

PAST DUE: COLLECTION LAWS GET AN UPDATE

08 January 2018

On January 1, 2018 portions of Ontario's Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017^[1], also known as Bill 59, will come into force, bringing important changes to the Collection and Debt Settlement Services Act^[2] (the "**CDSSA**") and the regulations^[3] thereunder (the "**Regulations**").

WHO DOES THE LEGISLATION APPLY TO?

The definition of "collection agency" will be expanded. A collection agency will now include a person who purchases debts that are in arrears (past due) and collects them.^[4] Whereas before, a purchaser of a debt was essentially placed in the shoes of the original creditor, the new definition will require a person who purchases debts that are in arrears and wants to collect them to either become or to use a registered collection agency to do so.

Despite the enhanced definition of a collection agency, Bill 59 provides many exemptions describing circumstances where a purchased debt would not be subject to the CDSSA, including:^[5]

- where a debt was purchased by virtue of acquiring/merging with a business that owned the debt;
- where a debt was acquired through seizure of accounts receivable under a security agreement;
- where, for the purposes of a financing transaction, the debt was acquired by taking an assignment of the contract that gave rise to the debt;
- where a person has purchased a financing agreement or payments due thereunder;
- where the debt's terms allow for it to be collected under the name of the original creditor; and
- where the debt created under an agreement to finance the purchase of goods/services and the creditor assigns the rights payments to a third party, even if the original creditor continues to collect on behalf of the third party.

Similarly, the amended Regulations will also provide new exemptions, setting out further situations where the CDSSA will not apply to what would otherwise be considered collections activities, including:^[6]

- where the collector is a property manager collecting rent owed by tenants;
- corporations collecting debts of affiliate corporations (however, if the corporation that owns the debt to be collected

- purchased the debt in arrears, then the CDSSA continues to apply);
- where the collector is the original creditor;
 - where the debtor is **not** an individual, the owner of a sole proprietorship, a member of a partnership or someone who provided a personal guarantee;
 - where the collector is a person/entity registered under the Securities Act or Commodity Futures Act, and their employees, the extent of the business authorized by that registration; and
 - where the collector is licensed under the Mortgage Brokerages, Lenders and Administrators Act, 2006 with respect to the activities authorized by the license.

DISCLOSURE

Another change is that at the request of a debtor, a collection agency must now provide the debtor with a breakdown of the current amount owing under the debt.^[7] While the legislation does not describe the particulars that must be provided in a "breakdown", it is fair to assume that the collection agency must be prepared to outline the following information:

- balance when first due;
- interest accrued since due date;
- interest rate; and
- any fees/penalties

PROHIBITED PRACTICES

Whereas before a collector could not communicate with a debtor by means that enable the costs of the communication to be payable by the debtor, under the amended Regulations there is no such prohibition. However, note that this is provided that the collection agency or collector reimburses the debtor for any charges within 15 days, should the debtor request reimbursement and provide the prescribed evidence proving the charges incurred.^[8]

ADMINISTRATION OF COLLECTION PRACTICES

Bill 59 has the function of removing some of the red tape that collection agencies face in Ontario. Starting in the new year, collectors will no longer need to be individually registered/licensed to engage in collection activities, as long as they are employed by a registered collection agency.^[9] Collection agencies retain their obligation to notify the Registrar of the commencement or termination of employment of a collector.

Moreover, the amendments to the CDSSA will allow the Registrar to establish written policies regarding the ways in which to interpret, administer, and enforce the CDSSA-which will be publicly available.^[10] These policies will likely create additional compliance requirements. Considering the lack of case law in this area, hopefully the written policies will prove to be a valuable resource for the public by providing clarification and guidance on prohibited collection practices.

In addition to any pre-existing penalties under the CDSSA, Bill 59 introduces the use of prescribed administrative monetary penalties to promote compliance with the CDSSA.^[11] There will be absolute liability for these penalties and they may be imposed without a hearing. Though Bill 59 does provide for a right to appeal, it is unclear if this process will be an independent one. As a result, there may be a lack of due process surrounding how these penalties will be assessed.

CONCLUSION

Bill 59's amendments to the CDSSA will be important for debt collectors, consumers, and businesses in the leasing and lending industry to take into account. Among other changes, the amendments have the effect of both increasing the scope of the CDSSA's application and carving out many exemptions. While there appears to be a move towards more stringent

enforcement of the CDSSA, the introduction of public policies regarding interpretation, administration and enforcement will hopefully clarify the legislation as we move forward.

If you have any questions about these amendments, do not hesitate to contact either the authors of this bulletin, or any member of our [Financial Institutions & Services Group](#).^[12]

[1] SO 2017, c. 5 – Bill 59.

[2] RSO 1990, c. C. 14.

[3] RRO 1990, Reg. 74.

[4] Bill 59, Schedule 2, s. 1(1) and (2).

[5] Bill 59, Schedule 2, s. 2(3).

[6] The Regulations (as will be amended), ss. 19.3 to 19.9.

[7] The Regulations (as will be amended), s. 13(10.2). Note that as of July 1, 2018 enhanced disclosure requirements in mandatory initial written notices from collection agencies will take effect. Please contact the authors or Gowling WLG (Canada) LLP if you would like more information.

[8] The Regulations (as will be amended), s. 19.10.

[9] Bill 59, Schedule 2, s. 4.

[10] Bill 59, Schedule 2, s. 3.

[11] Bill 59, Schedule 2, s. 9.

[12] Note that while this bulletin outlines some of Bill 59's legislative changes, please refer to the full Act should you wish to review all of the amendments.

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