



Study Guide and Reference
British Columbia Debt Collector Licensing Examination
April 1, 2016 - V20160401
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Forward

An applicant for a licence to act as an employee of a licensed debt collection agency must first demonstrate to the director that the person is knowledgeable about prescribed and prohibited debt collection practices in British Columbia. This is achieved by the applicant taking and successfully passing an exam that tests the person's knowledge of legislation governing debt collection practices. The legislation is contained in the *Business Practices and Consumer Practice Act* and Debt Collection and Repayment Regulation (renamed effective April 1, 2016).

This study Guide is intended to help the student learn the legislation. It contains all the relevant legislation that is tested by the exam. All of the questions on the exam are based on the legislation presented in this Guide. A good knowledge of the material in this Guide should be sufficient to earn a passing mark on the exam. Consumer Protection BC allows the exam to be open-book so that the student can use this Guide as a reference while taking the exam. We are aware that some employers do not allow their (prospective) employees to refer to the Guide while taking the exam. That is a matter entirely between the employer and the student.

The exam is administered online. The formats of all exam questions are either multiple choice or true/false. The exam consists of 50 questions randomly drawn from a larger pool of questions which, when considered together, cover all the prescribed and prohibited collection practices of the legislation. The student must correctly answer at least 40 of the 50 questions in order to pass (minimum 80% correct). Marks are not deducted for incorrect answers. Each incorrect answer will result in the presentation of the correct answer at the end of the exam. Upon completing the exam, the student will be informed of the score obtained and given the opportunity to print a Certificate of Achievement, provided the student achieved a score of 80% or greater. If the student failed, the student will be given the opportunity to take the exam again using a new selection of 50 questions drawn from the pool. There is no limit on how often the student can take the exam and no waiting period is imposed before the student can try again. There is no time limit imposed when actually taking the exam although it is believed that the exam should be completed by a prepared person in 30 minutes or less. There is no additional cost to the student or the (prospective) employer to take the exam, beyond the regular licence application fee.

The exam must be taken in the physical presence of the student's employer or prospective employer. The employer must act as the proctor and must attest to that fact by providing our office with a duly completed Proctor's Certificate. The purpose of the Proctor's Certificate is twofold. First, the proctor must verify that the exam taker has proven his or her identity to the proctor by providing the proctor with 2 pieces of ID with at least one piece containing the student's photograph. Students should bring their identification with them when they take the exam. Second, the employer must verify that the student was the person who took the exam, did so in the presence of the proctor, do not use any reference materials or other aids other than this Study Guide, did not obtain any assistance, advice or information from another person during the exam and finally, achieved the mark indicated on the Certificate of Achievement produced at the end of the exam.

To obtain a collector licence, the student must provide a printed copy of the Certificate of Achievement available immediately after the student has successfully passed the exam. Please note that a student's exam result is not stored by the system. The student must print the Certificate when offered the opportunity to do so or it will be lost and the exam will need to be taken and passed again. The Certificate of Achievement must be accompanied by a Proctor's Certificate duly completed by the

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student's employer or prospective employer. Both the Certificate of Achievement and the Proctor's Certificate must be attached to the student's application for a collector license and sent to our office.

The format of this Study Guide for the exam is simple. Each requirement or prohibition starts the section by directly quoting the applicable legislation. The quote is italicized and indented from any explanatory information that accompanies it. The most recent amendment to the provision, if any, appears in red print. The legislative reference number for each quote is also provided so the student may view the legislation in the context of the entire legislation. In the guide, the practices are presented in the same order that they are presented in the legislation. Where it is deemed necessary, the provision is briefly explained in plain language. Where it is helpful, an example is also given. The legislation itself is quite simple and is well written and mostly self-explanatory. Many provisions are so simple as to be self-evident and do not require further explanation. But there are numerous provisions and purposeful studying is required to learn all of them. It is our hope that this Study Guide will make that learning more organized and easier.

Prescribed and Prohibited Collection Practices

Legislation

The practices used by a creditor or an agent acting on behalf of the creditor to collect debts is regulated in British Columbia. The legislation that governs the collection practices is called the *Business Practices and Consumer Protection Act* (the Act) and the related Debt Collection and Repayment Regulation (the Regulation). The full Act is available for viewing or printing at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/04002_00 and the Regulation at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_295_2004. The purpose of the legislation is to prescribe some practices that must occur when attempting to collect a debt and to prohibit others from occurring. Almost all of the provisions are contained within the Act with only a few appearing in the Regulation.

Latest Legislative Changes Effective April 1, 2016

From time to time the Government of BC may change the legislation, necessitating changes to this Guide. This Guide includes the latest amendments to the Act and the Regulation that came into force on April 1, 2016. This Guide was also changed at that time to reflect the legislative changes and to both highlight the areas that generated the most complaints and to freshen the pool of questions randomly drawn upon for the exam. For the convenience of the student, the latest legislative amendments are noted in red print.

Administration of the Legislation

Under an Administrative Agreement, the Province of the British Columbia has delegated the administration and enforcement of the *Business Practices and Consumer Protection Act* and its related regulations to the not-for-profit organization called the Business Practices and Consumer Protection Authority. In late 2009, the organization added the alias "Consumer Protection BC" and now operates under that name.

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2

S. 2 (1) - Application of this Act

Parts 6 [Credit Reporting] and 7 [Debt Collection] apply to transactions, matters or things, regardless of whether they involve a consumer.

The prescribed and prohibited collection practices are set out Part 7 *Debt Collection* of the Act. This section stipulates that these practices apply to the collection of all debts, regardless of whether the debtor is a consumer or a business. In other words, the legislation, including its prohibited collection practices, applies equally to the collection of consumer and business debts. The same collection practices apply to both types of debtors equally. This stands as an exception to the remainder of the provisions of the *Business Practices and Consumer Protection Act*, which only apply to consumer transactions.

S. 3 - Waiver or release void except as permitted

Any waiver or release by a person of the person's rights, benefits or protections under this Act is void except to the extent that the waiver or release is expressly permitted by this Act.

This is a very important protection for consumers. It means that if the legislation provides a right or a protection to a consumer, including a debtor, then that right or protection will continue to apply, even if the consumer has apparently given up the right or protection. A debtor cannot waive any of the rights or protections provided by the Act or its related Regulation, even if the debtor signs an agreement purportedly giving up the rights or protections. For example, an agreement signed by the debtor to give up certain notice requirements set out in the legislation or a verbal agreement by a debtor to pay for the costs incurred to collect a debt is void and unenforceable by the creditor or its agent. In spite of these types of agreements, the rights waived or the protections given up by the debtor would still apply and Consumer Protection BC would be obliged to enforce them on behalf of the debtor.

S. 4(3)(b)(iv) & s. 5(2) - Deceptive acts or practices

(4)(3) *Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:*

(b)(iv) *a representation by a supplier that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,*

A deceptive practice sometimes used by collectors or creditors is to tell a debtor or threaten a debtor with a legal proceeding to enforce payment of a debt otherwise statute-barred simply because the debt has been assigned to a collection agent or sold to a debt buyer. Telling a debtor that the assignment or sale of the debt resets the limitation period thus rendering the debt enforceable again if it otherwise would be statute-barred under the *Limitations Act* would constitute a deceptive practice.

(5)(2) *If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.*

As subsection 5(2) states, if the debtor alleges a deceptive practice by a collection agent, the burden of proof that the practice was not deceptive is on the creditor or collection agent and NOT on the debtor. Failure to make that proof in a court could result in an offence.

S. 15- Assignee's obligations

(1) Subject to subsection (2), an assignee of a right of a supplier in a consumer transaction has no greater right than, and is subject to the same obligations as, the assignor respecting the credit given to the consumer.

If a credit contract (debt) is assigned to a third party, the party receiving the rights assigned (the assignee) has no greater right to be paid under the agreement than the original creditor had and is bound by the same obligations as the original creditor. The assignment could be partial (such as the right to collect the debt, in the case of a debt collection agent) or a complete assignment, as when the debt is sold outright to a third party debt buyer. This situation applies even though the assignee gives valuable consideration for the debt. An example where this situation arises sometimes is when a debt that is statute-barred is sold to another party. If the debt was unenforceable by the original creditor because it was statute-barred, it is also unenforceable by the debt buyer.

Also see s. 121(1) below for a related requirement.

S. 75 - Default charges

A credit grantor must not impose, under a credit agreement, any default charges other than the following:

The following list is an all-inclusive list that may be charged to a borrower as default costs (for a late, missed or dishonoured payment on the debt) (except that interest may also be charged on overdue payments provided interest was part of the original credit agreement). Any other default costs, even if contained in a credit agreement and agreed to by the debtor, are prohibited.

(a) court ordered costs incurred in collecting or attempting to collect a debt;

Note that the costs must be actually ordered by a court as part of a judgment against a debtor.

(b) reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject matter of a security interest after default;

These costs can only arise where a debt is secured by a security interest given by a debtor as part of the agreed-upon credit agreement. If a debt is unsecured, no such charges are allowed.

(c) reasonable charges that reflect costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.

The intent of this provision is to enable a creditor or collector to recover its costs resulting from payment instruments given by the debtor being dishonoured by a debtor's savings institution. It is not intended to be a money-making source of extra income for the creditor or agent or to be used as a punishment against a defaulting debtor. The cost charged to the debtor must bear a reasonable relationship to the actual cost to the creditor or collection agent resulting directly from the dishonouring of the payment.

S. 109 (1) - Contents of reports

A reporting agency must not include in a report given under section 108 (1) (a) [to whom reports may be given] any of the following:

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- (o) *any other information adverse to the individual's interest 6 years after the event that gave rise to the information;*

A credit reporting agency may report a debtor's late or missed payments for a maximum of 6 years from the date the payment was first missed or late. Note carefully that the 6-year reporting period starts to run from the first date that the debt went into arrears, regardless of whether or not it was reported at that time to the credit reporting agency. Six years after the first date of the arrears, the information about the arrears must be purged from the debtor's credit report. Unlike an enforcement limitation imposed by the *Limitations Act*, this is an absolute time limitation that cannot be extended by any event, including the assignment or purchase of the debt to another person, an acknowledgement by the debtor of the debt or subsequent payments made by the debtor. The term "date of last activity", sometimes used even by reporting agencies, has no application in BC to determine the length of time or the starting date of when unfavourable information about a debtor can be reported to users of credit reports. For late or unpaid debts, the maximum period is 6 years starting when the debt first went into arrears.

As a result of a successful action in BC Supreme Court by Consumer Protection BC, the 6-year maximum reporting period also applies to inquiries made by debt collection agencies into the credit report of a debtor. The inquiry information about the access by the collector was held to be adverse to the interests of the debtor and therefore must be purged from the debtor's credit report 6 years after the date of the debt arrears to which the inquiry related – not 6 years from the date the inquiry was made.

S. 113 - Definition - collector

"collector" means a person, whether in British Columbia or not, who is collecting or attempting to collect a debt.

This definition means that ANY person collecting or attempting to collect a debt is subject to the prescribed and prohibited collection practices. This means that creditors collecting their own debts, as well as third party collection agencies, must comply with the legislation relating to the collection practices. The definition also means that collectors located outside of British Columbia who are collecting or attempting to collect debts from residents of British Columbia are also subject to the BC debt collection legislation and licensing requirements.

S. 114 - Harassment

(1) A collector must not communicate or attempt to communicate with a debtor, a member of the debtor's family or household, a relative, neighbour, friend or acquaintance of the debtor, or the debtor's employer in a manner or with a frequency as to constitute harassment.

A collector is prohibited from harassing a debtor or anyone associated with the debtor. Note that both the frequency of the communications with a debtor as well the manner of the communications can constitute harassment.

This is a very broadly-worded provision. It would not be possible to list all the ways that a debtor could be harassed. The legislation does provide some further guidance, as set out below, but again, several of the terms and phrases used there also have broad meanings. In the end, whether or not harassment has occurred will be a matter of judgment exercised in the context of the situation complained about.

Complaints of harassment are the most common complaints received and investigated by Consumer Protection BC. While it is acknowledged that attempting to have a debtor who is in arrears pay a debt can be a difficult task, the use of any type of harassment to try to coerce the debtor to do so is specifically

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prohibited by the legislation and can result in monetary penalties being levied against the collection agency or collector. Repeated harassment can result in the licences being suspended or cancelled.

- (2) *Without limiting subsection (1), one or more of the following constitutes harassment:*
(a) *using threatening, profane, intimidating or coercive language;*

While certainly not all-inclusive, the following list details some of the types of threats that would be deemed to constitute harassment:

- Threatening to involve the police for non-payment of a debt (non-payment of a debt is a breach of a contract and a civil matter. It is not a criminal matter and will never be investigated by the police);
- Threatening to have a bailiff or sheriff seize an asset of the debtor in lieu of payment (unless the debt is secured by the asset, a judgment from a court is required before a creditor can begin the process of having assets seized and it would be considered harassment to threaten seizure of a debtor's asset before obtaining a judgment and processing to enforce it under the *Court Order Enforcement Act*);
- Threatening a debtor with violence if a debt is not paid (this threat would not only constitute harassment but it would also be a criminal act which could result in police action against the collector). Consumer Protection BC always encourages debtors complaining of physical threats of violence by collectors to immediately report the matter to the police;
- Threatening to call the debtor every hour, every day or even in some cases, every week, until payment is made (the purpose of a collection call is to encourage a debtor to voluntarily pay a debt. It can never be to call so frequently as to harass a debtor until the debtor pays).

Swearing at a debtor or someone connected to the debtor is defined as harassment and is forbidden.

Attempts to intimate a debtor, through tone, manner or words is also prohibited.

Threatening a debtor with an action that is unlawful or impossible is also prohibited by this subsection. Such a threat could also be a deceptive practice where the legal burden to prove the threat was not deceptive would rest with the collector.

- (b) *exerting undue, excessive or unreasonable pressure;*

While applying reasonable pressure on a debtor to pay is not prohibited, pressure that results in anguish, fear, panic or a sense of low self-esteem in a debtor is excessive and is prohibited.

- (c) *publishing or threatening to publish a debtor's failure to pay.*

A creditor or its agent may report a debtor's failure to pay to the creditor or a credit reporting agency in accordance with the credit reporting provisions of the Act. But informing or threatening to inform anyone else about a debtor's failure to pay, including the debtor's spouse, family members, neighbours or employer is strictly prohibited.

S. 115 - Disclosure to debtor

(1) *A collector must not attempt to collect payment of a debt from a debtor until the collector has notified the debtor in writing or the collector has made a reasonable attempt to notify the debtor in writing of*

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(a) the name of the creditor

- (i) with whom the debt was originally incurred, and*
- (ii) to whom the debt is currently owed, if different from the creditor described in subparagraph (i),*

[The red print indicates this is the latest amendment to the provision]

This requirement to provide advance notice to the debtor before actually contacting the debtor to demand payment on the debt is well written and clear. However, note that this requirement was amended, effective April 1, 2016, to include certain specific information about the debt. Subsection (a) now requires the written notice to the debtor to include not only the name of the creditor with whom the debt was originally incurred but also the name of the current owner of the debt if it is different. This is important when the original creditor has changed its name or where the debt has been sold to a third party after it was incurred. This information allows the debtor to assess his liability for the debt and to know who he must now pay.

(b) the amount of the debt

- (i) on the date it was first due and payable, and*
- (ii) currently owing, including a breakdown of that current amount, if different from the amount of the debt on the date it was first due and payable, and*

Subsection (b) now requires the collector to advise the debtor of the amount of the debt when it first became due as well as the amount currently owing. If the 2 amounts are different, the notice must provide a breakdown that reconciles the difference. Until this information is provided to the debtor, no attempts to collect the debt are permitted.

(c) the identity and authority of the collector to collect the debt from the debtor.

A creditor attempting to collect its own debt is exempt from this provision.

The notice a third-party collector must send must be in writing and sent to the debtor's last known address or email.

(2) A collector must not initiate verbal communication with a debtor with respect to the collection of a debt until 5 days after the collector has sent to the debtor the written notice referred to in subsection (1)

A waiting period of 5 clear days must pass after sending the notice before any attempt is made to verbally communicate with a debtor.

(2.1) Despite subsection (2), a collector may initiate verbal communication with a debtor, before sending to the debtor the written notice referred to in subsection (1), solely for the purpose of requesting the debtor's home address or electronic mail address in order to send that written notice, if the collector does not have the debtor's home address or electronic mail address or has that information but has reason to believe it is not correct.

Section 2.1 was added in 2016 to govern the situation where the collector does not have a home address or email address for the debtor or has reason to believe the address or email available is not correct. In that circumstance, the collector may verbally contact the debtor but only for the purpose of obtaining the address or email. This contact must not result in any attempt to press for collection of the debt. That may not verbally occur until after the collector has sent the advance written notice described above. If the

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collector believes the address or email available is not correct, the collector should document the specific reason why the address is not considered correct in the collection record if the event that point is challenged by either the debtor or Consumer Protection BC.

This section was amended and now also adds the use of email as a legitimate communications mode. Collectors can now use email to send notices to the debtor and the debtor can restrict a collector to using emails only as the mode of communication.

(3) If a debtor informs the collector that the debtor has not received the notice required under subsection (1), the collector must send that information to the debtor at the address provided by the debtor.

If a debtor claims not to have received the notice and provides a mailing or email address, the collector must immediately send the notice to the address provided.

S. 116 - Communication with debtor

(1) A collector must not communicate or attempt to communicate with a debtor at the debtor's place of employment unless

Communicating or attempting to communicate with a debtor at the debtor's place of employment can have very serious consequences for the debtor, including loss of employment. For this reason, contacting a debtor at work is strictly prohibited, except for the following special cases:

(a) the collector does not have the debtor's home address, telephone number or electronic e-mail address and the collector contacts the debtor solely for the purpose of requesting that information,

The caller must not attempt to collect the debt during this telephone call. Note that the debtor is not obliged to provide the information. Note that a debtor may provide an email address instead of a home address or telephone number, if the debtor decides to do that.

(b) the collector has attempted to contact the debtor at the debtor's home address, telephone number or electronic mail address that the collector has for the debtor but the collector has not contacted the debtor in any of those attempts, or

This contact can only be made once (see (2) below) and only after unsuccessful attempts have been made to contact the debtor at home. Be aware that many debtors may not be able or may choose not to discuss their debts while they are working and may simply terminate the call. If that occurs, the one permitted attempt has been used since the collector has made contact with the debtor and no further calls to the debtor at work are permitted.

(c) the collector has been authorized by the debtor to communicate with the debtor at the debtor's place of employment.

It is a good practice to have the debtor provide this authority in writing.

For the 3 permitted situations above, a collector must take special care not to harass a debtor when communicating with the debtor at work. In many circumstances, a debtor can be very vulnerable in the workplace. For example, a debtor that does not have a private office with a telephone may have to leave her/his normal workstation to take a call and the place where the call occurs may not be private. In addition, the employer may be concerned that the employee is using "company" time to deal with

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personal business rather than that of the company. Calling a debtor at work except in the 3 very limited circumstances set out above is always investigated by Consumer Protection BC if the debtor can provide plausible evidence of the contact.

(2) The collector must not make more than one verbal attempt, under subsection (1) (b), to contact the debtor at the debtor's place of employment.

Regardless of the outcome of the one attempted contact at work, no more calls to the debtor at the workplace are allowed. Note the important use of the word "attempt".

- (3) At the time a collector communicates with a debtor, the collector must first indicate to the debtor*
- (a) the name of the creditor*
 - (i) with whom the debt was originally incurred, and*
 - (ii) to whom the debt is currently owed, if different from the creditor described in subparagraph (i),*
 - (b) the amount of the debt*
 - (i) on the date it was first due and payable, and*
 - (ii) currently owing, including a breakdown of that current amount, if different from the amount of the debt on the date it was first due and payable, and*

Amendments in 2016 increased the amount of information a collector must provide to a debtor when communicating with the debtor. A collector must now provide a history of the ownership of the debt if it has changed since the debt was initially incurred as well as an accounting of the amount currently owing if the amount demanded now is different than the amount of the debt when it was originally incurred.

- (c) the identity and authority of the collector to collect the debt from the debtor.*

These requirements allow a debtor to become aware of the identity and authority of the caller, the debt involved and the amount owing and the purpose of the call. As Subsections 123 (b) & (c) below state, a collector is prohibited from misrepresenting the purpose of the call or the caller's identity.

- (4) A collector must not continue to communicate with a debtor*
- (a) except in writing, if the debtor*
 - (i) has notified the collector to communicate in writing only, and*
 - (ii) has provided a mailing address at which the debtor may be contacted,*

A debtor must notify the collector of this choice in written form (letter or email). Once the notification and mailing address are received, all verbal communications with the debtor must cease. Because of this very important consumer protection, it is important that a collector does not harass a debtor to avoid the debtor invoking this protection.

- (b) except through the debtor's lawyer, if the debtor*
 - (i) has notified the collector to communicate only with the debtor's lawyer, and*
 - (ii) has provided an address for the lawyer, or*

A debtor has the right to be presented by legal counsel. The debtor must deliver this instruction to the collector in writing or by email. Once received, the collector can contact the lawyer about the debt but can no longer contact the debtor directly.

- (c) if the debtor has notified the collector and the creditor that the debt is in dispute and that the debtor would like the creditor to take the matter to court.*

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Like the other instructions above, this notice must be provided in writing, which can be by email. Please note that it is not necessary for a debtor to also state or prove the reasons for the dispute. Those are matters for the court to deal with. It is sufficient that the debtor disputes the debt and invokes this provision. If a debtor states this wish, the only collection option available to a collector to collect the alleged debt is to commence a legal proceeding. All other collection communications with the debtor must cease immediately.

This provision is not applicable if the collector is attempting to collect a debt owed to government (Debt Collection Industry Regulation 2(4)).

S. 117 - Communication with persons other than debtor

(1) Except for the purpose of obtaining the debtor's home address, telephone number or electronic mail address if the collector does not have that information or has that information but has reason to believe it is not correct, a collector must not communicate or attempt to communicate with a member of the debtor's family or household, or a relative, neighbour, friend or acquaintance of the debtor unless

(a) the person contacted has guaranteed to pay the debt and is being contacted in respect of that guarantee, or

(b) the debtor has authorized the collector to discuss the debt with the person contacted.

Unless either (a) or (b) apply, a collector is prohibited from communicating with anyone related to a debtor except to obtain contact information for the debtor. If the collector already has the debtor's home address, email address or telephone number, no contact with the persons mentioned in the section is permitted unless the collector has reason to believe that the contact information is not correct. Note that the party contacted is under no obligation to provide the contact information and the collector must not harass the person in an attempt to get it.

(2) A collector must not communicate with a debtor's employer except

(a) for the purpose of confirming the debtor's employment, business title and business address but only if the collector has given notice to the debtor under section 121 (1)(b), (1.1) or (2), or

Effective April 1, 2016, a collector may only contact the debtor's employer to request the 3 specified pieces of the debtor's information if the collector has first given notice to the debtor that the collector intends to bring the proceeding. This prevents the humiliating practice of a collector immediately writing to the debtor's creditor to obtain the information at the start of the collection process when no legal action is planned or likely.

Only the 3 types of the specified information may be requested from the employer by the collector. And the employer is not under a duty to provide the information or even acknowledge the request.

(b) for other purposes authorized in writing by the debtor.

It is a good idea that the collector keeps the written authorization of file as proof that the authorization was given by the debtor.

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S. 118 - Time of communication

(1) In this section, "statutory holiday" means a holiday, except Sunday, unless the holiday falls on a Sunday.

If the day is both a Sunday and a statutory holiday, a collector must not attempt to communicate with a debtor unless specifically requested to do so on that day by the debtor. It is a good idea to retain the authority in the collection file. What constitutes a statutory holiday is defined in the *Interpretation Act*.

(2) Except on the request of the person contacted, a collector must not communicate, either by telephone or in person, with the debtor, a member of the debtor's family or household, or a relative, neighbour, friend or acquaintance of the debtor, or the debtor's employer or guarantor

(a) on a statutory holiday,

This provision means there is a complete ban on communicating with a debtor or a related person at any time during a statutory holiday.

(b) subject to paragraph (a), on a Sunday, except between the hours of 1 p.m. and 5 p.m. local time for the person contacted, or

Note that the applicable times are those in effect where the debtor resides and not where the creditor or collector is located.

(c) on any other day, except between the hours of 7 a.m. and 9 p.m. local time for the person contacted.

This section attempts to strike a balance between a creditor's right to contact a debtor about debt arrears and the privacy of the debtor to have time to rest and to spend time with family and friends.

S. 119 - Cost of communication

A collector must not communicate or attempt to communicate with a person for the purpose of collecting, negotiating or demanding payment of a debt by a means that results in the costs of the communication being payable by the person.

This provision prohibits collectors from placing collect telephone calls or sending mail with postage due. It also means a collector must not call a debtor on a debtor's cellular telephone unless 1) the debtor provided the number of the cellular telephone to either the collector or creditor AND the collector does not have a land line number for the debtor or 2) the debtor has requested the collector to call the cellular telephone. Some low-cost cellular phone plans charge the customer a fee for each incoming text messages and so collectors must be sensitive to that and not use text messages if the debtor will be charged for them.

S. 120 - Collection from person not liable for debt or in excess of amount of debt

A collector must not

(a) collect or attempt to collect money that exceeds the amount of the debt owing,

Amounts captured by this provision include any costs incurred by the collector attempting to collect the debt, interest unilaterally imposed by the creditor (or the collector) or any default fees not authorized by Section 75 (see above). Apart from an authorized default fee set out in Section 75 (see above), the only amount a collector can demand is the principal owing, and if the agreed-upon lending agreement provides

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for it, interest on the balance outstanding – even if the lending agreement states that certain other fees are payable for a debt in arrears (see s. 3 above). A collector must not add any fee to the amount to be collected as compensation to the creditor for the cost of the collection service provided if the debtor must pay that fee.

(b) collect or attempt to collect money from a person who is not liable for the debt, or

Spouses, parents and children of debtors are not liable for the debts of their kin unless 1) they are co-borrowers or 2) they guaranteed the debt and it is in default. This includes debts included in a debtor's bankruptcy. Not only are related persons not responsible for their kin's debts, a collector is prohibited from even discussing the debt with them (see s. 114(20) above).

(c) if a person has informed the collector that the person is not the debtor, continue to communicate with that person unless the collector first makes all reasonable efforts to ensure that the person is in fact the debtor.

The collector should document and retain the efforts made and evidence relied upon that confirms the identity of the debtor.

S. 121 - Legal proceedings

(1) If a debt has been assigned to a collector, the collector must not

*(a) bring or continue a legal proceeding for the **recovery of the debt** as plaintiff unless the debtor has been given notice of the assignment, or*

This requirement would be met by the collector if the notice required by Section 115 is provided to a debtor AND it advises the debtor that the debt has been assigned for collection. Failure to send the notice might be used by a debtor as a legal defence against a court action. In a BC court action some years ago, the court disallowed interest otherwise owing on a debt simply because the debtor had not provided with this required notice of assignment.

*(b) bring a **legal proceeding for the recovery of the debt** unless the collector first gives notice to the debtor that the collector intends to bring the proceeding.*

"Notice" is interpreted to mean a written communication and can include an email message. The written notice used must be one that has been submitted to us for review and is on file with us. As above, failure to provide the notice to a debtor might be used by a debtor as a legal defence.

*(1.1) **Subject to subsection (1), a collector must not bring a legal proceeding for the recovery of a debt unless the collector first gives notice to the debtor that the collector intends to bring the proceeding.***

Section (1.1) was added in April 2016. The requirement for notice to bring a legal proceeding now extends to all persons attempting to sue for the recovery of a debt, not just to debt collection agencies.

*(2) A collector must not recommend to a creditor that a **legal proceeding for the recovery of a debt** be brought, unless the collector first gives notice to the debtor that the collector intends to recommend that a proceeding be brought.*

(3) Nothing in subsection (2) affects solicitor-client privilege.

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(4) A collector must not directly or indirectly threaten, or state an intention, to bring or continue a legal proceeding for the recovery of a debt

(a) for which the collector does not have the written authority of the creditor, or

The authority must either be contained in the collection agreement between the creditor and the collector generally and absolutely or be sought and obtained for each specific debtor against whom a legal proceeding is threatened.

(b) for which there is no lawful authority.

For example, debts may be statute-barred under the *Limitations Act* or they may be included in or discharged by the bankruptcy of the debtor and are unenforceable in court. Therefore, a threat to sue the debtor for such a debt is not only meaningless but also deceptive, as well as contrary to this subsection.

S. 123 - False or misleading information and misrepresentations

In collecting or attempting to collect payment of a debt, a collector must not

(a) supply any false or misleading information,

There are many examples that could be offered here. The following are only a few:

- if a debt that is in arrears already appears on a debtor's credit report, informing the debtor that payment of the debt will result in the removal of the information would be false since the reporting agency would almost certainly not remove the information except to update its status as paid;
- stating that failure to pay will result in the immediate garnishee of the debtor's bank account or wages unless a judgment has been first obtained against the debtor or a pre-judgment garnishee has been obtained. Enforcement actions like garnishees, seizure of assets and liens on property are only possible after the matter has been to court and a judgment or pre-judgment action against the debtor has been received from the court;
- threatening to involve the police if the debt is not paid. Non-payment of a contractual debt is NOT a criminal matter and the police will never become involved in the collection of such a debt.

(b) misrepresent the purpose of a communication,

This provision applies to both verbal and written communications. Note that the provision prohibits the misrepresentation of the communication. So, unless you really do represent BC Lotteries and actually have a \$1,000,000 prize cheque for the debtor, do not claim that you do in an attempt to reach the debtor.

Note that this provision does not prohibit a communication, like a letter or a voice message, from being silent as to its purpose. However, once 2-way communication is established with a debtor, the collector must immediately state the purpose of the communication and the other information required by subsection 116 (3).

(c) misrepresent the identity of the collector or, if different, the creditor, or

Section 116(3) already requires a collector to identify herself/himself when communicating with a debtor. This subsection prohibits a collector from assuming a false identity to mislead a debtor.

(d) use, without lawful authority, a summons, notice, demand, or other document that suggests or implies a connection with any court inside or outside of Canada.

Only documents actually registered with or issued by a court or court registry can be implicitly or explicitly held out as court documents. And, the language and style of other documents must not emulate or copy

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that of official legal or court documents in a way that could deceive a debtor into believing the documents originated from a court or court registry, if they did not. Regulating law societies of several jurisdictions have taken an interest in collection firms that sent out documents purposefully made to appear as court or formal legal documents, when in fact they were not.

S. 125 - Definitions - Collection Agents

"collection agent" means a person, whether in British Columbia or not, who

(a) in the course of business collects or attempts to collect payment of a debt for another person,

Section 125 defines the parties that require a licence to collect debts. The licence is required if the person collecting or attempting to collect a debt owed to another person is doing so in the course of business (performing the collection activity for gain or profit or in the hope of gain or profit).

Debts that are sold to third parties where the third party will perform the collection activity itself also require a collection agent licence and licensed collectors to actually perform the activity. More simply put, anyone other than the original creditor must be licensed to collect debts.

It is useful to know that demanding, negotiating and receiving payment are considered the actions of a collection agent.

(b) in the course of business takes an assignment of a debt due to another person for the purpose of collecting or attempting to collect payment of the debt,

Since the purchase of a debt is really the complete assignment of a debt, this subsection defines a third party that purchases debt and collects it for its own account as a collection agent that must be licensed to conduct this type of business.

"debt repayment agent" means a person who, acts for or represents, or offers to act for or represent, a debtor in arrangements or negotiations with the debtor's creditors, which arrangements or negotiations may include receiving money from the debtor for distribution to the debtor's creditors, in consideration for a fee, commission or other remuneration that is payable by the debtor.

The previous definition of a debt pooler was amended and expanded, effective April 1, 2016. The definition now includes debt poolers and debt settlement agents and both are now defined as debt repayment agents.

S. 127 (1)(b) – Debt Repayment Agent

A debt repayment agent must not act for or represent the following:

(b) any of the debtor's creditors.

Debt repayment agents cannot act for both a debtor and the debtor's creditors. Therefore, a collector cannot attempt to collect a debt for a creditor from a debtor if it also acts as a debt repayment agent for that same debtor if the debt is involved in the debt resettlement program of the debtor. Alternatively, a debt repayment agent cannot represent a debtor to a creditor if it also acts as a collector for that creditor.

S. 128 (1) & (4) - Collection agent and bailiff fees and disbursements

(1) A collection agent must not charge the collection agent's fees and disbursements to a debtor except as authorized by an enactment.

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Neither the creditor nor the collection agent can assign or charge any of the costs of collection to a debtor. All the costs must be borne by the creditor or the collector or both of them. The practice of a collection agent adding a flat or percentage fee to a debt assigned to it for collection is prohibited. Note that the only others costs “authorized by an enactment” for the Default Charges set out in s. 75 above.

- (4) *Despite an agreement to the contrary between a debtor and a creditor,*
- (a) *any charges, except fees and disbursements deemed under subsection (2) and charges authorized under section 75(b) [default charges], made or incurred by a collection agent or made or incurred by a creditor in employing a collection agent to collect a debt, are not part of the amount owing by the debtor, and*
 - (b) *a collection agent must not collect from the debtor any charges that are not part of the amount owing by the debtor.*

Subsection (b) prevents a collector from attempting to collect advance payments or prepayments from a debtor if the amounts due are not yet payable by the debtor. A collector must also not attempt to collect “security” deposit from a debtor intended to ensure future and ongoing payments of debts by the debtor.

S. 143 - Licence required

A person must not engage in a designated activity unless the person is

- a) *licensed to engage in the designated activity, or*
- b) *exempted by regulation from the requirement to be licensed.*

Debt Collection and Repayment Regulation 1.1 (b) designates the business and occupation of debt collection for the purpose of requiring a licence. Note that both the business and its employees engaged in debt collection must be licensed. In other words, the corporate entity undertaking to do debt collection activities must have a collection agent licence while its employees who actually perform the collection activities must be individually licensed as collectors.

S. 164 - Administrative penalties

After giving the person an opportunity to be heard, the director may impose an administrative penalty on the person if the person contravenes

- a) *a prescribed provision of this Act or the regulations,*

The legislation gives the director or inspectors the authority to impose an administrative penalty (a financial fine) on anyone who contravenes prescribed provisions of the Act or its Regulations. If the contravention is caused by an individual like a collector, the fine can be imposed on that person. The administrative penalty is payable 30 days after it is imposed or after it is reconsidered by the director. If the penalty remains unpaid after that time, the director may file the notice imposing the administrative penalty with the Supreme Court of BC and after filing it, the notice has the same force and effect as if it were a judgment of the court. If the collection agency, the corporate entity, contravenes a prescribed provision of the Act or Regulations, the officer, director or agent who authorized, permitted or acquiesced in the contravention is also liable for payment of the penalty.

S. 165 - Amount of administrative penalty

- 1) *An individual on whom an administrative penalty is imposed is liable to a penalty of not more than \$5 000.*
- 2) *A corporation on which an administrative penalty is imposed is liable to a penalty of not more than \$50 000.*

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Contraventions of the certain statutory and regulatory provisions are subject to an administrative penalty (a monetary fine), to the maximum amounts set out above. Note that both the individual involved and the corporation can be penalized. Repeat contraventions can quickly increase the penalty for subsequent violations. Compliance Inspectors, Enforcement Inspectors as well as the director may levy administrative penalties.

Contravention of most of the prohibited collections practices are subject to administrative penalties.

S. 171 (1) - Damages recoverable

Subject to subsection (2), if a person, other than a person referred to in paragraphs (a) to (e), has suffered damage or loss due to a contravention of this Act or the regulations, the person who suffered damage or loss may bring an action against a

- (a) supplier,*
- (b) reporting agency, as defined in section 106 [definitions],*
- (c) collector, as defined in section 113 [definitions],*
- (d) bailiff, collection agent or **debt repayment agent**, as defined in section 125 [definitions], or*
- (e) a person required to hold a licence under Part 9 [Licences]*

who engaged in or acquiesced in the contravention that caused the damage or loss.

This provision, specifically subsection (c), gives a debtor who has been harassed by a collector or who has not been accorded a prescribed practice or suffered from a prohibited collection practice the right to sue the collector involved for any loss or damages incurred as a result.

S. 186 - Publication by director

- (1) The director may publish information respecting the following:*
 - a) the suspension or cancellation of a licence;*
 - b) an undertaking;*
 - c) a compliance order;*
 - d) a direct sales prohibition order;*
 - e) a property freezing order;*
 - f) the imposition of an administrative penalty;*
 - g) a court order made under this Act;*
 - h) a conviction of an offence under this Act.*
- (2) Without limiting subsection (1), the director may publish*
 - a) the name of the person against whom action is taken,*
 - b) the amount of any penalty, and*
 - c) the reason for the action taken or the nature of the contravention.*

This provision authorizes the director to make public all enforcement actions taken by Consumer Protection BC. Our current practice is to publish every enforcement action on our website in an area that is available to the public and can be searched by company name. If we feel the enforcement action was significant, we may also provide press releases to the media.

S. 189 - Offences

A person who contravenes any of the following sections commits an offence:

(3)(f) section 75 [default charges];

(4)(c) section 109 (1) or (3) [contents of credit report];

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- (g) section 114 (1) [harassment];
- (h) section 115 (1), (2) or (3) [disclosure to debtor];
- (i) section 116 (1), (2), (3) or (4) [communication with debtor];
- (j) section 117 (1) or (2) [communication with persons other than debtor];
- (k) section 118 (2) [time of communication];
- (l) section 119 [cost of communication];
- (m) section 120 [collection from person not liable for debt or in excess of amount of debt];
- (n) section 121 (1), (1.1), (2) or (4) [legal proceedings];
- (p) section 123 [false or misleading information and misrepresentations];
- (s) section 128 (1) or (4) (b) [collection agent and bailiff fees and disbursements];

A contravention of any of the above sections that relate to debt collection or credit reporting constitutes an offence that may be prosecuted under the *Offence Act* and could result in the penalties set out below in Section 190 below.

S. 190 - Offence penalty

- (1) An individual who commits an offence under this Act is liable to a fine of not more than \$10,000 or to imprisonment for not more than 12 months or to both.
- (2) A corporation who commits an offence under this Act is liable to a fine of not more than \$100,000.
- (3) Despite subsections (1) and (2), the court may increase a fine imposed under this section by an amount of up to 3 times the court's estimation of the amount of monetary benefit acquired or accrued as a result of the commission of the offence.

Offences are prosecuted by the Crown and the penalties imposed would be at the discretion of the court.

Debt Collection and Repayment Regulation

Previously, this Regulation was titled the Debt Collection Industry Regulation. It was changed to the Debt Collection and Repayment Regulation effective April 1, 2016 when amendments were made to both the Act and the renamed Regulation.

Reg. 2 – Exemptions from Part 7 of the Act

- (2) Sections 115 [disclosure to debtor] ~~and 121 (1) and (2) [legal proceedings] of the Act do does not apply to a creditor collecting or attempting to collect a debt owed to the creditor.~~

A creditor attempting to collect its own debt that it granted does not need to provide the advance written notice that it plans to attempt collection of the debt from the debtor. However, since April 2016, a creditor attempting to collect its own debt that it granted must give notice to the debtor if the debt has been assigned for collection if it intends that the assigned collector will bring a legal proceeding to collect the debt and the collector has also given notice to the debtor that it will recommend to the creditor that the legal proceeding be brought.

Req. 9 - Trust accounts

(1) A licensee must do all of the following:

(b) if receiving money from a debtor for distribution to the debtor's creditors or on behalf of a creditor from a source other than a debtor, deposit the money within 5 days of its receipt, in the trust account:

A debt collection agency must have and use a separate trust bank account that is designated by the savings institution administering the account as a trust account and the account must either be located in BC or possess a transit number assigned by the savings institution that denotes that the account is subject to BC legislation.

The use of the trust account is an acknowledgement that the funds in the account are not the property of the collection agency and are therefore unavailable to satisfy any of the agency's debts or financial obligations

Since April 1, 2016, all funds received by the agency from debtors must be deposited into the trust account within 5 days of its receipt. The funds collected from the debtor must remain in the trust account until the creditor's share of the funds are paid out to the creditor. The maximum period of time the collection agent has to pay the creditor its share of the collections is 60 days.

(1.1) A licensee must not deposit money into the trust account referred to in subsection (1)(a) other than money referred to in subsection (1)(b).:

Since April 1, 2016, a licensee must not deposit any money into its trust account not received from debtors. In other words, the licensee must not commingle any other types of money with the trust funds held in its trust account. This will ensure the integrity of the trust funds held on deposit in the trust account.

END OF STUDY GUIDE