

**Guide to
Licensed Debt Collection Agent and Bailiff
Inspections in British Columbia**



**CONSUMER
PROTECTION BC**

Table of Contents

INTRODUCTION.....	3
DEFINITIONS	3
WE ARE HERE TO HELP	4
BACKGROUND: OUR RESPONSIBILITIES.....	4
THE ROLE OF CONSUMER PROTECTION BC	4
THE ROLE OF THE LICENSEE	4
INSPECTIONS.....	5
AUTHORITY TO INSPECT	5
WHAT AN INSPECTION MIGHT LOOK LIKE	5
PRODUCING DOCUMENTS AND RECORDS	6
ENFORCEMENT	6
IDENTIFYING THE CONTRAVENTION	6
NOTICE OF ENFORCEMENT ACTION RECOMMENDED REPORT AND REPORT TO DIRECTOR	6
OPPORTUNITY TO BE HEARD	7
POSSIBLE ENFORCEMENT ACTION	7
RECONSIDERATION	7
APPENDIX 1.....	8

Introduction

Consumer Protection BC is responsible for the administration of the *Business Practices and Consumer Protection Act (Act)* and *Debt Collection Repayment Regulation (Regulation)*. Together this Act and Regulation govern the conduct of persons who engage debt collection, the business of debt collection, the business and occupation of bailiffs and, the licensing requirements related to each in British Columbia.

This guide has been prepared to better inform and educate debt collectors, debt collection agents and bailiffs on the compliance inspection process. As a licensee, it is your responsibility to conduct yourself and to operate your business so they comply with the laws and conditions on the licenses issued to them. We recommend licensees take the time needed to read this guide fully and to make sure that managers and staff are familiar with the information presented.

The material in this guide provides a reference point for collectors, collection agents and bailiffs on what to expect and how to prepare for compliance inspections performed by Consumer Protection BC.

This guide provides a general overview of the compliance inspections process. It is not an exhaustive review of the legislative provisions affecting debt collectors, debt collection agents and bailiffs in BC. We recommend that anyone regulated under the Act and Regulation obtain copies of both and review them in detail. You can find them online or printed versions may be ordered from:

**CROWN PUBLICATIONS INC.
106 Ontario Street
Victoria BC CANADA V8V 1M9
TEL: (250) 386-4636
TOLL FREE 1-877-747-4636
FAX: (250) 386-0221**

Definitions

“Act” means the Business Practices and Consumer Protection Act

“Collector” means a person, whether in British Columbia or not, who is collecting or attempting to collect a debt.

“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, or (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, and includes a bailiff;

“Bailiff” means a person, whether in British Columbia or not, who in the course of business acts, or assists a person to act, on behalf of another person in repossessing, distraining or seizing any personal property or in evicting a person from property.

“Director” means the director under the Business Practices Consumer Protection Act

“Inspector” means an individual designated by the director as an inspector

“**Licensee**” refers to an individual, individuals or corporate body that holds a licence issued by Consumer Protection BC. The terms covers both the licensee of record and any person acting in the place of the licensee, such as a manager or person in charge of the business in the licensee’s absence

“**Regulation**” means the Debt Collection and Repayment Regulation

We are here to help

We know operating a business has many challenges and responsibilities. You can always contact Consumer Protection BC to discuss potential compliance issues. If you have questions or concerns, contact us by telephone or email at:

Consumer Protection BC
307-3450 Uptown Boulevard
Victoria BC V8Z 0B9
Phone: 604 320-1664
Fax: 250 920-7181
Toll free: 1 888 564-9963
www.consumerprotectionbc.ca

A range of helpful information along with application forms, and links to the *Business Practices and Consumer Protection Act* and the *Debt Collection Repayment Regulation* can be found on our website at www.consumerprotectionbc.ca.

Background: Our Responsibilities

The Role of Consumer Protection BC

The mandate of Consumer Protection BC is to licence and inspect regulated businesses, respond to consumer inquiries, investigate alleged violations of consumer protection laws, classify all general release and adult films, and provide information so consumers can self-assess the fairness of a transaction.

As part of its responsibility to ensure compliance with the law and conditions on a licence, Consumer Protection BC staff regularly perform compliance inspections as well as inspections in response to consumer complaints. When an inspector identifies issues of non-compliance, the inspector may open a complaint file. When the eventual outcome of a complaint file results in compliance by the business being obtained, or some form of enforcement action being taken against the business, the outcome is published to our website. We share this information to enable consumers to make informed decisions.

The Role of the Licensee

As a licensee (someone who holds a licence), a licensee must let Consumer Protection BC know about any changes they make to the business such as the location of business and licensed employees they engage.

The licensee is legally responsible for understanding the Act, Regulation and any conditions on their licenses, and for complying with them all.

Licensees are also responsible for making sure their employees follow the Act, Regulation, and conditions on the licence, even when the licensee is not present at the business.

Licensees must fully cooperate with an inspector. Providing false or misleading information to an inspector, or obstructing or hindering an inspection are serious contraventions. A person that carries out such behaviors or activities is also subject to prosecution under the Offence Act.

Inspections

Authority to Inspect

Inspectors attend businesses located throughout the Province – sometimes arriving unannounced. The Act allows for an inspector to enter a business at any reasonable time to determine compliance with the Act, Regulation, conditions on a licence, or the suitability of a licensee or an applicant for a licence. It is a person's responsibility to cooperate fully during an inspection. In most instances, an inspector will provide a person with their official identification on arrival, and the request can be made for them to produce it. A person must not do anything to obstruct, hinder, or interfere with an inspector's entry and inspection of a business.

The Act gives the inspector the authority to:

- Inquire into any business, affairs or conduct of a person;
- Inspect, audit or examine any record, goods or other things or the provision of services in the premises
- Inspect a vehicle or vessel that is being used for business purposes;
- Require a person who has possession or control of any records, goods, or other things in the premises, vehicle or vessel to produce the records, goods or things;
- Make a record, including a record on film, audio tape, video tape or otherwise, of the premises, vehicle or vessel or any other things in the premises, vehicle or vessel;
- Remove any record from the premise, vehicle or vessel for purpose of making copies
- Remove and retain any record, good or other thing that may be required as evidence from the premises, vehicle or vessel.

What an Inspection Might Look Like

Remember that inspectors attend businesses to confirm compliance with the Act, Regulation, and conditions on a licence, however inspectors are also there to educate and answer questions. Licensees should feel free to approach them about any business issues or problems related to the Act or Regulation.

Typically, a licensee can expect that an inspector will do some of the following:

- For any issues identified, review the legislation and the conditions on a licence;
- Inspect the physical layout of the business;
- Inspect legal, financial and other business records;
- Observe and record your business practices, identifying deficiencies or problem areas that may lead to non-compliance
- Identify any contraventions

To give licensees a better understanding into what an inspector will be reviewing, we have provided a sample inspection checklist – see Appendix 1. Note: the items on the checklist are not an exhaustive list of the items an inspector may review at inspection.

Once an inspection is complete, a licensee or their designate will be provided with a Certificate of Inspection showing the date of the inspection. If there were issues of non-compliance identified, the inspector will issue a post inspection later within 14 days of the inspection being completed.

Producing Documents and Records

A licensee must produce all business records and documents requested for review by the inspector. Since business records are not always kept on the premises, if practicable, an inspector may schedule an inspection so the licensee is able to make sure the records are at the business for the inspection. Sometimes, the inspector may require the licensee to provide additional records at a later date. Refusing to provide records, or providing false or misleading information is a serious contravention. Items routinely requested for debt collection agent and bailiff inspections include:

1. All trust bank account statements for the past 3 months, together with all items returned by the bank with the statements;
2. Bank account reconciliations for the trust bank accounts for the past 3 months;
3. All of the other company bank account statements for the past 3 months, together with all items returned by the bank with the statements;
4. If applicable, statements for the past 3 months for credit cards used for company business;
5. A financial statement or a detailed general ledger trial balance for the licensee that is current to within 60 days of the date of the inspection;
6. A detailed listing showing all clients for whom the licensee is holding trust funds, as of the date of the trial balance, which includes the clients' names and the amount held for each client;
7. A detailed list of all clients for whom the company is acting at the time of the inspection.

Enforcement

Identifying the Contravention

If an inspector believes that there has been a contravention to the Act, Regulation, or conditions of a licence the inspector will advise the licensee or their designate of the contravention at the time of inspection and/or in post inspection correspondence that will be produced within 14 days of the inspection being completed.

When a contravention is identified, the inspector will decide whether to recommend to the director that enforcement action and/or licensing action be taken against the licensee.

If the inspector does not recommend enforcement action or licensing action be taken, the inspector may issue a warning letter or simply inform a licensee about the alleged contravention in a post inspection letter. The warning letter and/or the post inspection letter will be stored in the licensee's file and may be referenced by an inspector at subsequent inspections.

Notice of Enforcement Action Recommended Report and Report to Director

If the inspector decides to recommend enforcement action be taken, they will prepare a Notice of Enforcement Action Recommended Report (NEAR). Similarly, if the inspector believes that licensing action is necessary, they will prepare a report called a Report to Director (RD). Both types of reports include details of the alleged contraventions and a recommended penalty or other enforcement action.

The Opportunity to be Heard

The licensee will be given a copy of the NEAR or RD. A copy of the report will also be presented to the director who will decide whether to proceed with the enforcement action and/or licensing action recommended in the NEAR or the RD.

If the report is accepted by the director to proceed, the licensee will be contacted by the director (or their delegate) and given an opportunity to be heard. Under this process, the licensee will have the opportunity to reply to the NEAR or the RD and, to present any response and evidence that they would like the director to consider.

Possible Enforcement Action

If after the opportunity to be heard is completed the director believes the licensee contravened the Act, Regulations or a condition of the licence, the director may take one or more of the following actions against a licensee:

- Suspend or cancel the licence;
- Impose conditions on the licence;
- Impose an administrative (monetary) penalty;
- Issue a compliance order
- Accept an undertaking with terms acceptable to the director

Reconsideration

If a licensee is not satisfied with a decision of the Director they may apply to have the decision reconsidered. An application for reconsideration will only be accepted if a licensee can demonstrate new evidence has become available that did not exist at the time of the decision, or if it did exist, could not have been discovered through the exercise of reasonable diligence.

Appendix 1

 CONSUMER PROTECTION BC		License: _____ Date: _____		
Question	DEBT COLLECTION/ BAILIFF INSPECTION REPORT	Y	N	N/A
Business Model				
1	Is the primary business activity a bailiff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Is the primary business activity debt collection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	What form of payments does the licensee accept? CASH: <input type="checkbox"/> CHEQUE: <input type="checkbox"/> CREDIT CARD: <input type="checkbox"/> INTERACT/DIRECT DEPOSIT <input type="checkbox"/> EMAIL MONEY: <input type="checkbox"/>			
LICENCE SPECIFIC				
4	BPCPA 143 Are all employees of the business engaged in designated activity properly licensed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	DCRR 8(1) Is there a license for each location where the licensee operates?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	DCRR 8(2) Has the licensee notified the Director of a change of address of business location?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRUST ACCOUNT and OTHER ADMINISTRATION				
7	DCRR 9(1)(a) Is the licensee's trust account maintained at savings institution in BC?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	DCRR 9(1)(b) Is all money collected from debtors or other sources for distribution to creditors on behalf deposited in trust account within 5 days?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	DCRR 9(1.1) Does the licensee limit deposits to the trust to only funds intended for distribution to creditors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	DCRR 9(1)(c) Does the licensee maintain proper records of the trust account satisfactory to Director?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	BPCPA 146(c) [Licensing conditions] Are there any special conditions placed on the operation of the trust?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	DCRR 9(1)(d) Are the records and trust account in the places specified on application? If not, has the Director approved of the change?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	DEBT COLLECTION/ BAILIFF INSPECTION REPORT Cont.	Y	N	N/A
13	DCRR 9(2) Are the disbursements from the trust account only made to satisfy contractual obligations, errors or payments as described in BPCPA 126(2) and (3)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	BPCPA 126(2)(i)(ii) and BPCPA 126(3) Has the repayment agent accounted for all the funds accepted from debtors in the last 180 days and, remitted them to the proper person or agency within the required timeframes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OTHER CONDITIONS ON LICENCE				
15	DCRR 10(1) Has the licensee submitted financial statements to the Director as required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	DCRR 11(2)(a) Has the licensee reported any change of address for licensed employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	DCRR 11(2)(b) Has the licensee reported the name and current address of every licensed employee?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	DCRR 11(2)(c) Has the licensee reported the name of every employee that ceased to be employed and the reason for the cessation of employment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19	DCRR 11(3) Has the licensee sent the Director the licenses for any licensed employee who ceased to be employed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20	DCRR 11(2)(d)(i) If the licensee a corporation, has any change in senior officers been reported to the Director?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	DCRR 11(2)(d)(ii) If the licensee is a corporation, has a material change in the beneficial ownership of shares been reported to the Director?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	DCRR 11(4)(a) Is the Consumer Protection BC license displayed in a conspicuous place at the business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	DCRR 11(4)(c) Does the licensee maintain proper records of the property they have repossessed, seized or distrained, or disposed of?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24	DCRR 11(5) Does the licensee have written consent from debtors for seized property moved more than 100 km?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SECURITY				
24	DCRR 12(1) Is the amount of security held by Director correct and current?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BPCP ACT PART 7 – DEBT COLLECTION PRACTICES				
25	BPCPA 114(1) No use of threatening, profane intimidating or coercive language?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

25	BPCPA 115(1)(a) No attempted collecting of debts until written notification about name of original creditor and if currently different, to whom debt is currently owed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Question	DEBT COLLECTION/ BAILIFF INSPECTION REPORT Cont.	Y	N	N/A
26	BPCPA 115(1)(b) Does the initial letter of notification include the amount of the debt when first due and payable and if now different, the breakdown of amounts included in the total?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27	BPCPA 115(1)(c) Does the written notification include the identity and authority of collector to collect debt?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28	BPCPA 115(2) Has the collector made no attempt to initiate verbal communication until 5 days after written notice sent, unless there is reason to believe the address of debtor is not correct?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29	BPCPA 115(3) Is there evidence that the collector has sent written notices if debtors advise notification from BPCPA 115(1) was not received?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMUNICATION WITH DEBTORS				
30	BPCPA 116(1) Is there evidence that the collector has not attempted to communicate with debtors at places of employment unless permitted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31	BPCPA 116(2) Does the collector make no more than one attempt to communicate with debtors at employment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32	DCRR 11(4)(b) & (5)(a)&(b) Is the licensee only using written forms and contracts that have been approved by the Director?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Inspector's notes:

Inspector: _____

Date: _____

Contact person: _____

Signature: _____