



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

COLLECTION AGENCIES ACT

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



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COLLECTION AGENCIES ACT

CHAPTER C-11

1. Definitions

In this Act

- (a) “**collection agency**” means a person other than a collector who carries on the business
- (i) of collecting debts for other persons, or
 - (ii) of receiving moneys periodically from persons for distribution to creditors of those persons in consideration of the payment of the commission or other remuneration and includes a person who takes an assignment of debts in consideration of such payment;
- (a.1) “**collector**” means a person employed, appointed or authorized by a collection agency to solicit business or collect debts for the agency or to deal with or trace debtors for the agency;
- (b) “**Minister**” means the Minister of Justice and Public Safety and Attorney General or such other member of the Executive Council as may be designated by the Lieutenant Governor in Council;
- (c) “**person**” includes a partnership and a corporation. *R.S.P.E.I. 1974, Cap. C-12, s.1; 1980, c.2, s.3; 1983, c.1, s.6; 1985, c.3, s.1; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2012, c.7, s.1; 2013, c.28, s.1; 2015, c.28, s.3.*

2. Administration of Act

The Minister is charged with the administration of this Act. *R.S.P.E.I. 1974, Cap. C-12, s.2.*

3. Prohibition, unlicensed collector

- (1) No person shall act as a collector unless the person is the holder of a license under this Act that authorizes the person to act as a collector of a licensed collection agency.

Prohibition, unlicensed collection agency

- (2) No person shall carry on business as a collection agency unless the person is the holder of a license under this Act that authorizes the person, partnership or corporation to carry on the business of a collection agency.

Exemption

- (2.1) Repealed by *2012, c.7, s.2.*

Period of exemption

- (2.2) Repealed by *2012, c.7, s.2.*

Repeal of exemption

- (2.3) Repealed by 2012,c.7,s.2 on September 1, 2014.

Defence to prosecution, none where

- (3) It is no defence to a prosecution for a violation of this section that the person on whose behalf the accused acted was not, at the time of the violation, resident or carrying on business within the province.

Burden of proving a license

- (4) The burden of proving a license is on the person accused.

Acting as agent

- (5) Nothing in this section prevents the holder of a license under this Act who carries on the business within the province of a collector of debts due or alleged to be due to any other person, from acting in the collection of debts within the province as the correspondent of and on behalf of a person who carries on the business of a collection agent outside the province.

Collection of debts, deemed to include

- (6) The business of a collector of debts shall be deemed to include the business of purchasing or taking of assignments by any person of debts due or alleged to be due to others for the purpose of collecting the debts for the profit of that person. *R.S.P.E.I. 1974, Cap. C-12, s.3; 2012,c.7,s.2; 2013,c.28,s.2.*

4. Regulations

The Lieutenant Governor in Council may make regulations for and in relation to or incidental to

- (a) licensing under this Act;
- (b) prescribing the terms and conditions under which the purposes of this Act shall be carried out;
- (c) prescribing the term or period during which any license shall be in force;
- (d) prescribing and regulating the fees, including methods of ascertaining, calculating or determining the fees to be paid for licenses;
- (e) prescribing by whom licenses shall be issued;
- (f) the making of such returns or reports by such persons and in respect to such matters as may be considered expedient for the purpose of giving effect to this Act or regulations;
- (g) methods of collecting debts including the regulation or prohibition of the use of any particular method. *R.S.P.E.I. 1974, Cap. C-12, s.4; 1980, c.14, s.1.*

5. Application of Act

Subject to section 17.1, this Act does not apply to any solicitor or barrister or firm of solicitors and barristers of the Supreme Court of Prince Edward Island or to a sheriff for a county of the province or his deputy or to banks, trust companies, and credit unions. *R.S.P.E.I. 1974, Cap. C-12, s.5; 2013,c.23,s.3.*



6. Registrar of Collection Agencies

The Minister may designate a public officer as the Registrar of Collection Agencies and the Registrar is responsible to the Minister for the administration of this Act. *R.S.P.E.I. 1974, Cap. C-12, s.6; 1980, c.14, s.2.*

7. Suspend or cancel license, power to

- (1) The Minister may, at any time, in his absolute discretion, suspend or cancel any license for any reason which he may consider sufficient, and during the continuance of such cancellation or suspension, such person shall cease to transact further business.

Inspection of books and records

- (2) The Minister or such other person as may be directed in writing by the Minister, has full power at any time to enter into the premises of any licensee and examine the books and records of the licensee. *R.S.P.E.I. 1974, Cap. C-12, s.7; 2013, c.28, s.4.*

8. License revoked, effect of

No person whose license is or has been so revoked shall carry on the business of purchasing or taking of assignments of debts due or alleged to be due another person without being licensed under this Act; but this section does not apply to an isolated transaction by or on behalf of a creditor where the purchase or assignment is not done in the course of continued and successive transactions of a like character. *R.S.P.E.I. 1974, Cap. C-12, s.8; 2013, c.28, s.5.*

9. Trust account, moneys collected paid into

- (1) All moneys collected by a collection agency shall be deposited in a trust account in a savings institution.

Manner of making deposits

- (2) The manner of making the deposits referred to in subsection (1), and the control and disposition of the same shall be subject and conform to the regulations. *R.S.P.E.I. 1974, Cap. C-12, s.9; 1994, c.48, s.5.*

10. Proper records and books of account

- (1) Proper records and books of account shall be kept by a collection agency showing moneys received and moneys paid out.

Manner of keeping

- (2) The manner of keeping the books of account and records referred to in subsection (1) shall be subject and conform to the regulations. *R.S.P.E.I. 1974, Cap. C-12, s.10.*

11. Accounting for moneys collected

A collection agency shall, without any notice or demand, within seven days after the end of the month in which it has collected any money, account for all the money collected to the person entitled to the accounting; and in addition to that obligation, every collection agency shall, upon demand made by any person entitled to an accounting or by the Minister, duly account for all moneys received and collected. *R.S.P.E.I. 1974, Cap. C-12, s.11.*

12. Forms to be filed

Copies of all forms of notices, agreements and other forms used or proposed to be used by a collection agency for the purpose of its business in Prince Edward Island, shall be filed with the Minister. *R.S.P.E.I. 1974, Cap. C-12, s.12; 1994, c.48, s.5.*

13. Bond, accompanies application for collection agency license

- (1) Every application for an original collection agency license shall be accompanied by a bond to Her Majesty in such amount and form as may be prescribed by or under this Act.

Application for a renewal of collection agency license, bond and certificate

- (2) Every application for a renewal of a collection agency license shall be accompanied by
- (a) a bond to Her Majesty in such form and amount as may be prescribed by or under this Act or the regulations; or
 - (b) a certificate of a surety company that a surety bond previously filed on behalf of the applicant is in full force and effect. *R.S.P.E.I. 1974, Cap. C-12, s.13; 2012,c.7,s.3.*

14. Forfeiture of bond

Any bond given under this Act shall be forfeited and the amount thereof shall be recoverable from the person bound thereby as a debt due Her Majesty, where

- (a) a conviction of an offence under this Act, or of an offence involving fraud, theft, or conspiracy to commit an offence involving fraud or theft under the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46 has been made by any court;
- (b) a judgment based on a finding of fraud has been given; or
- (c) a winding up or receiving order has been made under the *Bankruptcy Act* (Canada) R.S.C. 1985, Chap. B-3, or the *Winding-up Act* (Canada) R.S.C. 1985, Chap. W-11, or the *Winding-up Act* R.S.P.E.I. 1988, Cap. W-5 of Prince Edward Island

against the person in respect of whose conduct the bond was conditioned, or if that person is a partnership, any partner of that partnership, and such conviction, judgment or order has become final. *R.S.P.E.I. 1974, Cap. C-12, s.14.*

15. Continuation of bond

In respect of every act and omission occurring during the term of a license, every bond shall continue in force for a period of two years after the license or renewal thereof to which it relates expires or is cancelled. *R.S.P.E.I. 1974, Cap. C-12, s.15.*

16. Assignment of bond

The Minister may, with the prior approval of the Lieutenant Governor in Council and upon such terms and conditions as he may prescribe, assign any bond forfeited under this Act or may pay over any moneys recovered under any such bond to

- (a) any person who may become, in respect of a claim arising out of a collection of debt, a judgment creditor of the person so bonded;
- (b) the Registrar of the Supreme Court in trust for a person referred to in clause (a); or
- (c) any trustee, custodian, interim receiver, receiver or liquidator of a person referred to in clause (a),



and every such assignment of a bond or payment over of moneys made by the Minister pursuant to this section shall be done in accordance with any order of the Lieutenant Governor in Council relating thereto. *R.S.P.E.I. 1974, Cap. C-12, s.16; 1992, c.65, s.2.*

17. Recovery of debt owing to Crown

- (1) Whenever Her Majesty becomes a creditor of any person under this Act, the debt may be recovered by action or other proceeding in any court of competent jurisdiction as a debt due Her Majesty.

Disposition of proceeds of bond

- (2) When a bond has been forfeited under section 14 by reason of a conviction or judgment referred to in clauses (a) or (b) of that section and two years have elapsed since
 - (a) such conviction or judgment; or
 - (b) the person in respect of whom the bond was furnished ceased to carry on business,and the Minister has not received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Minister, the Lieutenant Governor in Council may direct the Minister to pay to any person who upon forfeiture of the bond made any payments thereunder, such proceeds, or portion thereof, less the amount of any expenses which have been incurred in connection with any investigation or otherwise relating to such person. *R.S.P.E.I. 1974, Cap. C-12, s.17; 2013, c.28, s.6.*

17.1 Definitions

- (1) In this section,
 - (a) “**debt repayment agency**” means a person that carries on the activities of offering or undertaking to act for a debtor in Prince Edward Island in arrangements or negotiations with the debtor’s creditors or receiving money from a debtor for distribution to the debtor’s creditors in consideration of a fee, commission or other remuneration that is payable by the debtor;
 - (b) “**debt repayment agent**” means an individual employed or authorized by a debt repayment agency to act for or deal with debtors.

Prohibited practices for debt repayment agencies

- (2) No debt repayment agency or debt repayment agent shall
 - (a) collect from a debtor any amount greater than that prescribed by this section for acting for the debtor in making arrangements or negotiating with the debtor’s creditors on behalf of the debtor or receiving money from the debtor for distribution to the debtor’s creditors;
 - (b) make any arrangement with a debtor to accept a sum of money that is less than the amount of the balance due and owing to a creditor as final settlement without the prior express consent of the creditor;
 - (c) fail to provide any person for whom the debt repayment agency or debt repayment agent acts with a written report, containing the information required by subsection (7) on the status of that person’s account in accordance with this section;
 - (d) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;
 - (e) charge a fee for a dishonoured cheque unless the fee was included in the debt repayment agreement with the debtor;

- (f) charge or receive any fee in the form of a promissory note or other negotiable instrument other than a cheque or draft;
- (g) lend money or provide credit to a debtor;
- (h) offer, pay or give any gift, bonus, premium, reward or other compensation to a debtor for entering into a debt repayment agreement;
- (i) directly or indirectly collect any fee for referring, advising, procuring, arranging for or assisting a debtor in obtaining any extension of credit from a lender, creditor or service provider;
- (j) make a claim for breach of contract against a debtor who cancels a debt repayment agreement;
- (k) fail to inform a debtor within 30 days after the creditor has notified the debt repayment agency that the creditor has decided not to participate in or has withdrawn from a debt repayment program;
- (l) communicate information about the debt or the existence of the debt with any person except the debtor, a guarantor of the debt, the debtor's representative or the creditor of the debt.

Fees, and disbursements, collection

- (3) No debt repayment agency shall collect or retain from the debtor a fee, commission or disbursement for its services unless before providing the service it has
 - (a) either
 - (i) entered into a written agreement, signed by the debt repayment agency and the debtor, to provide the service that meets the requirements of subsection (4), or
 - (ii) obtained written authorization signed by the debtor to provide the service; and
 - (b) delivered a copy of the agreement or authorization under clause (a) to the debtor.

Debt repayment services agreement, requirements

- (4) A written agreement under clause (3)(a) must
 - (a) be dated and signed by the debt repayment agency and the debtor;
 - (b) include the name, address and telephone number of the debtor and the name, address, telephone number and, if available, fax number and e-mail address of the debt repayment agency;
 - (c) describe all the services that are to be provided under the agreement;
 - (d) state all fees, separately itemized, that are to be paid by the debtor;
 - (e) list all creditors as disclosed by the debtor to whom payments will be made under the agreement; and
 - (f) state the total amount owed, the payment amount, the schedule of payments to be made and the total number of payments for each listed creditor.

Fees, amount, restrictions

- (5) No debt repayment agency shall charge a debtor a fee that exceeds,
 - (a) in the case of a debt repayment agreement that includes a schedule of payments, the sum of
 - (i) \$50 as a one time set-up fee, and
 - (ii) 15% of the scheduled payment amount received from or on behalf of the debtor by the debt repayment agency; or



- (b) in the case of a one-time payment to a creditor or creditors, or an agreement to negotiate on the debtor's behalf with a creditor or creditors identified in the debt repayment agreement, 10% of the debt owing.

Fee may be charged after settlement

- (6) A fee under clause (5)(b) may be charged to the debtor by the debt repayment agency only after a settlement acceptable to the debtor has been successfully negotiated with the creditor or creditors.

Report on status of account

- (7) For the purposes of clause (2)(c), a written report that is provided to a debtor by a debt repayment agency must contain the following information:
- (a) the gross amount received by the debt repayment agency from or on behalf of the debtor;
 - (b) the amount and date of payments made on behalf of the debtor and to whom they were made;
 - (c) any fee, commission or disbursement retained by the debt repayment agency.

Provision of account report, frequency

- (8) A debt repayment agency shall provide, without charge, the written report referred to in subsection (7) to the debtor for which the debt repayment agency acts once every 60 days that the agency is acting for the debtor.

Applies to solicitors and barristers

- (9) This section applies
- (a) to solicitors and barristers who are engaging in the business of debt repayment agents; and
 - (b) to firms of solicitors and barristers which are engaging in the business of debt repayment agencies. *2013,c.28,s.7.*

18. Offences

Any person who violates any provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,500. *R.S.P.E.I. 1974, Cap. C-12, s.18; 1994, c.48, s.5; 1994, c.58, s.6; 2013,c.28,s.8.*