Consultation on Collection and Debt Settlement Services Act Regulation Reform

This consultation paper seeks your views on proposed regulation provisions to adopt under the Collection and Debt Settlement Services Act (the Act).

The Act has been amended by Bill 59, the Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2016 (the bill) to:

* Require purchasers of outstanding debts to either use a registered collection agency or become a registered collection agency if collecting those debts;
* End registration of individual collectors employed by collection agencies;
* Authorize limits on the exemption of lawyers from the Act; and
* Authorize use of administrative penalties to promote compliance with the Act.

To bring these amendments into force, a new regulation as well as amendments to the General Regulation made under the Act, are required to:

* Make technical changes throughout the current regulation to reflect the changes made to the Act regarding debt purchasing and collector registration;
* Define when lawyers, paralegals and law firms must register under the Act in order to carry out collection activity;
* List which provisions of the Act and the regulations can be enforced by administrative penalty and set penalty amounts.

The proposals also suggest other improvements to the General Regulation:

* Proposing several activities that the Act should not govern such as third party billing services and actions by property managers and mortgage brokers acting in their respective capacities;
* Providing an exemption for paralegals similar to the exemption provided to lawyers and subjecting both exemptions to proposed limits;
* Permitting collection agencies to use e-mail or other electronic communications with a debtor’s consent;
* Allowing agencies limited contact with possible debtors to verify that they are using the correct contact information before sending notices;
* Improving notices that agencies must give debtors to provide more useful information;
* Adding a new prohibited practice and modifying the rule on communication with consumers in ways that impose costs on them;
* Eliminating bonding and clarifying some financial requirements; and
* Requiring agencies to record collection calls.

# How to Respond

Your input is important. We welcome your answers to the consultation questions and any added input or suggestions you may wish to offer.

Please provide concrete examples or evidence to support your suggestions where possible. If you are a collection agency, you are invited to comment on the cost or savings of implementing any changes such as the cost of updating collection management systems.

This consultation document asks questions where you can respond by checking boxes to express your views and also by providing explanations or alternative options in free-form spaces.

You may download this paper and then submit your completed responses by mail or email. You also may submit any feedback to us without using the consultation questionnaire package.

You may respond by email to consumerpolicy@ontario.ca or by mail to:

Collection and Debt Settlement Act Regulation Consultation

Ministry of Government and Consumer Services

Policy, Planning and Oversight Division

56 Wellesley Street West, 6th Floor

Toronto, ON, M7A 1C1

Please respond no later than September 8, 2017.

When responding, please provide your name and contact information such as an email or postal address.

Name/Organization

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Contact Information

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Please also check a box to indicate whether you comment primarily as a:

[ ] Collection Agency

[ ] Creditor of other client of collection agencies

[ ] Debt Purchaser

[ ] Legal Professional

[ ] Business Association

[ ] Debtor

[ ] Consumer or Credit Counselling Association

[ ] Academic

[ ] Other – You may enter your answer here

Thank you for taking the time to review these proposals. If you have any questions about this consultation please email consumerpolicy@ontario.ca.

## Privacy Statement

Please note that unless agreed otherwise by the Ministry of Government and Consumer Services, all submissions received from organizations in response to this consultation will be considered public information and may be used, disclosed, and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve disclosing any response received to other interested parties. An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered to be public information. Responses from individuals may be used and disclosed by the ministry to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should it use, disclose, or publish individual responses, any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual’s prior consent unless required by law.  Contact information you provide may also be used to follow up with you to clarify your response.

If you have any questions about the collection of this information, please contact consumerpolicy@ontario.ca.

# Proposals

# Paralegals and Lawyers

Bill 59 introduced the ability to prescribe additional rules to qualify the Act’s exemption of barristers or solicitors, and their employees, in the regular practice of their profession. However, paralegals licensed under the Law Society Act (LSA) are not currently exempt from the Act.

The proposed General Regulation amendments provide for more equal treatment of licensees under the LSA by including an exemption from the Act for paralegals when they are providing services for which they are licensed under the LSA.

The proposed regulation also includes limits on the exemptions of both lawyers and paralegals to help distinguish between activities incidental to legal practice and that which ought to be treated as collection work subject to the Act.

These limits respond to concerns about whether law offices should be able to employ a large non-legal staff to call debtors, send letters demanding payment of debts and otherwise carry out the activities of collection agencies without having to comply with the Act.

There are a wide range of activities lawyers and paralegals may carry out in providing legal services to their clients, including, for example, asking someone to satisfy a financial claim made by their client.

It is proposed that a law firm, lawyer or paralegal would not need registration under the Act for its lawyers, paralegals or other employees to provide services that can only be provided by a lawyer or paralegal, or to do things incidental to such legal services. Registration would also not be required if a lawyer or paralegal was attempting to collect a debt that was recognized in a court judgment.

However, if services are provided that do not require licensing as a lawyer or paralegal, and which require registration under the Act, then registration is proposed to be required.

Also, if most of what a licensee does in terms of debt collection or debt settlement or most of what a specific employee does for any one client is a service that someone can provide without having to be licensed under the LSA, registration would be required.

Finally, despite the above statements, if a lawyer or paralegal advertises themselves as a collection agency, a collector, or as offering debt settlement services, then registration would be required.

Examples of activity that are not proposed to require registration:

* A lawyer or paralegal sues someone and, upon successfully receiving a court judgment recognizing the debt, makes efforts to recover on the judgment. Such efforts to recover the judgment would not require registration.
* A client retains counsel to recover an isolated debt the client is owed (there may or may not be a judgment) but the lawyer or paralegal is not being engaged by the client primarily for ongoing generic “debt recovery purposes”. Here, registration would not be required for such isolated activity.

Examples of proposed activity that would require a lawyer or paralegal to register:

* A licensee under the LSA provides various services to one or more clients, and for at least one client the service is primarily debt collection or settlement. Under the new rules, the licensee would be required to register because they were primarily providing services regulated under the Act.
* A licensee advertises themselves in a magazine as a collection agency, a collector or as providing debt settlement services.

## Proposed regulation text:

See section 18.1 of the Draft Revised General Regulation in Appendix One.

**Question #1: Do you agree with the proposed approach to the exemption of lawyers and paralegals?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Clarifying the Act’s Application

The following exemptions are proposed to be added to the General Regulation in order to be clearer about situations the Act is not intended to cover.

## Billing on Behalf of Third Parties

Some businesses allow third parties to add items to their bills. These companies provide their own goods and services and bill for them but also offer the opportunity for others to use their billing process. For example, several wireless companies may present charges from third parties for services such as ringtones.

The draft regulation would exclude this kind of activity from the Act.

## Property Managers

Property managers may be involved in collecting money owed to a third party, such as rent owed to a landlord or maintenance fees owed to a condominium corporation.

The draft regulation would exclude from the Act collection activity by a property manager that arises in the course of acting in that capacity.

## Affiliated Companies Collecting Money for Each Other

Companies may arrange various functions through affiliated firms (e.g., one firm handles sales and an affiliated firm handles financing).

The draft regulation proposes that affiliates, as defined in the Ontario *Business Corporations Act* would not require registration to collect a debt owed to one another, unless the debt being collected is a debt that was purchased in arrears.

## Debt Repurchased by the Original Creditor

With the coverage of the purchase of overdue debt, it is possible that an originating creditor may at times repurchase a debt. The draft regulation proposes an exemption for “a person who is collecting or attempting to collect a debt of which the person is the original creditor or owner” in order to avoid requiring registration by original creditors.

## Mortgage Brokers and Debt Settlement

Mortgage brokers, regulated under the Mortgage Brokerages, Lenders and Administrators Act, 2006, in arranging mortgages often investigate the borrower’s third party debts and make arrangements for them to be paid out of mortgage proceeds. This may include negotiating a reduction in debt obligations.

Technically, such activity could be viewed as debt settlement and fall under the Act. However, the harms which the Act’s debt settlement provisions are designed to address do not appear to arise in this context.

Requiring registration under the Act appears to be an unnecessary added regulatory burden and cost on mortgage brokers. The draft amendments propose an exemption for licensed mortgage brokers.

## Debt Purchased under Terms Permitting Collection Under Original Creditor’s Name

The draft regulation proposes to clarify that the exemption for those who purchase debt under terms permitting them to collect under the original creditor’s name, in clause 2(1)(l) of the Act, would apply only if the debt is actually collected under the original creditor’s name.

## Proposed regulation text:

See sections 19.3 to 19.9 of the Draft Revised General Regulation in Appendix One.

**Question #2: Do you agree with the proposed additional exemptions?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Revised First Notice Rules

The General Regulation currently requires agencies send a written notice with information about an alleged debt before calling or otherwise directly contacting a debtor.

There are several concerns with this requirement:

* A collector may not have been able to verify that the address they have for the debtor is current. As a result, the notice with its confidential information may go to the wrong address.
* Electronic communications such as text messages or email are not permitted to be used in delivering the first notice.
* If debts have been sold and the creditor has changed, the notice is not required to provide enough information for the debtor to always identify the debt they allegedly owe.
* The notice could provide more useful information to recipients to help them determine if they are the debtor and how to respond.

The draft regulation proposes the following changes:

* Allow agencies limited contact with debtors before sending a first notice. This contact would be to verify the address, and potentially obtain consent to send the notice electronically.
* Be clear that no other contact beyond the limited contact just described is permitted until the sixth day after sending the notice.
* Expand the information about the debt that is to be included in the notice to make it more useful to the alleged debtor.
* Require the notice to include a mandatory information statement set out by Minister’s Regulation.

## Proposed regulation text:

See sections 21 to 21.2 and clause 22(3)(c) of the Draft Revised General Regulation in Appendix One and the draft mandatory information statement in Appendix Three.

Please also see the next section for a related proposal regarding electronic communications.

**Question #3: Do you agree with the proposed approach to first notice?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Prohibited Practices

The Act and General Regulation set out various practices collection agencies are prohibited from carrying out such as calling people outside certain hours, contacting them too frequently or harassing them.

Two changes to the General Regulation are proposed in this regard.

First, the draft amendment proposes to add a new prohibition against agencies reporting a debt to a consumer reporting agency until after they have sent the required first notice to a consumer.

Second, the draft amendment proposes to modify a prohibited practice in the Act. This is the prohibition that forbids agencies from communicating using means that impose costs on the people they are contacting (subsection 22(b) of the Act). This prohibition was written when the most common form of such communication was a collect-call. Now there are many other forms of communication and different kinds of communications plans under which recipients may be contacted. A collection agency may not know whether a consumer pays to be communicated with through a particular channel.

The draft amendment proposes to add an exemption to this prohibition that states there is no contravention if the cost is reimbursed within 15 days of the consumer presenting evidence such as copy of a bill from their communications provider. For example, an agency that calls a number and finds the debtor is on a pay-as-you-go plan that charges them for incoming calls would be required to reimburse the debtor for that charge if given proper notice by the call recipient.

## Proposed regulation text:

See subsection 21(5) and section 19.9 of the Draft Revised General Regulation in Appendix One.

**Question #4: Do you agree with the added prohibited practices?**

[ ]  **Yes.**

[ ]  **No.**

[ ]  **Other.**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Financial Requirements - Bonding and Trust Accounting

The draft regulation removes the requirement for collection agencies to post bonds.

Bonds are intended to satisfy financial claims against an agency if the agency proves unable to do so. The ministry’s experience is that in the past eighteen years there have been only four claims against bonds and most of those have been for damages awards, not to compensate actual financial loss. Requiring all agencies to incur the ongoing cost of maintaining bonds for such a low frequency of claims does not appear reasonable.

The proposed regulation would improve protection against actual financial losses by clarifying that monies required to be deposited into a trust account are to be directly deposited without going through other accounts. The obligation on agencies to have the full name of trust accounts used by financial institutions would also be clarified as it may not always be feasible for an institution to use the full name.

## Proposed regulation text:

See section 17 of the Draft Revised General Regulation in Appendix One.

**Question #5: Do you agree with the proposed revisions concerning bonding and trust accounting?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Amendments Reflecting Regulation of Debt Purchasers and Ending Collector Registration

When proclaimed into force, the amended Act would require debt purchasers to register if they intend to collect debts themselves.

Several General Regulation requirements assume a collection agency is always handling a third party’s money. Many such requirements should be revised if the collection agency is the creditor for whom it is collecting money.

Similarly, when amendments to the Act are proclaimed into force, the Act will not require individual collectors to register. But the Act continues to impose rules on collectors’ conduct. A number of provisions in the General Regulation are proposed to be revised to reflect this change.

## Control of Agency by a Creditor

General Regulation subsection 13(14) is proposed to be amended by deleting the restriction that agencies controlled by a creditor are not allowed to collect debts owed to other creditors. Instead, the regulation proposes requiring agencies to disclose if the agency is controlled by a creditor or collects debts as a creditor. Recipients can then decide if they have a concern. Without such an amendment there is an argument that an agency that buys debts, being a creditor, cannot collect debts for anyone else.

## Engaging in business of lending money

General Regulation subsection 13(15) prohibits agencies from engaging “directly or indirectly in the business of lending money”. This subsection is proposed to be amended by adding “except to the extent the person has purchased a debt and the collector is negotiating terms for the payment of that debt”. This proposal is intended to recognize that a collection agency that has purchased a debt becomes a lender and must be able to engage in a lender’s business in respect of that debt.

## Creditor Protection

General Regulation subsection 17(1) (trust funds) and subsection 18(1) (paying creditors when demanded) are proposed to not apply in respect of funds collection agencies collect on their own behalf. It is not necessary to require a collection agency to put its own money into trust or to “pay itself” money.

## Creditor-Approval of Legal Action requirements

General Regulation subsections 23(1), (2) and (3) are proposed to be amended to exempt agencies acting on their own debts from needing written creditor approval in order to threaten legal action or inform debtor before recommending legal action to a creditor. No consumer protection is afforded by requiring an agency to give itself written approval for its own actions.

## Individual Collector Registration

When proclaimed into force, the amended Act would end registration of individual collectors employed by collection agencies. Amendments are proposed throughout the regulation to remove registration references but retain references in provisions governing dealings with debtors.

## Proposed regulation text:

See the sections noted above in the Draft Revised General Regulation in Appendix One.

**Question #6: Do you agree with the proposed approach to implementing regulation of debt purchase and ending collector registration?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

# Call Recording

Some collection agencies record their phone calls with debtors as a matter of quality control.

There have been suggestions in the past to require agencies to record collection calls to better resolve complaints. For example, allegations of harassment during calls are particularly difficult to prove or disprove without a recording.

If call recording is required, debtors would be advised that the call was being recorded. The recordings would have to be retained for a specified time period, proposed to be three years. Recordings would be subject to review by the ministry through its inspection authorities and available to debtors on request.

Collection agency views on any issues or concerns with implementing call recording are welcome. This includes any comments on how much the requirements would differ from current agency practices and any compliance costs expected such as programming or training costs.

## Proposed regulation text:

See the proposed section 32 of the Draft Revised General Regulation in Appendix One.

**Question #7: Do you agree with the proposed approach to call recording?**

[ ]  **Yes call recording should be mandatory for all collection calls by agencies.**

[ ]  **No, call recording should not be required.**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Administrative Penalties

The attached draft administrative penalties regulation in Appendix Two proposes which of the rules in the Act and revised General Regulation would be subject to administrative penalties.

Not every rule is proposed to be subject to these monetary penalties. Those rules that involve more subjective evaluations or rely on the credibility of witness statements to assess contraventions are not considered appropriate to be adjudicated under the simple stream-lined process the Act establishes for administrative penalties.

For example, carrying on business other than in a registered name or operating from an unapproved branch office appear to be clear matters and are proposed to be subject to an administrative penalty.

Penalty amounts are proposed to be different for companies and for individuals, recognizing that the amount required to promote compliance differs between them.

The proposed regulation also sets out a scaled approach under which the amount of a penalty would depend on how often the conduct had already been cited. Penalties would only escalate to the next step if previous finding of a contravention of the same provision has been made and not successfully appealed.

For companies, administrative penalties are proposed to be $1,000 the first time a contravention is found, $2,000 the second time that contravention is found and $6,000 the third and subsequent times the same contravention is found within two years.

For individuals, such as individual collectors, administrative penalties are proposed be $200 the first time, $400 the second time and $1,000 the third and subsequent times respecting the same contravention being found within two years.

Persons subject to administrative penalties would be identified on the ministry’s Consumer Beware List.

## Proposed regulation text:

See the Draft Administrative Penalties Regulation in Appendix Two.

**Question #8: Do you agree with the proposed approach to administrative penalties?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Phase-In Period to Implement Rules

If the proposed regulation provisions are finalized and approved, they would be published before the amendments to the Act made under Bill 59 are proclaimed into force. The intent would be to give the industry and public time to learn about the new rules and to know what to do to comply with them before they are in effect.

The ministry proposes that the proclamation of the Act’s amendments and coming into force of related regulations take place approximately 60 days after this publication.

**Question #9: Do you agree with the proposed time frame for agencies to come into compliance with the new rules?**

[ ]  **Yes**

[ ]  **No**

[ ]  **Other – Please Explain Below**

**Explanation and Additional Comments:**

**You may enter any explanation and additional comments here**

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# Conclusion and Final Comments

Thank you for helping by providing your views. Please share any additional comments or suggestions you may have here:

You may enter any explanation and additional comments here

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# Appendix One: Proposed Revised Regulation under the Collection and Debt Settlement Services Act

To understand parts of the regulation it may be necessary to read the Act. It can be viewed on the [ontario.ca/laws site](https://www.ontario.ca/laws/statute/90c14).

Caution: This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

ontario regulation

made under the

Collection and Debt Settlement Services Act

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

(GENERAL)

**1. (1) Subsection 1 (2) of Regulation 74 of the Revised Regulations of Ontario, 1990 is revoked.**

**(2) Subsection 1 (3) of the Regulation is amended by striking out “or by a collector under subsection 20 (2) of the Act”.**

**(3) Subsection 1 (5) of the Regulation is revoked and the following substituted:**

(5)  When notified by the Registrar, the applicant shall file any feeestablished by the Minister.

**2. Sections 2 to 10 of the Regulation are revoked.**

**3. Section 12 of the Regulation is revoked and the following substituted:**

Registration

 **12.** (1) No individual shall be registered as a collection agency unless the individual,

 (a) has had at least two years of actual experience in each phase of the collection agency business, or has related experience that, in the opinion of the Registrar, is equivalent to that actual experience; and

 (b) is 18 years of age or over.

 (2) No corporation shall be registered as a collection agency unless an individual who satisfies the requirement in subsection (1) is involved in the management of the collection agency.

**4. The Regulation is amended by striking out the heading “Terms and Conditions of Registration” before section 13.**

**5. (1) Subsection 13 (1) of the Regulation is amended by striking out “fee prescribed in section 11” and substituting “fee established by the Minister”.**

**(2) Subsections 13 (8) and (9) of the Regulation are revoked.**

**(3) Section 13 of the Regulation is amended by adding the following subsection:**

 (12.1) Every collection agency or branch thereof shall maintain the records of its activities conducted under the Act separate from the records it maintains with respect to any other activities.

**(4) Subsections 13 (14) and (15) of the Regulation are revoked and the following substituted:**

 (14) Every person registered as a collection agency who collects debts for a single creditor who exercises control directly or indirectly over the collection agency shall disclose on all correspondence and communications the full name of that creditor and an itemized breakdown of each account in arrears owing to the creditor.

 (14.1) Every person registered as a collection agency who collects debts for itself as creditor shall disclose its full name on all correspondence and communications.

 (15)  No person who is registered as a collection agency shall engage directly or indirectly in the business of lending money, whether as principal or as agent, except to the extent the person has purchased a debt and is renegotiating terms for the payment of that debt.

 (15.1) For the purposes of subsection (15) the renegotiation of terms for the payment of a debt with a debtor does not include the extension of additional credit to the debtor.

**6. (1) Section 17 of the Regulation is amended by adding the following subsections:**

 (1.1) Subsection (1) does not apply to funds received by a collection agency where the funds are owed to the collection agency itself as a creditor.

. . . . .

 (2.1) Every collection agency or branch thereof shall request that the bank, corporation or credit union at which it maintains a trust account include the designations mentioned in subsection (2) in any written reference the bank, corporation or credit union makes to the trust account.

**(2) Subsection 17 (4) of the Regulation is revoked and the following substituted:**

 (4)  A collection agency shall deposit all trust funds it receives from a debtor located in Ontario, whether by cash, cheque, electronic transfer or otherwise, into the collection agency’s trust account within two banking days of their receipt.

 (4.1) No collection agency shall deposit any trust funds received from a debtor located in Ontario, whether by cash, cheque, electronic transfer or otherwise, into an account outside of Ontario.

 (4.2) No collection agency shall transfer trust funds deposited in the collection agency’s trust account into an account outside of Ontario.

 (4.3) Where a collection agency disburses money held in a trust account, the money shall be disbursed directly from the collection agency’s trust account to the recipient and shall not be transferred through any other accounts.

**7. (1) Subsection 18 (1) of the Regulation is amended by adding “with respect to the debt the money is collected on” after “such collection agency”.**

**(2) Section 18 of the Regulation is amended by adding the following subsections:**

 (1.1) Subsection (1) does not apply to money collected by a collection agency where the money is owed to the collection agency itself as a creditor.

**8. The Regulation is amended by adding the following section:**

Application of Act

 **18.1** (1) A licensee under the *Law Society Act* is exempt from the application of the *Collection and Debt Settlement Services Act* if all services provided by the licensee or by the licensee’s employees on the licensee’s behalf are,

 (a) services that can only be provided by a licensee under the *Law Society Act*, or

 (b) services that are incidental to providing services described in clause (a).

 (2) Despite subsection (1), a licensee under the *Law Society Act* is not exempt from the application of the *Collection and Debt Settlement Services Act* if,

 (a) the primary activity of the licensee, or an employee on the licensee’s behalf, for any client is to act as a collection agency or collector or to offer debt settlement services in respect of a debt, other than a debt recognized in a court judgement; or

 (b) the licensee advertises himself, herself or itself as a collection agency or collector or as providing debt settlement services.

 (3) For the purpose of this section, a person is considered to be an employee of a licensee under the *Law Society Act* if the person is employed by any partnership, corporation or other entity for which the licensee works and in respect of which the licensee is a partner, shareholder or holds a similar position of authority.

 (4) If a licensee under the *Law Society Act* is required to register under the Act, the requirement is satisfied if the licensee is personally registered or if the entity for which they work is registered.

**9. Section 19 of the Regulation is revoked.**

**10. (1) Subsection 19.1 (1) of the Regulation is revoked.**

**(2) Subsection 19.1 (2) of the Regulation is amended by striking out “Section 11 does not” and substituting “Fees established by the Minister do not”.**

**11. Subsection 19.1.1 (2) of the Regulation is amended by striking out “or collector” wherever it appears.**

**12. The Regulation is amended by adding the following sections:**

 **19.3**  The Act does not apply to a person who accepts payment of accounts on behalf of a creditor acting in the creditor’s name but who does not otherwise negotiate with or in any way attempt to obtain payment from debtors in respect of the amount owing other than by presenting bills.

 **19.4** The Act does not apply to an employee, designate or representative of an owner of a building who is responsible for managing the building, including by renting rooms, receiving rent and maintaining the building, with respect to dealing with amounts owed to the owner by tenants of the building.

 **19.5** (1) The Act does not apply to corporations in respect of the collection of debts for other corporations that are their affiliates, as defined in section 1 of the *Business Corporations Act*.

 (2) Despite subsection (1), if the person holding the debt to be collected is a person who purchased debts that are in arrears, then the Act continues to apply both to that person and to any affiliate of that person.

 **19.6** The Act does not apply to a person who is collecting or attempting to collect a debt with respect to which the person is the original creditor.

 **19.7** The Act does not apply to a person or entity licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* with respect to the activities authorized by the licence.

 **19.8** The exemption from the Act provided for in clause 2 (1) (l) of the Act does not apply unless the debt is collected under the original creditor’s name.

 **19.9** (1) Clause 22 (b) of the Act does not apply to a collection agency or collector if the charge or cost of communication referred to in that clause is fully reimbursed to the person communicated with or with whom communication was attempted within 15 days of the person presenting evidence of the charge or cost to the collection agency.

 (2) Evidence of the charge or cost referenced in subsection (1) may take any form, including a copy of a bill from the person’s telephone or other communications provider.

**13. Section 21 of the Regulation is revoked and the following substituted:**

 **21.** (1) Subject to section 21.1, no collection agency or collector shall demand payment or otherwise attempt to collect payment of a debt from a debtor or in any other way contact the debtor before the sixth day after sending a private written notice to the debtor that sets out the following information:

 1. The name of the creditor to whom the debt is owed, and if different, the name of the creditor to whom the debt was originally owed.

 2. The specific type of financial product that incurred the debt, if known.

 3. The amount of the debt on the date it was first due and payable, and if different, the amount currently owing, including a breakdown of that current amount.

 4. The identity of the collection agency and collector who is demanding payment of the debt.

 5. The authority of the collection agency to demand payment of the debt.

 6. A description of any other debts currently owed by the debtor to the creditor that have been assigned to the collection agency, including the amount of each debt and the type of financial product, if known.

 7. The contact information of the collection agency, including the full mailing address and telephone number and, where available, email address and fax number.

 (2) The notice mentioned in subsection (1) may be sent by ordinary mail, or e-mail where the debtor has consented.

 (3) Subsection (1) does not require that the written notice be sent before a written demand for payment but is satisfied if a written demand for payment is contained in a written notice.

 (4) If a debtor states to a collection agency or collector that the debtor has not received the notice required by subsection (1), the collection agency or collector shall resend the notice to the debtor at the address provided by the debtor, and no demand for payment or other attempt to collect payment of the debt shall be made before the sixth day after the day the notice is resent.

 (5) No collection agency shall report a debt to a consumer reporting agency until the time period referenced in subsection (2) or (4) has elapsed.

 **21.1** (1) If a collection agency does not have a debtor’s identity, home address or e-mail address, it may initiate verbal communication with a debtor before sending the written notice referred to in subsection 21 (1) solely for the purpose of confirming such information in order to send the written notice.

 (2) If a collection agency initiates verbal communication for the purpose described in subsection (1), it shall, during the communication,

 (a) explain to the debtor that the details of the debt will be confirmed in a written notice; and

 (b) explain that the collection agency will contact the debtor again after the written notice to discuss payment.

 (3) The collection agency may also, during the communication,

 (a) provide the debtor with the details of the debt to which the communication relates;

 (b) provide the debtor with the contact information of the collector and collection agency; and

 (c) request that the debtor provide his or her consent to receive the written notice in an electronic form.

 **21.2** A collection agency may engage in verbal discussion of the debt and of repayment of that debt at the debtor’s unsolicited request.

**14. Clause 22 (3) (c) of the Regulation is revoked and the following substituted:**

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

**15. Section 23 of the Regulation is amended by adding the following subsection:**

 (4) Subsections (1) to (3) do not apply to a collection agency with respect to the collection of a debt owed to itself as a creditor.

**16. Paragraph 3 of subsection 26 (1) of the Regulation is amended by striking out “or collector’s”.**

**17. Subparagraph 6 iii of subsection 27 (1) of the Regulation is revoked and the following substituted:**

 iii. The names of any collectors who negotiated or concluded the agreement with the debtor on behalf of the collection agency

**18. Subsection 28 (6) of the Regulation is revoked.**

**9. Paragraph 3 of section 29 of the Regulation is revoked.**

**20. (1) Subsection 30 (1) of the Regulation is amended by striking out “or collector” wherever it appears in the portion before paragraph 1.**

**(2) Subsection 30 (2) of the Regulation is amended by striking out “or collector”.**

**(3) Subsection 30 (4) of the Regulation is amended by striking out “or collector”.**

**21. The Regulation is amended by adding the following sections:**

Refunds

 **31.** A collection agency that receives a notice demanding a refund under subsection 16.6 (5) or 16.8 (1) of the Act shall provide the refund within 15 days after receiving the notice.

Records of Phone Calls

 **32.** (1) A collection agency shall record all phone calls made or received by the agency or by a collector who works for the agency respecting collections with debtors, including,

 (a) calls made or received by any means, including over regular phone lines, over cell phone lines or through the internet;

 (b) calls made pursuant to section 21.1;

 (c) calls made to or received from,

 (i) the debtor,

 (ii) the debtor’s spouse or common law partner,

 (iii) a member of the debtor’s family or household,

 (iv) a relative, neighbour, friend or acquaintance of the debtor,

 (v) the debtor’s employer,

 (vi) a person who guaranteed the debt,

 (vii) a person mistakenly believed to be the debtor, and

 (viii) any other person where the call is respecting a collection from a debtor.

 (3) The recording required by subsection (1) shall be made in a reasonably accessible format.

 (4) The collection agency or collector shall advise the person to whom a phone call is made or from whom a phone call is received that the call is being recorded to comply with this Act.

 (5) The collection agency shall retain the recording made under subsection (1) for two years after the day the phone call is made or received.

 (6) A person may request a copy of a recording of a phone call made to or received from that person by making a written request to the collection agency, and the collection agency shall, at no charge, send a copy of the recording to the address given to the collection agency, or by electronic means if the person requests it, within 10 days of receiving the request.

 (7) The Registrar may request a collection agency to provide a copy or copies of a recording of a phone call and the collection agency shall provide the copy or copies to the Registrar within 5 days.

**Commencement**

**22. This Regulation comes into force on the later of,**

 **(a) the day subsection 12 (1) of Schedule 2 of the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017* comes into force; and**

 **(b) the day this Regulation is filed.**

# Appendix Two: Proposed Administrative Penalties Regulation

Caution: This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

**ONTARIO REGULATION**

made under the

**COLLECTION AND DEBT SETTLEMENT SERVICES ACT**

**ADMINISTRATIVE PENALTIES**

 **1.** The amount of an administrative penalty that an assessor may, by order, impose under subsection 29.0.1 (1) of the Act for a contravention of a provision of the Act or the regulations shall be the amount set out in this Regulation.

 **2.** The amount of the administrative penalty that may be imposed is $200 each time a registrant fails to notify the registrar as required by section 20 of the Act.

 **3.** (1) Subject to subsections (2), (3) and (4), for each item of Table 1, the amount of the administrative penalty that may be imposed in an order for the contravention of the provision set out in Column 1 that is described in Column 2 is,

 (a) the first time an order is issued for a contravention of the provision, $200 if the person is an individual and $1,000 if the person is a corporation;

 (b) the second time an order is issued for a contravention of the same provision, $400 if the person is an individual and $2,000 if the person is a corporation;

 (c) the third or subsequent time an order is issued for a contravention of the same provision, $1,000 if the person is an individual and $6,000 if the person is a corporation.

 (2) For the purposes of subsection (1), a contravention is considered to be a second, third or subsequent contravention if it occurred within one year after the preceding contravention.

 (3) For contraventions described in items 1 to 14 and 21 to 40 of the Table, if at the time the assessor issues an order in respect of the contravention, the contravention has been continuing for two or more consecutive days, the order shall be in respect of the entire period and shall treat the continuing contravention as a single contravention.

 (4) For contraventions described in items 15 to 20 of the Table, an assessor may impose administrative penalties for multiple occurrences of the same contravention by multiplying the amount of the contravention determined under subsection (1) by the number of occurrences.

TABLE 1

| Item | Column 1Provision contravened | Column 2Description of contravention |
| --- | --- | --- |
| 1.  | Subsection 4 (2) of the Act | Registrant carries on business in a name other than the name in which it is registered or invites the public to deal at a place other than that authorized by the registration. |
| 2. | Clause 16.5 (1) (a) of the Act | Registrant provides debt settlement services to a debtor before it has entered into a debt settlement services agreement that is in writing and that meets the prescribed requirements. |
| 3. | Clause 16.5 (1) (b) of the Act | Registrant provides debt settlement services to a debtor and did not deliver a written copy of the debt settlement services agreement to the debtor on or before entering into the agreement |
| 4. | Subsection 16.5 (2) of the Act | Registrant enters into more than one agreement for debt settlement services with the same debtor while there is a debt settlement services agreement between the parties that has not expired. |
| 5. | Subsection 16.5 (3) of the Act | The disclosure described in the provision is not clear, comprehensible and prominent.  |
| 6. | Subsection 16.5 (4) of the Act | The information described in the provision is not delivered in a form in which it can be retained by the debtor. |
| 7. | Subsection 16.6 (1) of the Act, together with section 28 of Ontario Regulation 74 | Registrant requires or accepts any payment or any security for a payment contrary to those provisions. |
| 8. | Subsection 16.6 (6) of the Act, together with subsection 31 (2) of Ontario Regulation 74 | Registrant fails to provide a refund in accordance with the regulations after receiving a notice demanding a refund under subsection 16.6 (5) of the Act. |
| 9. | Subsection 13 (3) of Ontario Regulation 74 | Registrant operates a branch office that is not authorized by its registration. |
| 10. | Subsection 13 (10) of Ontario Regulation 74 | Registrant operates from a permanent place of business that is not in Ontario, operates from a dwelling, or does not operate during normal business hours. |
| 11. | Subsection 13 (12) of Ontario Regulation 74 | Registrant fails to keep on its premises the documents described in that provision in the manner described in that provision. |
| 12. | Subsection 13 (13) of Ontario Regulation 74 | Registrant fails to retain an entry in a record book of account kept under subsection 13 (12) of the Regulation for a period of six years from the date of the entry. |
| 13. | Subsection 17 (2) of Ontario Regulation 74 | Registrant fails to maintain in respect of all trust funds that come into its hands a separate trust account in an 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 or failing to properly designate such an account as set out in that clause. |
| 14. | Subsection 17 (3) of Ontario Regulation 74 | Registrant maintains more than one account designated as a trust account without first notifying the Registrar and obtaining the Registrar’s consent in writing. |
| 15. | Subsection 17 (4) of Ontario Regulation 74 | Registrant fails to deposit all trust funds received from a debtor located in Ontario into its trust account within two banking days of receipt. |
| 16. | Subsection 17 (4.1) of Ontario Regulation 74 | Registrant deposits trust funds received from a debtor located in Ontario into an account outside of Ontario. |
| 17. | Subsection 17 (4.2) of Ontario Regulation 74 | Registrant transfers trust funds deposited in its trust account into an account outside of Ontario. |
| 18. | Subsection 17 (4.3) of Ontario Regulation 74 | Registrant fails to disburse money held in its trust account directly from the trust account to the recipient, or transfers the money through other accounts. |
| 19. | Subsection 18 (2) of Ontario Regulation 74 | Registrant fails to pay money to the Minister of Finance when required by the provision. |
| 20. | Subsection 18 (3) of Ontario Regulation 74 | Registrant fails to hold money referred to in the provision in accordance with the provision. |
| 21. | Subsection 19.1.1 (3) of Ontario Regulation 74 | Registrant engages in the activity described in subsection 19.1.1 (1) of the Regulation before notifying the Registrar in accordance with the provision |
| 22. | Subsection 21 (2) of Ontario Regulation 74 | Registrant contacts the debtor contrary to the provision. |
| 23. | Subsection 22 (1) of Ontario Regulation 74 | Registrant contacts or attempts to contact the debtor after the letter described in the Regulation has been sent, unless the debtor consents to or requests the contact. |
| 24. | Subsection 22 (2) of Ontario Regulation 74 | Registrant contacts or attempts to contact the debtor after the letter described in the Regulation has been sent, other than through the debtor’s lawyer or licensed paralegal, unless the debtor consents to or requests the contact. |
| 25. | Subsection 22 (6) of Ontario Regulation 74 | Registrant engages in any of the prohibited conduct described in that provision. |
| 26. | Subsection 23 (1) of Ontario Regulation 74 | Registrant directly or indirectly threatens, or states an intention, to commence a legal proceeding for the collection of a debt, unless the collection agency or collector has the written authority of the creditor to commence the proceeding, and the proceeding is not otherwise prohibited by law. |
| 27. | Subsections 25 (1) and (2) of Ontario Regulation 74 | Registrant collects or attempts to collect charges that are not permitted by those provisions. |
| 28. | Subsection 26 (1) of Ontario Regulation 74 | Registrant communicates or causes to be communicated the representations mentioned in paragraphs 1, 2, and 3 of that provision. |
| 29. | Subsection 27 (1) of Ontario Regulation 74 | The debt settlement services agreement fails to meet the requirements stated in the provision. |
| 30. | Subsection 28 (1) of Ontario Regulation 74 | Registrant requires or accepts any payment or security for payment for its services in respect of a debt owed by a debtor to a creditor other than in accordance with the provision. |
| 31. | Section 29 paragraph 1 of Ontario Regulation 74 | Registrant restricts the debtor from having access to his or her consumer report or makes any oral or written representation suggesting that the debtor is restricted from having such access. |
| 32. | Section 29 paragraph 4 of Ontario Regulation 74 | Registrant fails ailing to give a written report to the debtor on the performance of the agreement within 15 days after the debtor requests it. |
| 33. | Section 29 paragraph 10 of Ontario Regulation 74 | Registrant fails to provide information as to how to contact the collection agency or collector during normal business hours. |
| 34. | Subsection 30 (1) of Ontario Regulation 74 | Registrant fails to keep on its premises the records described in that provision for every debt settlement services agreement with a debtor. |
| 35. | Subsection 30 (2) of Ontario Regulation 74 | Registrant fails to keep on its premises copies of all published advertisements and the records needed to support claims or statements made in the advertisements. |
| 36. | Subsection 30 (3) of Ontario Regulation 74 | Registrant fails to keep a record required to kept under subsections 30 (1) and (2) of the Regulation 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. |
| 37. | Section 31 of Ontario Regulation 74 | Registrant that receives a notice demanding a refund under subsection 16.6 (5) or 16.7 (1) of the Act fails to provide the refund within 15 days after receiving the notice. |
| 38. | Subsection 32 (1) of Ontario Regulation 74 | Registrant fails to record a phone call made or received by a registrant respecting collections with debtors. |
| 39. | Subsection 32 (4) of Ontario Regulation 74 | Registrant fails to advise the person to whom a phone call is made or from whom a phone call is received that the call is being recorded to comply with the Act. |
| 40. | Subsection 32 (5) of Ontario Regulation 74 | Registrant fails to retain the recording made under subsection 32 (1) of the Regulation for three years after the day the call is made or received. |

Commencement

 4. This Regulation comes into force on the day it is filed.

# Appendix Three: Proposed Mandatory Information Statement

The proposed mandatory statement appears on the next page, set out as it would be required to read for debtors.

## Information from the Ministry of Government and Consumer Services

**If you think that the debt isn’t yours, or that a mistake has been made:**

Contact the collection agency and explain. A collection agency can’t keep contacting you if you are not the person they are looking for and you tell them so. The agency must take reasonable steps to make sure you are the person that they should be contacting with respect to the debt.

* If you already paid the debt, contact the creditor to correct the error.
* Check your credit report to see if the debt appears correctly on your report.

**A collection agency cannot:**

* phone you on Sunday, except between 1 p.m. and 5 p.m. or on any other day of the week between 9 p.m. and 7 a.m.;
* phone you on a holiday;
* use threatening, profane, intimidating or coercive language;
* use undue, excessive or unreasonable pressure or harass you;
* give false or misleading information to any person; or,
* charge you any fees other than fees for non-sufficient funds on payments that you submitted.

**There are limits on who an agency can contact:**

In general, a collection agency **can only contact your employer one time**to get your employment information. They can also contact your employer if:

* your employer has guaranteed the debt;
* it’s about a court order or an automatic salary deduction (also called assignment of wages); or,
* you have given them written permission.

A collection agency can’t contact your spouse, family member, a relative, neighbour, friend or acquaintance except:

* to get your contact information if they don’t have it already;
* the debtor requested the collection agency to discuss the debt with that person or,
* if that person has guaranteed the debt.

**To learn more about the rules governing collection agencies:**

For more information about your rights and options when dealing with a collection agency, please contact the Ministry of Government and Consumer Services www.ontario.ca/consumerservices, consumer@ontario.ca, 1-800-889-9768.