency in respect of the cheque by the financial institution that dishonoured the cheque.

(6) A collection agency that receives a notice demanding a refund under subsection 16.6 (5) of the Act shall provide the refund within 15 days after receiving the notice.

29. No collection agency or collector shall engage in any of the following practices or employ any of the following methods in providing debt settlement services to a debtor or in respect of a debt settlement services agreement with a debtor:

1. Restrict the debtor from having access to his or her consumer report, or make any oral or written representation suggesting that the debtor is restricted from having such access.
2. Restrict the debtor from communicating with his or her creditors.
3. Provide debt settlement services under a name other than the collection agency's or collector's registered name.

4. Fail to give a written report to the debtor on the performance of the agreement within 15 days after requesting it.
5. Offer or pay any compensation to a debtor in exchange for the debtor entering into a debt settlement services agreement.
6. Directly or indirectly require or accept any money for assisting a debtor to obtain an extension of credit other than an extension of time for the debtor to repay a debt.
7. Fail to inform a debtor's creditors that the collection agency or collector is authorized to arrange or negotiate a schedule of payments or a one-time payment on the debtor's behalf, within 15 days of becoming authorized.
8. Fail to inform a debtor of a refusal by a creditor to negotiate a schedule of payments or a one-time payment, within 15 days of the refusal.
9. Communicate information about a debtor's debts to any person except the debtor, a guarantor of the debt, the debtor's representative or a creditor of the debtor without the debtor's written consent.
10. Fail to provide information as to how to contact the collection agency or collector during normal business hours.
11. Fail to respond to a debtor's communications within a reasonable time.
12. Obtain a debtor's contact information from a third party unless the third party named the collection agency or collector that would receive the information and the debtor explicitly consented to the contact information being shared with the collection agency or collector.
13. Misrepresent the time needed to achieve the results promised by the collection agency or collector.
14. Enter into a debt settlement services agreement with a debtor if it is apparent that the debtor's creditors would not enter into an agreement to settle the debt.
15. Enter into a debt settlement services agreement with a debtor if it is apparent that the debtor is not able to protect his or her interests because of disability, illiteracy or inability to understand the agreement or similar factors.
16. Give any person false or misleading information.
17. Enter into more than one debt settlement services agreement with a debtor.

30. (1) A collection agency or collector that provides debt settlement services shall keep on its premises the following records for every debt settlement services agreement with a debtor, whether the record was created by the collection agency or collector or created by a third party and used by the collection agency or collector:

1. A copy of the agreement.
2. Any receipts issued and disbursements made by the collection agency or collector on behalf of the debtor.
3. Copies of all correspondence relating to the debt settlement services provided by the collection agency or collector, including letters, e-mails and faxes to or from the debtor, any guarantor of the debtor's debt, the debtor's representative or the debtor's creditors.
4. Records relating to any negotiation of debt repayments to creditors by the collection agency or collector.
5. Any other records created or used while dealing with the debtor, the debtor's representative or the debtor's creditors.

(2) A collection agency or collector that provides debt settlement services shall keep on its premises copies of all published advertisements and the records needed to support claims or statements made in the advertisements.

(3) Records required under subsection (1) or (2) shall be kept for six years after the last payment made in connection with the debt settlement services agreement, or the date of the last advertisement, as the case may be.

(4) A collection agency or collector shall provide to the Registrar a copy of any record mentioned in subsection (1) or (2) upon the Registrar's request, within the time specified by the Registrar.

11. Forms 1, 2 and 3 of the Regulation are revoked.