INSTITUTE OF LAW RESEARCH AND REFORM

EDMONTON, ALBERTA

# DEBT COLLECTION PRACTICES

REPORT NO. 42

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# DEBT COLLECTION PRACTICES

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## INSTITUTE OF LAW RESEARCH AND REFORM

The Institute of Law Research and Reform was established January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta and the Alberta Law Foundation.

Its office is at 402 Law Centre, University of Alberta, Edmonton, Alberta, T6G 2H5. Its telephone number is (403) 432-5291.

The members of the Institute's Board of Directors are W.E. Wilson, Q.C. (Chairman); J.W. Beames, Q.C.; W.F. Bowker, Q.C.; C.W. Dalton; George C. Field, Q.C.; W.H. Hurlburt, Q.C.; Professor J.C. Levy; D. Blair Mason, Q.C.; Thomas W. Mapp; Professor R.S. Nozick; and R.M. Paton. Emile Gamache, Q.C. was a member of the Board during most of the time when this report was prepared.

The Institute legal staff consists of W.H. Hurlburt, Q.C., Director; C.R.B. Dunlop, Baz Edmeades, George C. Field, Q.C., R. Grant Hammond, Thomas W. Mapp, and Margaret A. Shone, Counsel.

## ACKNOWLEDGMENTS

The Institute wishes to acknowledge the contribution of C.R.B. Dunlop, of the Faculty of Law, University of Alberta, who has transferred to the Institute staff on a full-time basis for

a two-year period starting January 1, 1983. Professor Dunlop prepared a draft report for the Institute's Board of Directors, attended Board meetings and was the draftsman of this Report.

The Institute also wishes to acknowledge the advice and assistance of Mr. Donald Bence, the Administrator of Collection Practices, Department of Consumer and Corporate Affairs, Government of Alberta. His assistance and advice has been most helpful.

However, the Institute's Board of Directors assumes sole responsibility for the opinions and recommendations contained in this report.

## Table of Abbreviated References

### 1. Statutes

#### a. Alberta

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|---|---|
| CPA | Collection Practices Act, R.S.A. 1980, c. C-17. |
| Bill 89 | Collection Practices Bill, introduced into the 3rd Session, 18th Legislature on Nov. 10, 1977. |
| CLAA | Credit and Loan Agreements Act, R.S.A. 1980, c. C-30. |

#### b. United States

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| FDCPA | Fair Debt Collection Practices Act, 15 USCS, ss. 1692-1692o. |

#### c. Recommended U.S. Statutes

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| UCCC | Uniform Consumer Credit Code (1974 Act), ss. 5.108, 6.111. |
| NCA | National Consumer Act (1970), s. 7. |
| MCCA | Model Consumer Credit Act (1973), s. 6. |

### 2. Reports by Law Reform Agencies

#### a. England

| | |
|---|---|
| Payne Committee | Report of the Committee on the Enforcement of Judgment Debts (Cmnd. 3909, February, 1969). |

#### b. Australia

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|---|---|
| Kelly Report | Kelly, Debt Recovery in Australia (Commission of Inquiry into Poverty, 1977) c. 9. |

c. British Columbia

B.C. Report — Law Reform Commission of British Columbia, Report on Debtor-Creditor Relationships: Part I - Debt Collection and Collection Agents (1971).

d. New Brunswick

N.B. Report — Dore and Kerr, Third Report of the Consumer Protection Project: Volume 2: Legal Remedies of the Unsecured Creditor After Judgment (1976).

e. Alberta

Ramsay Report — Ramsay, The Use, Effectiveness and Social Impact of Wage Garnishment: An Empirical Study (Institute of Law Research and Reform; March, 1980).

## Part I. Summary of Report

### What the law should do.

The private collection of debts, whether by creditors themselves or through debt collection agencies, is not only legitimate as between creditor and debtor but is in the public interest. Vigorous collection practices are therefore proper and should not be discouraged, and creditors should be able to follow procedures which are cost efficient and which avoid the use of the courts except in extreme cases.

The nature of debt collection imposes severe pressures upon those engaged in it. Sometimes those pressures lead them to engage in harassment and intimidation which would generally be regarded as going beyond the bounds of the behaviour which can be permitted in the market place. Such tactics are unfair to the debtor and to other creditors of the debtor who govern their conduct by acceptable standards. The law should prescribe minimum standards of conduct in simple and intelligible language and it should provide an efficient method of enforcement of the standards. The United Kingdom, the United States, and most of the provinces of Canada provide more in the way of standards of conduct than does Alberta.

### Purposes of the Institute's proposals.

Under the Alberta Collection Practices Act, the Administrator of Collection Practices of the Department of Corporate and Consumer Affairs regulates the conduct of debt collection agencies and the debt collectors whom they employ. He does so largely through the power to grant or deny licences, and, while the Act gives him and the industry some guidance, it does not give them much. The first purpose of the Institute's proposals is to set out a simple list of rules of conduct which, instead of the present vague discretions, will provide a firm and ascertainable legal basis for regulation.

The Collection Practices Act does not now establish any rules of conduct for creditors who collect their own debts, nor any administrative means of ensuring that their conduct will comply with minimal acceptable standards. The second purpose of the Institute's proposals is to set out a simple, and somewhat shorter, list of rules of conduct which should apply to everyone, including collection agencies but also including creditors who collect their own debts.

Proposed standards of conduct.

The conduct which would be prohibited for everyone would include clearly improper tactics such as actual or threatened violence, illegal acts and false accusations, and threats of arrest or criminal proceedings. It would go on to include the making of telephone or personal calls with such extreme frequency as to constitute "abuse" or "oppression," and the use of collect telegrams or telephone calls. It would include holding oneself out as being associated with a court, a government or a lawyer, and it would include the use of documents which would give that impression. It would include threats of actions which could not legally be taken. Finally, it would include exerting or threatening pressure through the debtor's employer with the consequent prospect of the loss of the debtor's means of paying the particular claim and the claims of his other creditors.

In addition, the Institute's proposals would require debt collection agencies and their collectors to adhere to additional standards. The collector would be obliged to give his and his agency's name and the creditor's name to a debtor whom he approaches for the purpose of debt collection. He would be obliged to refrain from making false statements about the nature and powers of his agency. (The Collection Practices Act already prohibits him from making calls upon the debtor in person or by telephone between 10:00 p.m. and 7:00 a.m.)

Abolition of unnecessary regulation.

The Institute's proposals would lead to one significant reduction in paper work and regulation. Under the present Act, debt collection agencies must each year obtain the Administrator's approval of all forms and form letters which they propose to use, and this has been taken to include even specially written (or "freehand") letters, or at least the usual kinds of paragraphs in them. Further, no agency may use a form of letter which the Administrator has not approved. This system of "prior vetting" is a substantial burden upon the collection agencies and upon the Administrator. The Institute's view is that, if there is a short and simple list of prohibitions such as those mentioned above, there will no longer be a need for the "prior vetting" system, and the Institute therefore proposes that, upon implementation of the Institute's other proposals, this system be abolished.

Administration.

The Institute's proposals would leave the Administrator of Collection Practices as the administrator of the Act. He would have power to issue cease and desist orders in cases of breaches of the Act, though his orders could be appealed to the Court of Queen's Bench under a simple procedure, and he would continue to exercise his licensing and investigative powers. Breaches of the Act would alternatively be subject to prosecution. The existence of these remedies would provide less horrendous alternatives to the refusal or revocation of a licence. They would also make it unnecessary to provide for a civil remedy by the debtor against a debt collector or creditor who uses illegal tactics.

The Institute's proposals do not deal with the licensing of collection agencies and collectors which will presumably continue as at present and with the present exceptions. For the

protection of clients' confidentiality, lawyers would be exempted from the Administrator's power of investigation, and, because they are already subject to the discipline of the Law Society, lawyers would be exempted from the Administrator's power to issue cease and desist orders.

Implementation of proposals.

The Institute's proposals would be implemented by amendments to the Collection Practices Act. Proposed amendments appear in Part III.

# II. REPORT ON DEBT COLLECTION PRACTICES

## Chapter 1. Introduction

1.1 The purpose of this report is to consider the adequacy of existing legal controls on the way in which creditors, debt collection agencies and debt collectors collect debts in Alberta without recourse to the court system. In January, 1982, the Institute decided to embark on a general study of unsecured creditors' remedies. On the assumption that almost all creditors try to collect debts personally or through an agent before commencing an action, it seemed appropriate to begin with a review of the legal controls over such collection practices before looking at such remedies as execution and garnishment.

1.2 One limitation should be noted. The Alberta Collection Practices Act,[1] the principal statute under consideration, deals primarily with the licensing of collection agencies and collectors, and their regulation in the interests of their clients: the creditors. We are not concerned with this aspect of the Act and will say little about it, except as it affects the process of debt collection.

1.3 At the beginning of the project, interviews were conducted with creditors, collection managers and collection agency personnel, as well as with the Administrator of Collection Practices, Alberta Department of Consumer and Corporate Affairs. Letters were solicited and received from the Law Society of Alberta, the Superintendents of Real Estate and Insurance, Alberta Department of Consumer and Corporate Affairs, the Better Business Bureaus of Edmonton and Calgary, and employees of the Edmonton Journal.

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[1] R.S.A. 1980, c. C-17 (hereafter CPA).

1.4 There was an examination of present Alberta case law and statutes relevant to debt collection. Law reform reports, statutes, books and articles on the law in other jurisdictions were consulted. Material frequently referred to is listed in the Table of Abbreviated References.

1.5 The debt collection process has been considered by several law reform agencies in other jurisdictions and has been the subject of much recent legislation. In England, the Report of the Committee on the Enforcement of Judgment Debts[2] devoted a section to collection practices in that country and concluded that "some creditors are prepared to use any method and go to unacceptable lengths to harass and intimidate debtors in order to collect their debts." The Committee proposed that there should be a provision "making it unlawful to employ unreasonable extra-judicial methods for the collection of debts."[3] The recommendation was acted upon in 1970 with the passage of the Administration of Justice Act 1970.[4] Australia has also studied the question.[5]

1.6 In the United States, the excesses of debt collectors have resulted in numerous law review articles as well as the judicially-created tort of unreasonable debtor harassment.

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2 Cmnd. 3909, February, 1969 at para. 1235 (hereafter Payne Committee).

3 See Payne Committee, at paras. 1230-1244.

4 (U.K.), c. 31, s. 40.

5 See Kelly, Debt Recovery in Australia (Commission of Inquiry into Poverty, 1977) c. 9 (hereafter Kelly Report).

Provisions against abusive debt collection practices were included in the Uniform Consumer Credit Code (1974 Act), sections 5.108; 6.111 (hereafter UCCC) and the more pro-consumer National Consumer Act (1970) section 7 (hereafter NCA) and the Model Consumer Credit Act (1973) section 6 (hereafter MCCA). These model statutes were enacted in some states with or without local variations. In 1977, the Federal Government intervened and enacted the Fair Debt Collection Practices Act.[6]

1.7 Canadian provincial statutes dealing directly with debt collection date back as far as 1896 when Ontario passed the Debt Collectors Act,[7] which prohibited the printing or publication of notices or forms which were imitations of the forms appended to the Division Courts Act and were calculated to deceive the public. According to the Law Reform Commission of British Columbia,[8] modern collection agency legislation is based on a pattern set by Nova Scotia.[9] All Canadian jurisdictions have statutes today which regulate collection agencies, although details differ.

1.8 Law reform agencies have reviewed the law relating to debt collection in British Columbia[10] and tangentially in New

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6 15 USCS, ss. 1692-1692o (hereafter FDCPA).

7 S.O. 1896, c. 23.

8 Law Reform Commission of British Columbia, Report on Debtor-Creditor Relationships: Part I - Debt Collection and Collection Agents (1971) at p. 6 (hereafter the B.C. Report).

9 See Collection Agents Act, S.N.S. 1921, c. 14.

10 See note 8 above.

Brunswick.[11] However it must be noted that almost all Canadian jurisdictions have stronger statutory prohibitions against abusive debt collection than those presently in force in Alberta. The federal government attempted to involve itself in the area in sections 36-38 of the ill-fated Borrowers and Depositors Protection Act,[12] which was the subject of much debate and which was permitted to die at the end of the session.

1.9 In 1933, the Conference of Commissioners on Uniformity of Legislation in Canada considered the desirability of preparing a uniform collection agents act, but decided in 1934 not to proceed. The Commissioners concluded that the existing statutes had not been tested by experience, nor was it obvious to them that uniformity of law was essential or that there was in fact an approximation of legal principles among the provinces.[13] The Conference has not considered the subject since 1934.

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11 Dore and Kerr, Third Report of the Consumer Protection Project: Volume 2: Legal Remedies of the Unsecured Creditor After Judgment (1976 - hereafter N.B.Report) at pp. 220-222.

12 Bill C-16, Oct. 27, 1976.

13 See Proceedings of Sixteenth Conference (1933) 20; Proceedings of Seventeenth Conference (1934) 41-42.

## Chapter 2. The Debt Collection Process

2.1 The vast majority of outstanding debts are collected by the efforts of the creditor himself or his agent without the commencement of an action against the debtor. The principal reason is economic; debt collection by one's own collection department or by a collection agency is likely to be much cheaper than debt collection by a lawyer. The creditor may steer away from legal action for other reasons, including a desire to keep the debtor as a potential customer, but the cost factor is probably the most important reason for using some form of extra-judicial collection method in preference to an expensive lawsuit.

2.2 Creditors' efforts to collect their own debts vary so greatly that generalization is difficult. At one end of the scale is the large retail store or credit card company which has a computerized billing system, often national in scope, which will automatically send out dunning letters or bills marked Past Due and which will make many of the credit decisions, such as whether a file should go to a collection agency or to a lawyer or should be written off. At the other end of the spectrum is the small corner garage where the collection effort may amount to a telephone call worked in between lube jobs.

2.3 Whether the creditor is large or small, one common question arises. If a debtor does not respond to the creditor's collection efforts, should the debt be written off or should it be sent to a third person (lay or legal) who is expert at collections and who will act as an agent to collect the account? The decision made will depend on a variety of factors, including the size and age of the account and the circumstances of the debtor, so far as they can be discovered. Other factors are the nature of the original transaction and the desire of the creditor to

keep even a delinquent debtor as a future customer.

2.4 One national department store routinely sends some of its debts to collection agencies or to lawyers; on the other hand, the comptroller of a chain of health studios told us that her company had once used a collection agency but had stopped doing so because the agency "came on too strong." Many creditors, including government agencies, use third persons to collect at least some of their debts. It is intended to discuss collection agencies first and then other third person agents, especially lawyers.

2.5 A collection agency normally acts as agent for the creditor, and it is apparently uncommon for creditors to assign their overdue debts to collection agencies or others for collection. One national collection agency told us that they took assignments occasionally where the client was outside the province and legal action had to be taken. There is a feeling that such assignments are "illegal", perhaps flowing from the case of Valley Credits Ltd. v. Key[14] in which a British Columbia provincial court judge held that a collection agency that took an assignment of a claim and sued on it in return for a fee based on a percentage of the take was engaging in the practice of law, and that such a lawsuit amounted to an abuse of the court's process and should be dismissed. The effect of Valley Credits has been somewhat modified by Valley Credit Ltd. v. Greentree.[15]

2.6 A distinction should be drawn between the assignment of an overdue book debt, which is uncommon, and the assignment of the

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[14] (1977) 75 D.L.R. (3d) 281 (B.C. Prov. Ct.).

[15] (1979) 15 B.C.L.R. 28 (B.C. Co. Ct.).

original finance contract to a finance company or an acceptance company, which in some businesses is the normal pattern. In the latter case, the assignee will of course undertake any collection efforts, perhaps involving a collection agency or a lawyer at some stage.

2.7 Collection agencies and collectors (individuals working for agencies) are licensed by the Government of Alberta under the Collection Practices Act.[16] We talked to the Administrator of Collection Practices (the responsible public servant whose office is created by the Collection Practices Act). He told us that there is no educational test necessary to become a collector. When licensing agencies and collectors, the Administrator relies heavily on their ability to be bonded, and he will check for trouble in the past regarding the agency or its principal shareholders or employees. We received complaints about the absence of any training requirement for would-be collectors.

2.8 Until 1982, hardly any licences of agencies or collectors were suspended or revoked. In 1982, the Administrator did suspend one agency licence and one or two licences of collectors. However his primary response to complaints is to put pressure on the agency or the collector to deal with the complaint and to correct any improper conduct in the future.

2.9 From discussions with the Administrator and others, we got some idea of the nature of the collection agency business in Alberta. Some collection agencies are large (national or international) and are organized like any large corporation. Other agencies are small and locally owned by an owner-manager who has usually worked as a collector before starting his own business. Collection agencies usually take collection work from

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[16] R.S.A. 1980, c. C-17.

clients on a "no collect no pay" basis. When money is collected,the agency will retain a percentage, varying from 10% to 60% depending on the client, the age of the accounts and the value of the business.

2.10 Collectors by and large have no more than a grade 12 education. In one international agency, collectors work on salary but are eligible for incentive contests such as cash prizes, televisions, trips and so on. This agency makes computer projections of the average percentage recovery which collectors should recover from various classes of debts. Collectors are expected to meet these projections.

2.11 In smaller agencies, collectors are very likely to be paid on the basis of a smaller salary plus commissions or bonuses. One director of a small agency indicated that a collector might start with a basic salary of $800 to $1000 a month, rising to $1500 or $2000. If that collector generated more than, say, 3 times his basic salary in a month, he would receive a percentage of any income he produced over that amount as a bonus. Basic salaries and multiples vary from collector to collector and from agency to agency.

2.12 Until one or two years ago, collectors tended to move frequently from agency to agency, perhaps in search of a better financial situation. In the last two years, the state of the economy has made them somewhat less transient.

2.13 We got the impression that the work of a collector is result-oriented and high tension. A collector's future and often his month-to-month income depends on his ability to pursuade debtors to pay him after they have neglected or refused to pay the creditor directly. The conditions of work may not be too pleasant. One manager of an agency said that he routinely listened to the calls being made by his collectors.

2.14 A number of people told us that collection agencies are "more aggressive" than creditors collecting their own debts. One reason is that the collection agency is often retained only after the creditor has made substantial efforts to collect the debt himself. Moreover the reputation of aggressiveness may well be an asset in a business where debtors are recalcitrant and where the real remedies of the collection agency and the creditor are extremely limited. The collector often must act as though he has remedies although they either do not exist or are too expensive to use.

2.15 Some debts are given for collection to third persons other than collection agencies or collectors. The Collection Practices Act provides in section 3(2) that:

> (2) This Act does not apply to barristers and solicitors in the practice of their profession.

CPA 3(1) provides in part that the Act, except sections 14, 19, 20 and 23, does not apply:

> (a) to an insurer, agent, adjuster or broker licensed under the Insurance Act or to his employees acting in the regular course of their employment,
>
> .....
>
> (c) to a real estate agent or salesman licensed under the Real Estate Agents' Licensing Act or to his employees acting in the regular course of their employment.

CPA 13, the principal section regarding prohibited debt collection practices, is thus rendered inapplicable to the two groups listed in CPA 3(1)(a) and (c) as well as to lawyers. These exemptions are discussed below in chapter 8.

2.16 CPA 3(3) provides that regulations may designate persons to whom part or all of the Act will not apply. We are not aware of any person or persons so exempted. We did not find any classes of third persons other than those referred to in CPA 3(1,2) who are acting as debt collectors.

2.17 It is now necessary to turn to the process of debt collection itself, whether conducted by the creditor, a collection agency or someone else. The techniques employed to collect debts are limited only by the ingenuity of the creditor or collector but may usefully be divided into two categories, namely, those directed to the debtor personally and those which involve third persons.

2.18 Techniques directed to the debtor are the telephone call or the letter, although personal visits occasionally happen. Most collection agencies discourage personal visits because they are uneconomic. However one manager of an acceptance company which does the credit granting and collection work for a department store will go out to a customer's house to retrieve a credit card which is being misused. The Administrator of Collection Practices indicated that personal visits are more common in in-house collections by banks or finance companies or where secured creditors are seeking quit claims of chattels.

2.19 Collection agencies told us that the usual reason for contacting someone other than the debtor was to discover the latter's whereabouts. One agency and one finance company said that they had strict rules not to discuss the debt with anyone other than the debtor. However, managers of two other agencies said that they occasionally discussed the debt with third persons, especially if asked. The Administrator of Collection Practices agreed that such third person contacts occurred and sometimes led to complaints.

## Chapter 3. Do Abuses Occur?

3.1 To this point, we have described the extra judicial debt collection system as it operates in Alberta. We now turn to the central issue: is there sufficient evidence of abusive or excessive efforts at debt collection to warrant a re-examination of the law governing debt collection in this province?

3.2 To answer this question, we made inquiries of the Administrator of Collection Practices, collection agencies, creditors and the Better Business Bureau in Edmonton and Calgary, among others. We reviewed the literature on debt collection here and elsewhere, including a report on wage garnishment which had been prepared for us.[17] Our conclusion is that there is evidence of debtor harassment and of unreasonable debt collection methods which is sufficient to justify a review of the law governing the process.

3.3 Our principal source of information to support this conclusion was the Alberta Department of Consumer and Corporate Affairs and particularly Mr. Don Bence, the Administrator of Collection Practices. The Department keeps statistics of complaints of excessive collection practices in which files were opened, investigations undertaken and the files later closed. We were informed that the Department closed 92 such files in 1982, of which 78 concerned collection agencies. In 1981, there were 93 collection practice files closed, of which 53 involved complaints against collection agencies.

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[17] Ramsay, The Use, Effectiveness and Social Impact of Wage Garnishment: An Empirical Study (Institute of Law Research and Reform: March, 1980), at pp. 223 ff. (hereafter the Ramsay Report).

3.4 These figures are smaller than the total number of complaints received by the Department. Where a debtor phones complaining of harassment, he is told to talk to the collection agency manager or to the creditor to attempt to resolve the problem. If he does but is not satisfied, he must forward a written complaint to the Department before a file is opened and an investigation commenced. There are therefore substantially more complaints made than there are files opened. Some of these complaints may of course have been resolved or may be without merit.

3.5 The Administrator receives some complaints about creditors collecting their own debts. Because the Collection Practices Act is generally inapplicable to such cases, it is necessary for the Department to rely on persuasion. Mr. Bence's view is that the same range of unreasonable debt collection practices is being carried on by creditors as by collection agencies. Once the debtor has made a written complaint, the Department's policy is to send an investigator to visit the agency or the creditor with a view to resolving the complaint and curbing improper activity in the future. Three creditors who collect their own debts told us that they are interested in repeat business and would therefore not use harsh or excessive collection tactics.

3.6 During our discussions with the Administrator, he told us of several specific cases which seemed to him to involve harassment or excessive debt collection techniques:

(1) In two cases, a collector ascertained that a debtor might be a recent immigrant and threatened him with deportation unless the debt was paid.

(2) A collector collecting a debt owed to a government identified himself to the debtor as "the pre-legal director for the Northwest Territories." He was in fact an employee of a

collection agency. (We were told about other cases where collectors did not immediately indicate who they were.)

(3) One collector telephoned the debtor's 78 year old grandmother in Ontario, indicated to her what might happen to the debtor unless the debt was paid, and concluded by saying that the debtor, an 18 year old girl, was "running around with a wild crowd in Edmonton and might be pregnant."

(4) A couple of agencies have obtained from their lawyers letters purporting to be from the lawyer but including an agency telephone number (but not identified as such). The agency fills in the names of debtors and sends off the letters.

(5) A creditor obtained a small claims summons, filled in the debtor's name, left the rest of the form blank and sent the document to the debtor.

3.7 The Administrator told us that other common complaints were:

(1) demand letters which asked the debtor to pay the debt and costs (without limiting the demand to court costs or taxed costs),

(2) threats to sue "in three days" where the collector had no instructions to sue and where suit could not be brought in three days,

(3) pursuit of the wrong person,

(4) demand for payment of a sum which had already been paid directly to the creditor,

(5) repeated telephone calls,

(6) abusive language, and

(7) telephone calls to the debtor's employer where details of the debt were discussed with the employer or with fellow employees.

3.8 The Administrator did say that collection tactics are somewhat more subtle and less blatant than they were five years ago. He expressed some concern about lawyers who, in their practice or as employees of collection agencies, write letters which would be improper if written by licensed collectors. He expressed frustration with the limited scope of the Collection Practices Act.

3.9 Not surprisingly, collection agencies, collectors and creditors tended to the view that abusive or excessive collection practices either did not occur any more or were practised by others. One manager of an acceptance company indicated that he would leave notes such as "Please call" without indicating the nature of his business. This manager told our consultant, Professor Dunlop, that he once sent a demand letter wrapped as a Christmas present to a debtor. Unfortunately "the post office screwed up." The manager regarded such a tactic as almost a joke which he felt moved to carry out because of the difficulty of getting in touch with this debtor, coupled with the inordinate cost of sending out a staff member to hand-deliver the letter.

3.10 Another agency manager told Professor Dunlop that one of his collectors contacted a debtor's brother to get the debtor's address. The collector did not reveal his employer, and the

brother gave the desired information. When the collector later contacted the debtor, he identified the reason for his call. The brother complained that he too should have been told the collector's reason for calling. The agency thought they were in the right on these facts as the sole purpose of the call to the brother was to trace the debtor.

3.11 Collectors also told us of cases where relatives or employers were contacted and the debt was discussed. In one case, a collector talked to the debtor's mother concerning the debt. One manager of an agency said that he would telephone a debtor at his place of employment to talk about the debt and that, after two or three unproductive phone calls, he would, if asked, talk to the debtor's fellow workers about the debt and would leave his return phone number as "John Smith, X Collection Agency." A finance company, told about this practice, told us that they did not agree with it.

3.12 We were told by one collector and one creditor that phone calls sometimes had to be made between 10 p.m. and 7 a.m., despite section 13(1)(j) of the Collection Practices Act. We were also told by another collector of a case where the threat of deportation had been held over a debtor's head. It is not clear whether this case was one of the two reported to the Administrator of Collection Practices. (See above, paragraph 3.6(1)).

3.13 Another former collector and manager of an agency told us that collectors were often hired off the street, given little or no training and put to work immediately, sometimes without a licence, and for very short terms. Unrealistic quotas forced these untrained collectors to use threats like "We are taking legal action," or "We will sue as of 3 o'clock this afternoon

unless we are paid," when the threats were known to be untrue. We were told that collectors would threaten to deprive the debtor of his job or to attach his bank account. In some cases, agencies hiring collectors told them to lie to debtors, according to our informant.

3.14 Another collector told us that it is common for collectors, when calling debtors, to give the proper name of the collection agency but to use a phony personal name, called a "desk name." The reason is to avoid abusive calls to the collector's home phone number or other forms of personal contact. Some collectors engage in the opposite practice; they will give their correct name and the name of the creditor, but will not disclose the fact that they work for a collection agency, much less the name of the agency. Both of these practices would appear to be prohibited by CPA 13(e) and 13(f).

3.15 One local branch manager of a national finance company told us that he would tell debtors that non-payment could result in a report of the delinquency to the credit bureau. However a national manager of the same company said that this was not the company's policy. In his view, company employees should not threaten adverse credit reports nor should they in fact make adverse reports to credit rating agencies except where a debtor's address is unknown (one assumes after reasonable efforts to trace him have been made).

3.16 One agency was sufficiently concerned to seek a legal opinion about a demand notice from an Edmonton parking lot company which bore what the Edmonton Journal described as "a strong resemblance" to a City of Edmonton parking tag.[18]

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[18] Edmonton Journal, March 22, 1982, section B, page 1.

3.17 Further evidence of abuse can be found in a report prepared for the Institute By I.D.C. Ramsay.[19] He conducted interviews with thirty debtors whose wages had been attached and who were part of a sample drawn from a file study conducted in the Edmonton Clerk of the Court's office in 1978 and 1979. Of the thirty debtors interviewed, six complained of "some form of objectionable collection practice."

3.18 While this report was being prepared, the Toronto Globe and Mail of March 9, 1984 reported a case in which a collector threatened a widow with the digging up of her husband's body to repossess the burial suit.

3.19 This evidence of debtor harassment should not be surprising when we consider the nature of the debt collection business, discussed in chapter 2. Collectors are often paid in part by commission based on money collected, and their future in the business is almost always determined by the same criterion. Collection agencies themselves usually take accounts on a no collect no pay basis. The pressure is thus on the collector to get immediate payment of the debt rather than to agree to a delay or to advise the debtor on options such as bankruptcy. The creditor collecting his own debt is under a similar pressure.

3.20 The impact of the Execution Creditors Act[20] also tends to encourage aggressive collection practices. If the debtor pays the debt in whole or in part directly to the creditor or his agent, the proceeds have not been attached by virtue of legal process and need not be split with other creditors pursuant to the Act. However, if collection efforts fail and the creditor

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[19] See note 17 above.

[20] R.S.A. 1980, c. E-14.

is forced to sue to judgment and then seize or garnishee, the money is subject to division. The incentive is strong to get even partial payment now without recourse to the courts and, if necessary, to engage in harassment where such tactics are likely to achieve the desired objective.

3.21 The need for a review of Alberta debt collection law is underlined when we compare it with legislation and common law rules elsewhere. We discuss non-Alberta law more fully in chapter 7 of this report, but the conclusion may be briefly stated here, namely, that most Canadian and American jurisdictions have statutes and, to some extent, case law doctrines governing debt collection which are substantially tougher on collectors than is the law of Alberta. We assume that Canadian and American jurisdictions which have enacted harsher collection practices statutes have done so because they identified problems which required legislation. In light of the national or international connections of creditors and collection agencies operating in Alberta and (judging from the literature) the rough similarity of the collection industry across North America, we think it likely that the abuses which demanded action elsewhere exist in Alberta as well.

3.22 As a result of the evidence which we have described, together with our understanding of the nature of the debt collection process, we are convinced that a number of cases of debtor harassment exist and are likely to continue to exist in this province. The number is small in comparison to the number of debts collected, but it is large enough to be significant. While it may be true that the vast majority of debt collections are carried out in a firm but reasonable manner, we think that cases of abusive debt collection tactics have occurred which justify a review of the legal rules which govern the process.

## Chapter 4. Existing Common Law and Criminal Law Controls

### a. Common Law Controls

4.1 There are a number of civil remedies, principally in the law of torts, which may provide some assistance to the harassed debtor. It is beyond the scope of this report to examine in detail the facts which the debtor must prove in order to obtain these remedies. Our general conclusion is that the common law will not be very useful or effective as a control on the activities of creditors and their agents except in the occasional outrageous case.

4.2 The legal system does not operate by itself; it must be triggered by the victim commencing and carrying forward a law suit against his defendant. Such an action will involve expense and delays, as well as uncertainties as to a successful outcome. Nor is the average debtor likely to have the courage, much less the means, to turn the tables on his creditor and sue for damages for excessive or unreasonable collection practices. The paucity of reported cases in Canada appears to support the conclusion that most cases of creditor harassment are unlikely to lead to a lawsuit, unless the facts are extraordinary and the potential damage award is large.

4.3 The application to the debt collection process of the torts of trespass, assault and false imprisonment is obvious but unlikely to arise in most situations. The tort of intentional or negligent infliction of nervous shock is likely to be restricted to cases of "outrageous conduct and very serious injury."

4.4 United States courts have treated some collection tactics as infringing the debtor's right to privacy. Canadian courts have usually used other causes of action to accomplish similar

results,[21] although there is one recent case, not involving debt collection, in which the tort of invasion of privacy has been declared to be part of Canadian law.[22] Where a creditor or a collection agency has acquired information about the debtor from a person in a confidential relationship with him (such as a lawyer, doctor or banker), the debtor may have a cause of action against the person who disclosed the information and against the creditor or his agent if he passed the information on to others.

4.5 The tort of defamation may be useful to the harassed debtor, subject to the limitations on tort actions generally discussed above. It is not defamation to say of a man that he owes money, unless the statement goes further and says or implies falsely that he refuses to pay his debts or is unable to do so. The statement must of course be published, and the defence of justification must not be available.[23] The defence of qualified privilege is unlikely to have any application except possibly to a communication from a creditor or collector to the debtor's employer.

4.6 The upshot is that a debtor who has been subjected to unreasonable collection efforts is unlikely to commence a common law action and carry it to judgment unless the case is an extraordinary one. Effective controls over the collection practices of creditors or their agents must be sought elsewhere.

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21 Compare Motherwell v. Motherwell [1976] 6 W.W.R. 550 (Alta. C.A.).

22 Saccone v. Orr (1981) 19 C.C.L.T. 37 (Ont. C.C.).

23 On justification in this context, see Green v. Minnes (1892) 22 O.R. 177 (C.A.).

b. Criminal Law Controls

4.7 The criminal law, like the law of torts, is not a significant control on debt collection practices unless they are particularly outrageous. The debtor is unlikely to raise the matter at all, and if he does, the police may be reluctant to get involved in a dispute which they perceive to be a civil matter and therefore low on their list of priorities.

4.8 The crimes of assault, false imprisonment, defamatory libel, trespass, intimidation, threats and loitering have an obvious but limited relevance. Subsection 330(3) of the Criminal Code provides that it is a summary conviction offence to make or cause to be made repeated telephone calls to a person without lawful excuse and with intent to harass. Section 34 of the Alberta Government Telephones Act[24] makes it an offence, punishable by fine or imprisonment up to six months, to "use profane, obscene or abusive language" while talking on a telephone, or by other means to interfere with "the use or enjoyment of the system."

4.9 Section 129 of the Criminal Code prohibits a person from asking for or obtaining any valuable consideration by agreeing to compound or conceal an indictable offence. Subsection 305(1) makes it an indictable offence to induce or attempt to induce any person to do anything by means of threats, accusations, menaces or violence "without reasonable justification or excuse and with intent to extort or gain anything". Subsection 305(2) provides that a threat to institute civil proceedings is not a

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[24] R.S.A. 1980, c. A-23, s. 34.

threat for the purposes of subsection 305(1). The implication is that a threat to commence criminal proceedings as a device to compel payment of a claim, whether just or not, may be an offence under subsection 305(1).

## Chapter 5. Existing Alberta Legislation

### a. Judicature Act

5.1 Section 38 of the Judicature Act[25] provides as follows:

> 38 Any person using any court process or form or any process or form similar to it in any manner likely or intended to deceive any other person is guilty of an offence and liable to a fine of not less than $100 and not more than $500 or to a term of imprisonment not exceeding 6 months, or to both.

Before 1980, the section was found under the title of the Court Forms Act; it dates back almost unchanged to 1918.[26] The dollar value of the fine (and the length of the prison term) are the same today as in 1918. The Act is rarely invoked, although there was one conviction under it in 1982. It should be noted that the section is not limited to collection agencies or collectors but applies to all people including creditors collecting their own debts, and to barristers and solicitors acting for others or on their own behalf.

### b. Collection Practices Act

5.2 Before 1965, the licensing of collection agencies was governed by regulations made pursuant to the Licensing of Trades and Businesses Act.[27] In 1965, the Collection Agencies Act[28]

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[25] R.S.A. 1980, c. J-1.

[26] An Act respecting the Unauthorized Use of Court Forms, S.A. 1918, c. 19.

[27] See e.g., R.S.A. 1955, c. 175, s. 6.

[28] S.A. 1965, c. 13.

created a scheme for licensing and administering agencies and individual collectors. The Act was primarily concerned with the regulation of the relationship between agencies and their creditor clients, but sections 13 and 14 empowered the Administrator to prohibit the use of misleading collection letters by collection agencies, collectors and other persons, including creditors collecting their own debts. The Act did not apply to "barristers and solicitors in the regular practice of their profession." Offences under CAA 13 and 24 were punishable by fine or imprisonment (s. 16) and might be taken into account in the grant or renewal of a licence, or in its suspension or cancellation (s. 6).

5.3 The Collection Agencies Act was repealed and replaced by The Collection Practices Act[29] which with minor modifications is the law today. The history of the passage of the 1978 Act bears some comment.

5.4 The new statute first appeared in the 3rd Session of the 18th Legislature[30] as Bill 89. Most of the Bill dealt with the relationship between the collection agency or collector with the creditor client. However section 13 contained a list of prohibited practices for agencies and collectors, and section 14 contained a further list which applied to all persons, collectors or not. Bill 89 is set out in Appendix A to this paper. Bill 89 went only to first reading and died with the end of the session.

5.5 In the 4th Session of the 18th Legislature, Bill 13, almost identical to Bill 89, was introduced on March 14, 1978. Several

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[29] S.A. 1978, c. 47.

[30] On November 10, 1977.

amendments were made, the chief of which for our purpose was the deletion of section 14 and the inclusion in section 13 of what is now clause 13(1)(j). With these changes, Bill 13 was passed and became the Collection Practices Act.[31] With minor amendments, the Act remains the same today.[32] A copy of the present Collection Practices Act is attached as Appendix B.

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31 S.A. 1978, c. 47.

32 R.S.A. 1980, c. C-17.

## Chapter 6. Reform of Debt Collection Law in Alberta

6.1 Legislating rules to control the process of debt collection involves a difficult balancing of the conflicting interests of creditors, debtors and others, as well as the needs of the society as a whole. The purpose of this chapter is to articulate those interests and to make some comments on them, as well as to make some relatively minor recommendations about the scope of the Collection Practices Act.

### a. The Creditor's Interest in being Paid

6.2 We start from the belief that a creditor with a valid claim can legitimately expect the law to provide him with a straightforward and efficient system of enforcing his right to be paid. We accept the basic policy articulated in the Report of the Payne Committee[33] that

> ...citizens ought to repay legally binding debts and that the community recognizes a social and moral obligation to honour obligations freely contracted. Pacta sunt servanda is not only legal doctrine; it is moral precept too.

### b. The Creditor's Interest in Collecting the Debt Himself

6.3 If a creditor is entitled to enforce his claim, we see no reason why he should not be free to approach his debtor directly or through an agent to seek payment of an alleged debt before or after commencing legal action. One cannot object to creditors making firm but reasonable demands that their debtors honour their obligations, although we will later consider whether this right should continue forever or should have some end date.

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33 At para. 46.

6.4 Michael Greenfield, in an interesting discussion of debt collection[34], distinguishes three interests which the creditor may have in the process.

> He has an interest in collecting [the debt] as soon as it becomes due. This interest is analogous to the interest of every party to a contract in obtaining the timely performance for which he bargained. The creditor has a further interest in collecting the debt with the expenditure of as little effort and expense as possible. This interest tends to induce him to avoid litigation, which is expensive and time-consuming, and pursue extrajudicial collection efforts, such as letters and telephone calls, which are inexpensive and less time-consuming. The third interest of the creditor relates not to collection of the debt, but rather to a desire to punish the debtor for not paying or a desire to gain revenge for the debtor's failure to pay. Although this desire may be very real in a particular situation, unless society also has an interest in punishing delinquency, it clearly is not entitled to protection.

The Institute concurs with Greenfield's conclusion that the creditor's desire to punish the debtor ought not to be protected, at least in the law governing collection practices.

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34 Greenfield, "Coercive Collection Tactics - An Analysis of the Interests and the Remedies", [1972] Wash. U.L.Q.1, 8.

6.5 The creditor can use his discussions with his debtor to discover defences to the claim (e.g., wrong person, debt paid) or to hear consumer complaints about the goods or services which were given in return for the debt. The creditor also has a chance to learn why the debt has not been paid. Where the debtor has been injured, lost his job or otherwise suffered a misfortune, most creditors will indicate an intention not to press for payment until the debtor is back on his feet.

6.6 A more basic reason for the creditor getting in touch with the debtor is to see if debt collection is likely to produce any return. When a collector telephones a debtor seeking payment, he is also interested in ascertaining the debtor's exigible or attachable assets before deciding whether further action would be profitable.

6.7 The debt collection process should show the debtor that the creditor is serious in his intention to collect. The debtor may be assuming that the creditor will do nothing to enforce the claim. A telephone call from a collector may be enough to cause the debtor to think again about his obligation, especially if he realizes that he may suffer substantial additional costs if he fails to take the debt seriously.

### c. Society's Interest in Extra-Judicial Debt Collection

6.8 Society at large is also interested in seeing debts paid speedily and without immediate recourse to the courts. It is generally desirable that creditors and debtors negotiate their own settlements, if only to avoid the flood of litigation which would result if people were compelled to commence legal action over all claims that were past due. If a creditor commences a law suit against his debtor, he is causing the state to spend public money on what is a private dispute. Society cannot reasonably expect creditors or debtors to pay the whole real

cost of invoking its legal machinery, but it is legitimate to hope that the parties will try to settle the dispute privately before or even after a law suit is commenced.

d. The Use of Collection Agencies or other Agents

6.9 It seems equally clear that a creditor should be free to employ an agent for the purpose of debt collection. Creditors may not have expertise in the collection of bad debts or they may prefer to use professional collectors to do this work, just as they may want to retain agents to represent them in other aspects of their business. There seems no legitimate reason to contemplate the abolition of collection agencies, even if such a draconian policy was feasible.

e. The Licensing of Collection Agencies and Collectors

6.10 The Collection Practices Act presently requires collection agencies and collectors to obtain licences under that Act. The general question of licensing business enterprises is outside the scope of this report. In the narrow case of collection agencies, however, licensing is useful because it gives a potentially potent mechanism for controlling debt collection practices by such agencies.

6.11 Under CPA 18, a licence issued under the Act expires at the end of the calendar year and must be renewed if the agency or collector is to continue in the business. The Administrator of Collection Practices has under CPA 15 the power to suspend or cancel a licence at other times and, under CPA 19, the power to inquire into complaints against licensees about a broad range of matters, including breaches of the Act or the "record of past conduct" of the licensee. Under these sections, the Administrator may be able to examine the collection practices of the agent or the collector, although his power to do so is arguably limited to those practices expressly prohibited in CPA 13.

6.12 If the Act were amended to include a more comprehensive list of prohibited practices, the Administrator's powers to investigate complaints and to suspend or refuse to issue licences would give collection agencies and collectors a powerful incentive to follow his instructions as to the acceptability of collection practices. Some collection agencies told us that they are responsive now to the directives of the Administrator, whether or not the practices in question are expressly dealt with in CPA 13. The effectiveness of administrative controls on debtor harassment is important in light of our earlier finding that the law of torts and the criminal law are unlikely to be an effective control over collection practices except in an outrageous case. The Institute favours the continuance of the licensing requirement for collection agencies and collectors.

f. The Use of Unlicensed Collection Agencies and Collectors

6.13 CPA 4 presently provides:

Licence required

4(1) No person shall carry on the business of a collection agency unless he is the holder of a collection agency licence, in the form prescribed by the Minister, issued under this Act.

(2) No person shall act as a collector for a collection agency unless he is the holder of a collector's licence, in the form prescribed by the Minister, issued under this Act.

(3) No collection agency shall employ or authorize any person as a collector unless that person is the holder of a collector's licence.

(4) No person shall

(a) advertise himself, or

(b) hold himself out,

> as a collector or as carrying on the business of a collection agency unless he holds a collector's licence or a collection agency licence, as the case may be.

6.14 CPA 4 appears to prohibit three activities:

(1) Carrying on the business of a collection agency or a collector without a licence. CPA 4(1-2).

(2) Employing an unlicensed collector. CPA 4(3).

(3) Advertising or holding oneself out as a collection agency or a collector when unlicensed. CPA 4(4)

The Institute has no quarrel with these prohibitions which are intended to support the main goal of licensing. However we have four problems with the scope of CPA 4(3).

6.15 (1) First, CPA 4(3) says nothing about a collection agency hiring an unlicensed collection agency. Such a hiring seems to be as much an evasion of the licensing requirement as being an unlicensed collector. Other Canadian statutes prohibit both arrangements. In our view, the Alberta Act should be amended to make it clear that the employment of both unlicensed collection agencies and collectors is unlawful. The redraft of subsection 4(3) in our draft amendments to the CPA is intended to carry out this recommendation.

6.16 (2) Second, while CPA 4(3) prohibits collection agencies from hiring unlicensed personnel, it does not prohibit a collector from employing an unlicensed collection agency or collector. The evil seems to us to be the same, whoever does the hiring, and the Act should be amended to reflect this policy. The redraft of subsection 4(3) in our draft amendments achieves this result.

6.17 (3) The third problem with section 4(3) is that it is so wide that it covers the case where an Alberta collection agency employs a collection agency or collector in Ontario who is licensed under the Ontario Act (but not under the Alberta Act) to collect a debt from a debtor in Ontario. Strictly speaking the Ontario collection agency is not licensed under the Alberta Act and therefore an offence has been committed by the principal collection agency. This result could not have been intended, and the section should be amended to make it clear that it is limited to the case where an unlicensed collection agency is employed to collect a debt in Alberta.

6.18 Recommendation 1. We recommend the repeal of CPA 4(3) and the substitution of the following:

> (3) No collection agency or collector shall employ, authorise or use the services of a collection agency or collector who is not licensed under this Act where the services are to be performed in Alberta.

6.19 (4) The fourth problem with CPA 4(3) is that nothing is said of the creditor or other person who engages the services of an unlicensed agency or collector. It is possible that a creditor desirous of retaining an aggressive collector might choose one because he is unlicensed and therefore more free of the supervision of the Administrator of Collection Practices. The collector on these facts is committing an offence under CPA 4(1) or 4(2); the issue is whether an additional prohibition should be created for the creditor doing the hiring.

6.20 Six Canadian provinces[35] make it an offence for any person knowingly to employ an unlicensed collection agent. The requirement of knowledge restricts the offence to the creditor

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[35] Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Saskatchewan.

or other person who knows that the collector is unlicensed when he hires him. Given this limitation, the provision would appear to strengthen the policy of licensing which we earlier argued was a necessary and useful one. We therefore recommend that Alberta follow the other Canadian jurisdictions noted above. Subsection 4(3.1) of the draft amendments is intended to accomplish this change.

6.21 CPA 4(3.1) does not apply to a situation where a creditor asks a friend who is not in the collections business to recover a debt. This is because the definitions of "collection agency" and "collector" in CPA 1(b) and (c) restrict those terms to persons engaged in the business of collecting debts.

6.22 Recommendation 2. We recommend the addition to CPA 4 of subsection (3.1) which provides:

> (3.1) No person other than a collection agency or a collector shall knowingly employ, authorize or use the services of a collection agency or a collector who is not licensed under this Act where the services are to be performed in Alberta.

g. Exemptions from Licensing

6.23 CPA 3 exempts from the licensing requirement certain classes of persons who may act as collection agents or collectors. The Institute makes no comment on these exemptions. Whether these persons should be exempted from section 13 (which lists prohibited collection practices) is relevant to this Report and will be considered in chapter 8.

### h. The Debtor's Interest in Legal Controls on Debt Collection

6.24 To this point, we have argued that a creditor has a legitimate interest in collecting a debt either directly or through a licensed collection agency. But, as an American court has observed, "the right to pursue the debtor is not a license to outrage the debtor."[36] The debtor is not an outlaw; he has legitimate interests which the law should protect, even if he owes the money claimed.

6.25 At the most basic level, the debtor has an interest in preserving the integrity of his body from physical attack or imprisonment. He is also interested in protecting his reputation from defamation and his privacy from unreasonable invasion. Greenfield notes the debtor's "further personality interest in maintaining his dignity and self-respect, an interest that continues to exist even after he has defaulted on a contractual obligation."[37]

6.26 A second group of interests of the debtor have to do with the maintenance of existing relationships with other persons, including family, friends, other creditors and his employer. This last relationship is particularly important because it is often the principal if not the only source of income for the debtor which will permit him to survive and will enable his

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[36] See Norris v. Moskin Stores (1961) 272 Ala. 174, 132 So. 2d 321.

[37] Greenfield, supra, note 34, at p. 9.

debts to be paid. The employment interest is in part protected by section 102 of the Employment Standards Act[38] which provides as follows:

> 102 No employer or other person shall dismiss, terminate, lay off or suspend an employee for the sole reason that garnishment proceedings are being or may be taken against an employee.

6.27 It is sometimes said that debt collection may cause the debtor to be fearful or anxious. To some extent, this result is intended by creditors or collectors and is acceptable as a means of stirring the debtor into an attempt to meet his obligation. On the other hand[39]:

> [I]t cannot be tolerated that just claims be pursued by unjust methods. It must not be forgotten that the debtor class includes many who by misfortune or mischance have drifted into debt and they are peculiarly exposed and vulnerable to the methods which we condemn.

6.28 One reason for permitting, indeed encouraging, efforts to collect debts without resort to the courts is that any chance for discussion and negotiation of the dispute is desirable and to be encouraged. Creditors and collectors uniformly say that they are anxious to discover why the debt is not being paid, and if the reason is misfortune or some defence to the claim, this information will be taken into account.

6.29 A problem with this justification of existing debt collection practices is that the dialogue between the creditor or agency and the debtor is usually one-sided. The creditor

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38 R.S.A. 1980, c. E 10.1.

39 See Payne Committee, supra, note 2, at para. 1236.

or collector is the professional dealing with the amateur. It is likely that the debtor will be told that he owes the money and should pay, but will not be informed of his rights to assert defences, to seek shelter under an orderly payment of debts plan or to assign into bankruptcy.

6.30 The effect of repeated debt collection efforts may be to induce the debtor to pay the debt by ignoring other obligations, selling exempt assets, using exempt income or borrowing still more money. The effect of debt collection practices may be greater if the debtor is poor, unsophisticated or vulnerable to pressure (e.g., a recent immigrant). The quality of the dialogue between collector and debtor will also be affected by the result-oriented character of the collection business. As noted in chapter 3, the pressure is on the creditor or collector to collect his money as quickly as possible, and the temptation may be to engage in harassment where such tactics are likely to achieve the desired objective.

### i. Interests of Other Persons in Controls on Debt Collection

#### (1) The Debtor's Family, Friends and Neighbors

6.31 The debtor's family and, to a lesser extent, his friends and neighbors have interests related to those of the debtor which need not be expanded on.

#### (2) Interests of the Debtor's Employer

6.32 Greenfield[40] identifies four separate interests which the debtor's employer may have in the debt collection process.

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[40] Supra, note 34, at pp. 11-12.

(a) He is interested in the qualifications of his employees to do their work, although indebtedness is unlikely to be relevant where the employee reasonably and in good faith denies that he is indebted.

(b) The employer has an interest in the efficiency of his employees who may be distracted by worry or may engage in absenteeism because of debt problems.

(c) The employer has an interest in his own reputation in the community.

(d) Most important, the employer may be directly affected by repeated collection effects directed to the employee at work, not to speak of those involving other employees or the employer. The employer's fear of involvement in garnishee proceedings is also relevant.

### (3) The Debtor's Other Creditors

6.33 If one creditor collects his claim by aggressive collection methods, other creditors may be affected. The payment to the squeaking wheel may leave the debtor with nothing left to pay other creditors, regardless of the legitimacy of their claims. As pointed out above, money paid directly to one creditor need not be divided among other writ-holders. The debtor who yields to the pressure of one creditor by going further into debt may ensure his eventual financial collapse with resulting losses for everyone except perhaps the creditor who pushed hard and got paid, thereby triggering the disaster.

(4) The Public

6.34 Society is interested in ensuring that debt collection, whether judicial or extra-judicial, is not so harsh and punitive as to drive the debtor to leave his job (if he is not fired), to neglect his other obligations in order to pay the debt for which he is being pursued, or even to go on the welfare rolls rather than coping with his obligations. Society is also interested in preserving and encouraging the debtor's opportunity to assert any defence he may have to the debt claim. As has been noted above, extra-judicial collection tactics are not well suited to a fair assessment of the respective legal rights of debtor and creditor.

6.35 Society has an interest in encouraging over-burdened debtors to seek solutions which deal fairly with all of their creditors and which encourage rehabilitation of the debtor. Insofar as abusive debt collection efforts operate against this objective, they ought to be discouraged.

j. Conclusion

6.36 The result of the analysis of interests in this chapter is that extra judicial debt collection, whether carried on directly or thorugh an agent, is a legitimate business activity if it does not become abusive or unreasonable. However the evidence of abuses detailed in chapter 3, together with the nature of the debt collection business, leads us to the view that effective legal controls on debt collection are necessary to prevent unacceptable harassment of debtors.

6.37 The next questions which must be addressed are these:

(1) Where should the line be drawn between reasonable and excessive debt collection practices?

(2) Is the present law adequate and effective to prevent excessive practices?

(3) If the answer to question (2) is no, how should the law be modified to achieve the desired result?

Our discussion of these issues forms the subject matter of the next chapter.

## Chapter 7. Prohibitions Against Unreasonable Debt Collection Practices

### a. A General Concept of Debtor Harassment?

7.1 The difficulty in drawing a line between acceptable and unacceptable collection practices flows from our conclusion, stated at the end of chapter 6, that debt collection is a legitimate activity. We are dealing with a situation in which a creditor, directly or through an agent, is trying to collect a claim which is owing and which is not subject to any defences which can be, or at any rate have been, articulated by the debtor.

7.2 Setting aside the possibility of the unasserted defence, the debtor may not have paid the debt for a variety of reasons, ranging from poverty on the one hand to knavery on the other. At the outset of the debt collection process, the creditor or his agent cannot know what is the situation. All he knows is that the money is owing and has not been paid. Not surprisingly, his first approach to the debtor will likely be a demand to pay what appears to be a legitimate debt.

7.3 The difficulty in working out a general test for distinguishing acceptable from unacceptable collection practices may be indicated if we take the word "harassment" as a possible touchstone. The Shorter Oxford English Dictionary defines "harassment", among other things, as "vexation, worry." When a debt collector pursues a debtor, his objective may be to vex or worry by insisting on payment of a claim which the debtor has neglected or refused to pay. To legislate that "harassment" is unlawful would abolish most debt collection efforts. If we rephrase the test to prohibit "excessive harassment", we

would have simply buried the problem in the word "excessive".[41]

7.4 Some law reform agencies have tried to develop a general test for identifying unacceptable collection efforts, but the results are not particularly convincing. The Payne Committee[42] concluded that a collection tactic should be forbidden where it could be described as "any harassment of the debtor which is not reasonably necessary for the protection of the interests of the creditor." The definition again raises the question what is "reasonable," although the Committee thought that it would not "cause any difficulty to magistrates." Alberta Bill 89 took a similar approach in the preamble to subsection 14(1) which provided that:

> 14(1) No person shall, in collecting or attempting to collect a debt or locate a debtor, unreasonably oppress, harass or abuse the debtor or any other person, and without restricting the generality of the foregoing, no person shall....
> (There followed a list of 13 specific prohibitions.)

7.5 The New Brunswick Consumer Protection Report[43] concedes that some harassment is bound to occur in the collection process, but concludes that harassment should "be no more than incidental to the task of getting the debtor to pay. The object of the process is debt collection, not punishment of the debtor." The Report continues:

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41 A useful case is R v. Ens [1980] 1 W.W.R. 639 (Sask.D.C.)

42 Supra, note 2, at p.321.

43 Supra, note 11, at p. 220.

> For the purposes of this paper, "harassment" refers to any attempt to collect a debt by a method which operates indirectly by inducing a debtor to find some method of paying his creditor in order to avoid further punishment, rather than directly by making some valuable asset available to satisfy his creditors.

7.6 The difficulty with this definition of harassment is to apply it to a concrete situation. A series of telephone calls may be perceived by the collector as a device to induce the debtor to pay, while the debtor perceives them as punishment. The problem remains to define reasonableness, and the New Brunswick definition raises that issue without solving it.

7.7 Despite the problems outlined above, several jurisdictions have simply prohibited "harassment" or "unfairness", leaving the task of definition to a court or an administrative body. An elaborate version of this approach is the Fair Debt Collection Practices Act, passed by the United States Congress in 1977.[44] After a preamble which announces the intention "to eliminate abusive debt collection practices by debt collectors", the Act in a succession of sections legislates against harassment, false or misleading representations and unfair practices.

7.8 The legislative style may be illustrated by looking more closely at FDCPA 1692d which begins as follows:

> A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

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[44] 15 USCS, ss. 1692-1692o (hereafter FDCPA).

There follows a list of six specific practices. The sections on fraudulent (FDCPA 1692e) and unfair (FDCPA 1692f) practices adopt the same form.

7.9 The advantage of drafting a general prohibition followed by a non-exclusive list of specific offences is that the draftsman protects himself against the ingenious collector who thinks up a new technique which is undoubtedly abusive but which was not thought of when the statute was drafted. The history of collection practices legislation lends support to this fear. These acts are a catalogue of unfair or excessive practices of the past, which have long since been abandoned by the industry.

7.10 There are however two major problems with legislation of this generality which have led the Institute to a decision not to recommend it for Alberta.

(1) The general prohibition of harassment in FDCPA 1692d goes too far in that it literally prohibits any persistent importuning or demands by the collector which may be objectively describable as harassment but which we think are acceptable as devices to collect a legitimate debt. The quoted section does not draw the crucial and difficult distinction between acceptable and unacceptable harassment.

(2) We will discuss below a system of enforcement of prohibitions against excessive debt collection practices which will rely heavily on the Administrator of Collection Practices and his staff. The difficulty with a wide-open prohibition of harassment is that harassment may become what the Administrator says it is, or at least the prohibition may be perceived as giving an undesirably broad and unfettered discretion to the public servants who must enforce the Act. While it is impossible to avoid considerable discretion in the Administrator, we think it useful for the legislation to give

him and the business community as much guidance as possible, which leads us away from the extreme generality of provisions like FDCPA 1692d.

7.11 The FDCPA section regarding false or misleading representations (s. 1692e) raises somewhat different but related problems. The first part of the section reads:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

Sixteen specific offences follow.

7.12 The motivation behind FDCPA 1692e is one for which the Institute has much sympathy. We earlier indicated the debtor's interest in a reasoned and regulated debt collection process. Unfortunately, false representations are likely to occur because of the nature of the debt collection industry. Debtors are often poor, unsophisticated, frightened people who are likely to be influenced by false representations as to the facts, the status and power of the creditor, or the consequences of nonpayment. Some regulation is desirable, and we will later recommend changes in the Collection Practices Act to deal with specific kinds of false representations.

7.13 However the Institute cannot accept the blanket prohibition contained in FDCPA 1692e. Take the following three situations, all of which would apparently be caught by the opening words of the American section.

(1) The creditor or his agent says to the debtor that the creditor intends to sue unless payment is forthcoming in ten days. The creditor has decided not to sue, whether the debt is paid or not. The statement is therefore false.

(2) The collection agency, relying on the creditor, says that the debt is still owing. In fact the debtor has paid the creditor who has failed to forward the information to the agent.

(3) The creditor or his agent innocently tells the debtor that his joint bank account with his wife (who is not indebted to the creditor) can be attached. The creditor has not read or heard about Banff Park Savings and Credit Union Ltd. v. Rose[45] which is authority for the contrary proposition. Our view, clearly in cases (2) and (3) and hesitantly in case (1), is that the law should not prohibit such statements, especially when the penalty in the case of the agent may be suspension of his licence.

7.14 The relationship between debtor and creditor is not fiduciary in nature, nor will it necessarily be unconscionable or lead to over-reaching by the creditor or his agent. There may be types of false representations which are reprehensible, but they should be identified and specifically prohibited. The FDCPA section imposes a duty of truth-telling and accuracy on the debt collector substantially higher than the duty imposed on most other participants in the business world, including lawyers. The Institute therefore rejects a general prohibition along the lines of FDCPA 1692e. The section suffers from the same weakness as FDCPA 1692d, namely, that it condemns a wide range of conduct without selecting those practices which are excessive or offensive.

7.15 In the rest of this chapter, we will set out specific classes of collection practices which are offensive and should be prohibited. Where these offences are not now effectively

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45 (1982) 22 Alta. L.R. (2d) 81 (C.A.).

regulated by law, we will propose amendments to the Collection Practices Act.

7.16 Implicit in the approach we take in the rest of this report is our belief, expressed earlier, that the law of torts and the law of crimes will not be affective to control anything more than the occasional outrageous case of debtor abuse. Our view would not be different if the law of torts were to be amended to provide for a new tort of excessive collection practices, along the lines of the Texas judge-made tort governing this kind of activity. As far as licensed collection agents and collectors are concerned, the most effective regulation of day to day debt collection is likely to be a government department armed with adequate licensing legislation. If the legislation is to extend to creditors, the problem of adequate sanctions is more difficult, and we will address it further in chapter 8.

7.17 Also implicit in our approach is that the list of prohibited collection practices should appear in the Collection Practices Act rather than in regulations. Some provinces have put them in regulations, perhaps because they can be changed more quickly than statutes to cover new collection tactics.

7.18 We think that, despite the advantages of quicker response time inherent in legislation by regulation, our proposed changes to the law should be incorporated into the CPA. It is important that our report, which recommends changes to the law of debtor and creditor, should receive the scrutiny of the Legislative Assembly and the public. We think that such scrutiny is more likely to occur if our proposals take the form of amendments to the Act.

7.19 As we consider each specific class of collection practices during the rest of this chapter, we will first decide whether the practice should be prohibited at all. We will then ask two

questions as to the scope of the proposed prohibition. The first of the two questions will be further split into two sub-issues.

Issue No. I - Should the prohibition apply only to collection agents and collectors, or should it be extended to all persons engaged in debt collection, including creditors collecting their own debts?

Sub-issue 1 - Should prohibitions directed to licensed collection agencies or collectors apply to certain classes of agents who are not required to be licensed but who do collect debts for their clients? CPA 3 sets out a list of people who collect debts for creditors but who are exempted from part or all of the Act. Other Canadian statutes contain similar sections, although the contents of the lists vary greatly.

Sub-issue 2 - Should all or part of the list of prohibited tactics be extended to creditors collecting their own debts? Section 14 of Bill 89 created a list of prohibited practices which applied to all persons. We understand that it was this aspect of the Bill which created adverse criticism leading to the deletion of section 14 and modification of some other sections before the present Collection Practices Act was passed.

Issue No. II - Should the proposed prohibition apply only to debt collection or should it be extended to cover the related activity of locating the debtor (often called skip tracing)?

7.20 We intend to consider these issues as we discuss each potentially prohibited collection practice in this chapter, excepting sub-issue 1 which raises special considerations and which will be dealt with further in chapter 8. Some comments of a general nature may however be useful before we embark on our

detailed analysis.

7.21 As to issue no. I, the Institute does not begin with the view that creditors, lawyers or other persons should be subject to a list of prohibited collection practices, or the contrary view that such a list should be restricted to licensed collection agencies or collectors. We have not addressed ourselves to the licensing sections of the Collection Practices Act, and we are prepared to assume that the various exempted professions and occupations in CPA 3, and of course creditors will remain free of licensing. However that assumption does not dictate the further conclusion that those persons should also be exempt from a list of prohibited debt collection practices.

7.22 It seems to us that issue no. I can only be decided by looking at specific collection practices. If, for example, we recommend the prohibition of threats of violence or other criminal conduct as a collection tactic, it is difficult to see why such a rule should not apply to creditors or their lawyers as well as to collection agencies. On the other hand, some prohibitions may be appropriate only when directed at professional collectors but not if applied to the creditors themselves. We will look at the problem later in this chapter as we discuss specific tactics, and again in chapter 8 under the heading Exemptions.

7.23 Issue no. II asks whether the proposed prohibitions should apply only to debt collection or should be extended to the activity of locating debtors. In order to collect the debt, the creditor or his agent must first find the debtor, a process of considerable difficulty in some cases. It may be that different rules must apply to the two activities, and this issue will be addressed in the course of our discussion of specific practices. Again our approach will be to consider the issue as we discuss each collection tactic, rather than attempting an overall solution.

b. Violent or Criminal Conduct

7.24 It is wrong that anyone should, in the course of locating a debtor or collecting a debt, use or threaten to use violent or other criminal means. Such activities are subject now to criminal or tort sanctions, but the Collection Practices Act should in our view identify them as unacceptable. Our proposed clause 13.1(a) is intended to prohibit such practices.

7.25 Recommendation 3. We recommend the addition to the CPA of clause 13.1(a) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> > (a) use or threaten to use violent or other criminal means to cause harm to the person, reputation or property of the debtor or any other person.

7.26 Some American states forbid the use of profane, obscene or abusive language during attempts at debt collection. Unless this kind of communication is now illegal, we think that it should not be singled out in a collection practices statute. Tempers may run high and the language of both participants may correspondingly degenerate in this kind of conversation. Present criminal controls are sufficient without imposing additional and unrealistic controls.

c. False Accusations

7.27 It is equally wrong for anyone to make or to threaten to make false accusations about the debtor or anyone else as part of the process of debt collection or location of the debtor. Such false accusations, or the threat to make them to third persons, can be intended only to badger the debtor into payment by the threat to blacken his reputation or that of another

person. Such activity is reprehensible and should be prohibited. Clause 13.1(b) is intended to accomplish this goal.

7.28 The law of defamation covers only part of this class of conduct, and even then is restricted to the exceptional cases. It will be noted that clause 13.1(b) does not prohibit or regulate the making of true statements to third persons. That situation is discussed below. See paragraphs 7.122 - 7.154.

7.29 Recommendation 4. We recommend the addition to the CPA of clause 13.1(b) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> (b) accuse or threaten to accuse falsely any person of fraud, crime or conduct which, if true, would tend to disgrace a person or to subject him to ridicule or the contempt of society.

d. Repeated and Inappropriate Telephone or Personal Calls

7.30 Most Canadian statutes prohibit repeated telephone calls or other communications which, because of their timing, nature or frequency amount to harassment of the debtor or his family, and Alberta Bill 89 would have done so. The present Collection Practices Act contains a more limited provision, also found in most other Canadian legislation, which says that no collection agency or collector shall "make any personal call or telephone call for the purpose of demanding payment of a debt on any day except between 7 a.m. and 10 p.m." CPA 13(1)(j).

Both provisions have as their objective the prevention of abusive or excessive communication.

(1) Absolute Prohibitions

7.31 The Institute has little difficulty in supporting the policy of a prohibition on calls between 10 p.m. and 7 a.m. There should be a time when the debtor is free from being importuned to pay his claim, and the collector can still call during the open period (which will catch most employees sooner or later) and on weekends.

7.32 The Institute has considered whether CPA 13(1)(j) should be expanded to cover creditors collecting their own debts. On balance, we do not favour such a change. This type of technical rule is best restricted to people who are in the business of debt collection for others, and should not be applied to creditors, some of whom may not know about the prohibition.

7.33 The Institute therefore recommends no change to the present CPA 13(1)(j).

(2) Repeated Telephone or Personal Calls

7.34 The Institute thinks that the Act should contain a prohibition of telephone calls or personal visits which, because of their frequency, constitute abuse or oppression of the debtor or his family. This prohibition would apply to communications occurring at any time, and should apply to debt collection and to the location of debtors by creditors or collection agents. Clause 13.1(c) is the proposed section. It would require an exercise of discretion by the Administrator, especially as to the nature of the communications, but is limited by the words "abuse" or "oppression".

7.35 Recommendation 5. We recommend the addition to the CPA of clause 13.1(c) which provides:

13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall

(c) make or attempt to make telephone calls or personal calls with such frequency as to constitute abuse or oppression of the debtor, his spouse or any member of his family.

e. Collect Telephone Calls and Other Communications

7.36 Many Canadian and American statutes prohibit collectors from making collect telephone calls or other communications in the course of collecting a debt. Alberta Bill 89 contained a similar section - clause 14(1)(b) - which applied to all persons sending a collect telegram or making a collect telephone call for the purpose of demanding payment of a debt. In our view, such collect calls are primarily harassing tactics and should be prohibited, whether the intent of the caller is to collect the debt or to locate the debtor. Hence our proposed section 13.1(d).

7.37 Recommendation 6. We recommend the addition to the CPA of clause 13.1(d) which provides:

13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall

(d) send a telegram or make a telephone call to a debtor for which the telegraph or telephone charges are payable by the addressee of the telegram or the person to whom the telephone call is made.

f. Threat of Arrest or Criminal Proceedings

7.38 The use or threat of use of the criminal courts to collect a civil debt would appear to be a violation of sections 129 and 305 of the Criminal Code. Such threats should equally be forbidden in the Collection Practices Act, and clause 13.1(e)

so provides. Like the Code provision, the proposed section should apply generally.

7.39 Clause 13.1(e) forbids representations, whether true or false. The reason is that references to criminal proceedings or speculation about the criminal liability of the debtor should be completely excluded from the debt collection process.

7.40 Recommendation 7. We recommend the addition to the CPA of clause 13.1(e) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> (e) represent that, failing payment, the debtor is liable to arrest or criminal proceedings.

g. Using Non-Approved Letters and Forms

7.41 CPA 5(1)(e) presently provides that an application for a collection agency licence shall be accompanied by

> copies of forms and forms of letters that the collection agency uses or proposes to use in making demands for the collection of debts.

CPA 7(1)(d) imposes a parallel requirement on applicants for the renewal of a licence. It should be noted that CPA 18 requires renewal applications to be made annually.

7.42 CPA 13(1)(b) provides that no collection agency or collector shall

> (b) use any form or form of letter to collect or attempt to collect a debt unless a copy of the form or form of letter is filed with and approved by the Administrator.

The powers of the Administrator to refuse to approve a form of letter are set out in CPA 13(3):

> (3) The Administrator may refuse to approve any form, form of agreement or form of letter that he considers to be objectionable and, without restricting the generality of the foregoing, he may refuse any form, form of agreement or form of letter that
>
> (a) misrepresents the rights and powers of a person collecting or attempting to collect a debt,
>
> (b) misrepresents the obligations or legal liabilities of a debtor, or
>
> (c) is misleading as to its true nature and purpose.

7.43 Similar provisions exist in all Canadian jurisdictions and, at first glance, they appear to be useful in preventing abuses. However the Institute discovered that the system of prior vetting of form letters has been much criticized in Alberta by industry representatives and, to some extent, by the Administrator.

7.44 Collection agencies are unhappy about having to submit all form letters annually. They tell us that the Department changes its mind from year to year as to the rightness or wrongness of particular phrases. In most cases, form letters are rejected or revised because of very minor points. For example, the Administrator takes the view that a letter which says that the debtor is responsible for "the balance of the account and costs" is inappropriate; what the letter should talk about is "taxed costs." The industry spokesmen question the need for prior vetting at all. If the system is to continue, they want clearer directions as to what can and cannot be said in a letter.

7.45 The Administrator is also unhappy with the prior vetting system, although for somewhat different reasons. The annual avalanche of paper from applicant collection agencies causes his staff serious problems in processing the material. The Administrator concedes that the standard for review of form letters in CPA 13(3) is unclear, and he finds the judgments required to be difficult.

7.46 Another problem with form letters is that the Administrator has taken the view that what are called freehand letters, that is, individual letters written to a specific debtor, also fall under the requirement for approval. The basis for this opinion is the requirement that "form letters or forms of letter" be submitted. The Administrator's view is that a freehand letter falls under the latter phrase and, while we think that there is some doubt about this interpretation, it is the one which has prevailed. The Administrator tells us that an agreement has been reached between him and the industry that the latter need not send in every freehand letter if they submit standard phrasing that they would use in freehand as well as form letters. Even with such an agreement, the requirement necessarily creates uncertainty and places unnecessary impediments in the way of legitimate activity.

7.47 The prior vetting requirement was introduced at a time when there were few specific prohibitions in the legislation. If our proposals are adopted, the legislation will cover the main problems encountered in collection letters, and the Administrator will have substantial sanctions against the use of objectionable letters. The standard of review in CPA 13(3) is so vague as to give the Administrator and the industry little clear guidance as to what is permitted and what is prohibited.

7.48 All of these factors have led the Institute to propose that the prior vetting requirement for form letters be abolished. We therefore recommend the repeal of CPA 5(1)(e), 7(1)(d) and 13(1)(b). As to 13(3), we recommend that it be amended so that it will not cover "forms" and "forms of letters." We do not propose any change to the present requirement for prior vetting of agreements between collection agencies and their clients because that question lies outside the scope of this report.

7.49 The Institute has considered whether to retain the present CPA 13(3), not as a prior vetting requirement but as a section empowering the Administrator to issue cease and desist orders after the use of an offensive letter. At the draft stage of the report, the Institute in fact proposed the enactment of subsection 13.1(2) which would provide as follows:

> (2) Where
>
> (a) the Administrator has reason to believe that a person is using a form or a form of letter to collect or attempt to collect a debt from a debtor, and
>
> (b) the Administrator is of the opinion that the form or form of letter is objectionable on any of the grounds on which an approval may be refused under section 13(3),
>
> the Administrator may issue an order directing that person to cease using that form or form of letter by a date specified in the order and not to use any other form or form of letter of a similar nature.
>
> (3) A copy of the order shall be served on the person to whom the order is directed.

The proposed subsection was an expanded version of subsection 14(3) which appeared in Bill 89 but was deleted before the present Act was passed.

7.50 On reflection, we have concluded that the excessive vagueness of CPA 13(3) is offensive, whether it is used as a standard for prior vetting or for the issue of cease and desist orders. We earlier rejected the inclusion of a general prohibition of debtor harassment or abuse. CPA 13(3) is similarly sweeping in its prohibition of any form letter that is, in the opinion of the Administrator, "objectionable."

7.51 We will later (in para. 8.50) propose the addition to the CPA of a section permitting the Administrator to issue cease and desist orders when a person is contravening or has contravened a

provision of the Act. This power is narrower than the present CPA 13(3) or our earlier proposed subsection 13.1(2), and preferable for that reason.

7.52 Recommendation 8. We recommend the repeal of CPA 5(1)(e), 7(1)(d) and 13(1)(b).

7.53 Recommendation 9. We recommend the deletion from CPA 13(3) of references to "forms" and "form letters," so that the subsection will read as follows:

> (3) The Administrator may refuse to approve any form of agreement that he considers to be objectionable.

h. Simulated Court or Legal Documents

7.54 Section 38 of the Judicature Act presently prohibits "any person using any court process or form or any process or form similar to it in any manner likely or intended to deceive any other person." The use of forms which simulate court or legal documents has a long history in collections practice in North America, and there have been recent examples in Alberta. See supra, paragraphs 3.6 (4 and 5), 3.16, 5.1. The Judicature Act section provides only a quasi-criminal sanction, and the provision may not extend to the simulation of municipal legal documents, such as traffic tags.

7.55 We therefore recommend that the amendments to the Collection Practices Act should include clause 13.1(f) which would apply to all persons, whether engaged in finding debtors or in debt collection. We think that section 38 of the Judicature Act, which has a much wider application than debt collection, should remain in force, although the Attorney-General's Department might want to consider expanding section 38 along the lines of our clause 13.1(f).

7.56 Our proposed section would prohibit the use or distribution of any document which simulates a court or legal document, including a lawyer's letter. The section would have covered the demand note which was the subject of the Edmonton Journal article referred to in paragraph 3.16. It would also cover non-court documents purporting falsely to be issued by an official or agency of any of the three levels of government.

7.57 Recommendation 10. We recommend the addition to the CPA of clause 13.1(f) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> (f) use or distribute any written communication which simulates or is falsely represented to be a document authorized, issued or approved by
>
> (i) a court,
> (ii) the federal government, a provincial government or a municipal government, or a department or agency of a government, or
> (iii) a lawyer.

i. False Representation of Government Authority

7.58 This type of false statement is related to the simulated court or government document discussed above at paragraphs 7.54 - 7.57. In both cases, the intention is to apply pressure to the debtor by representing falsely that the collector is part of the judicial or governmental system and has special rights because of that connection. Clause 13.1(g) applies to all persons engaged in finding debtors or in debt collection and would prohibit representations like the statement, referred to

in paragraph 3.6(2), that the collector was "the pre-legal director for the Northwest Territories." It would not prohibit a true statement that, for example, an agency had been instructed by a government to collect a debt.

7.59 Recommendation 11. We recommend the addition to the CPA of clause 13.1(g) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> (g) falsely hold himself out, by implication or otherwise, as being employed by or representing or being affiliated or associated with
>
> (i) a court,
> (ii) the federal government, a provincial government or a municipal government, or a department or agency of a government, or
> (iii) a lawyer.

j. Threat of Unlawful Activity

7.60 We earlier recommended prohibitions against threats of violent or criminal conduct (paras. 7.24 - 7.26) or of false accusations (paras. 7.27 - 7.29). Many American and Canadian jurisdictions have gone further and have tried to prohibit the threat of any action which is unlawful. Examples might include the following:

(1) a threat to ensure that the debtor is deported - see para. 3.6(1),

(2) a threat to seize exempt assets or income,

(3) a threat by an employee of a creditor or a collector to commence an action against the debtor when the employee knows

that he has no such authority from his employer, and

(4) a misrepresentation as to the creditor's legal remedies (already dealt with in part in paragraphs 7.38 - 7.40, dealing with threats of arrest or criminal proceedings).

Should any or all of these cases be stigmatised as a prohibited collection practice?

7.61 The Institute earlier decided not to propose a general prohibition of "harassment" or "falsity" or "unreasonableness." The kinds of statutory provisions to be discussed below suffer from the same fault; they embrace a wide variety of disparate cases which should perhaps be dealt with differently. The point may be made more clearly by looking at some examples.

7.62 The United States Fair Debt Collection Practices Act, in subsection 1692e(5), would prohibit "the threat to take any action that cannot legally be taken or that is not intended to be taken." Variants of this type of section appear in the Model Consumer Credit Act and some state statutes. One problem with the section is that it applies even if the collector makes an innocent misstatement of the law. This problem could be cured by, for example, limiting the section to cases where the person making the threat knows or has reason to know the true state of the law. With this limitation, the prohibition would be more palatable.

7.63 However the Institute has much more difficulty with the attempt to prohibit a threat to take action that is not intended to be taken. We do not think that a creditor should be prohibited by law from telling his debtor that he has the right to commence an action and that he intends to exercise his right. The creditor may well intend to commence action and may change his mind when the time to sue arrives. However one may regard

the use of empty threats, we do not see any reason for the law to prohibit this kind of conduct for debt collection when it permits it elsewhere.

7.64 Another somewhat different version of this type of legislation is the common Canadian provision forbidding a threat to proceed with any action for which the threatener does not have lawful authority. In some jurisdictions, the prohibition extends to creditors as well as to collection agencies and collectors. The provision is singularly murky, primarily because of the ambiguous concept of authority. We decline to recommend it for inclusion in the amended Act.

7.65 Instead we propose clause 13.1(h). It forbids a threat that the spokesman, the collection agency or the creditor will take any action which the spokesman knows or ought reasonably to know cannot legally be taken. The section avoids the concept of authority and is limited by the requirement that the spokesman knows or ought reasonably to know that the action is unlawful. The standard of reasonableness will vary depending on the experience of the spokesman. The application of the section may therefore extend to persons other than agencies or collectors. The provision is also wide enough to cover the collector who asserts the creditor's intention to take an unlawful action, as well as the assertion by the collector of his own intention to act unlawfully.

7.66 Recommendation 12. We recommend the addition to the CPA of clause 13.1(h) which provides:

> 13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall
>
> (h) threaten that he, the collection agency, the creditor or an assignee of the debt from the creditor will take any action which he knows or ought reasonably to know cannot legally be taken.

k. Misrepresentation of Status or Rights of Collection Agency or Collector

7.67 A related proposal has to do with the exaggeration by collection agencies and collectors of their status or powers. These people are licensed under the Collection Practices Act and are engaged in an activity which may lead to litigation. It is tempting for agencies and collectors to make inflated claims as to their legal position in order to frighten the debtor or others into paying. We earlier noted the danger that a poor or unsophisticated person may be intimidated by the professional collector, a danger that is heightened by the economic structure of the collection agency business. Legislation prohibiting such inflated claims exists in many Canadian and American statutes and was included in Alberta Bill 89. Hence our recommendation of clauses 13(1)(k and l).

7.68 The subject of our proposed amendments is the exaggeration by collection agencies and collectors of their status or powers. We do not see a need for the extension of such legislation to prevent creditors or others from exaggerating their rights or status. The reason for clauses 13(1)(k and l) is that one may be led to assume that the licence of the agency or collector entitles the licensee to special rights or privileges. That problem does not exist where creditors collect their own debts.

7.69 Recommendation 13. We recommend the addition to the CPA of clauses 13(1)(k and l) which provide:

13(1) No collection agency or collector shall

(k) if a collection agency, falsely represent to the debtor or to any other person the status or powers of

the collection agency, or the services rendered by it,

(l) if a collector, falsely represent to the debtor or to any other person the status or powers of his employer or himself, or the services rendered by his employer or himself.

1. Collecting Money in Excess of Debt

7.70 CPA 13(1)(c) and (g) provide that no collection agency or collector shall

(c) collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the debtor to the creditor;

(g) collect from a debtor any amount greater than that prescribed by the regulations for acting for the debtor in making arrangements or negotiating with his creditors on behalf of the debtor or receiving money from the debtor for distribution to his creditors;

CPA 13(1)(g) appears to be limited to situations where an agency or collector is acting for the debtor in a debt pooling arrangement (and therefore outside our study). CPA 13(1)(c) is left as the only statutory limit on the agency or collector collecting more than the debt owing.

7.71 Clauses 13(1)(c and g) of Bill 89 also applied to collection agencies and collectors and were identical to the clauses quoted above. However clause 14(1)(a) provided that no "person" shall

(a) collect or attempt to collect money in addition to or in excess of the amount payable by the debtor to the creditor;

Clause 14(1)(a) was substantially wider than clause 13(1)(c) in that it prohibited the collection of money in excess of the amount payable, whether or not the person knew the true state of accounts between debtor and creditor. There was apparently no defence for the person who collected money in good faith. Clause 14(1)(a) disappeared (along with the rest of section 14)

before the Bill became the Collection Practices Act.

7.72 Loan or credit sale contracts sometimes say that, where the debtor does not pay the debt at the proper time, the creditor or his agent may recover from the debtor the amount of the debt and interest plus costs of collection. The Alberta Credit and Loan Agreements Act[46] provides that such an agreement must take a certain form, failing which certain remedies are created for the debtor. Setting aside such legislation, there would appear to be nothing wrong with a creditor and debtor agreeing that, upon default, the debtor will be liable for collection costs over and above the debt.

7.73 Where such an agreement does not exist, a creditor cannot recover his collection costs from the debtor except where rules of court provide otherwise, or perhaps in an action for damages.[47] In the usual case, however, the creditor cannot recover money in addition to the debt except by agreement or court order.

7.74 Where a collection agency or a collector is collecting money on behalf of a creditor, the matter is complicated by the fact that the creditor may have made a mistake as to the amount of the debt or the proper name of the debtor, or may later receive a payment directly from the debtor without telling the agency. In these circumstances, the agency may in good faith pursue a debtor and even collect money when the debt has in fact been paid. The question to be decided is how the legal system should deal with the collection or attempted collection of excess money.

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46 R.S.A. 1980, c. C-30.

47 See Trans Trust S.P.R.L. v. Danubian Trading Co. Ltd. [1952] 2 Q.B. 297, 306 (C.A.).

7.75 Where the agreement between creditor and debtor says nothing about collection costs, it seems to us wrong that a collection agency or collector should try to collect its costs or those of the creditor from the debtor. This is not what the parties agreed when the transaction was first entered into, and no court has ordered that the debtor pay anything more than what is owing. However this principle should be limited so as to protect the agency or collector who collects or attempts to collect in good faith, only to discover that the debt had in fact been paid or was not owing by the person being pursued. The result is that we agree with the present CPA 13(1)(c).

7.76 Suppose that it is the creditor himself who is trying to collect money in excess of the amount agreed to in the original contract. Here a defence of good faith is more difficult to sustain; the creditor should know if he has been paid or not. On the other hand, the creditor may want to propose a refinancing of the debt, on terms which would result in payments in excess of the amount originally agreed to. While such a refinancing may be imprudent, we would not want to pass legislation which indirectly prohibited such an arrangement. We have therefore decided not to recommend the extension of the principle of CPA 13(1)(c) to people other than collection agencies and collectors.

7.77 A more difficult problem arises where the agreement between debtor and creditor does provide that, in the event of default, the debtor is responsible for costs of collection. Some Canadian collection practices statutes override such agreements. For example, subsection 20(2) of the Nova Scotia Collection Agencies Act says:

> (2) Notwithstanding any agreement to the contrary between a debtor and a creditor, any charges made or incurred by a collection agency or made or incurred by a creditor in employing a collection agency to collect the debt shall be deemed not to be a part of the amount owing by the debtor and shall not be recoverable by the creditor

> or by the collection agency acting on behalf of the creditor.

Such a provision was not included in Bill 89, and there is nothing like it in the present Act.

7.78 The Nova Scotia section might have a substantial impact, as is illustrated by the following hypothetical situation. A lends B $1,000.00 pursuant to an agreement which provides that, in the event of nonpayment of the $1,000.00 on the due date, A can recover his collection charges from B. B does not pay. A instructs the X Collection Agency to collect on the basis that X will keep 50% of all monies collected. X collects $1,000.00 from B, pays $500.00 to A and keeps the rest. Absent a provision like Nova Scotia subsection 20(2), A would appear to have a good action against B for $500.00 as a collection charge. B thus pays $1,500.00 in total. If the Nova Scotia provision were in place and if the $500.00 retained by X is a "charge... incurred by a creditor in employing a collection agency to collect the debt", A would not be able to recover the $500 from B.

7.79 The argument for Nova Scotia subsection 20(2) is that most contracts of credit sale and loan are contracts of adhesion in which the consumer has little bargaining power and must reject the loan outright or to accept it on the proffered terms. There is in many cases an inequality of knowledge and sophistication which translates into a virtually uncontrolled power in the vendor or lender to impose such terms as he pleases. If these assumptions are right, they might support a rewriting of the law of contract to invalidate terms like the one under consideration as against public policy.

7.80 However a study of collection practices is not, in our view, the place to propose the outlawing of a contractual term which would otherwise be valid. Such a proposal would involve,

among other things, a reconsideration of the Credit and Loan Agreements Act. Such a study is larger than collection practices and we cannot undertake it here. We therefore do not recommend the inclusion in our draft amendments of a provision like Nova Scotia subsection 20(2).

m. Duty to Volunteer Names of Agency, Collector and Creditor

(1) Present Law

7.81 CPA 13(1)(e and f) presently provide that no collection agency or collector shall:

> (e) if a collection agency, carry on the business of a collection agency in a name other than the name in which he is licensed, or invite the public to deal anywhere other than at a place authorized by the licence;
>
> (f) if a collector, collect or attempt to collect a debt without using his true name and the name of the collection agency that employs or authorizes him to act as a collector, as that collection agency's name is shown on the collection agency licence.

These apparently simple sections raise a number of difficult issues which need to be disentangled and considered separately.

(2) Duty to Debtor

7.82 Restricting ourselves to collection agencies or collectors dealing directly with the debtor, it seems essential that the law should place a negative and a positive obligation on the agency or the collector. The negative duty should be to refrain from false representations as to the status or nature of the agency or collector. We earlier made recommendation 13 to prohibit false representations as to status.

7.83 We now conclude that the law should also impose on

collection agencies or collectors dealing directly with the debtor the positive requirement to reveal to him (1) the name of the collector, (2) the name of the employing or authorizing collection agency, and (3) the name of the creditor whose account is being collected. Such a requirement seems to be required for fair dealing between the parties, as well as to permit the debtor to complain to the Administrator about improper collection practices. Hence our proposed section 13.2.

7.84 In our view, the same arguments do not apply where it is the creditor collecting his own debt. We have already proposed extensive controls on the quality of communication during the debt collection process. It is in the interests of the creditor or his assignee to convey to the debtor the information set out in our proposed section 13.2. On balance, we do not favour the extension of the provision to cover people other than collection agencies and collectors.

7.85 Our recommendations appear below at paragraphs 7.96 and 7.97.

(3) Duty to Third Persons

7.86 In paragraphs 7.81 - 7.85, we argued that collection agencies and collectors collecting or attempting to collect debts directly from the debtor should be required to give him the names of the agency, collector and creditor. We must now decide whether these positive duties of disclosure should apply to communications with third persons.

7.87 At paragraph 7.81, we quote the present CPA 13(1)(e and f). The sections, which are common in Canadian and American statutes, are ambiguous. If a collector tries to collect a debt from the debtor or anyone else (but not if he is engaged in finding a debtor), he is required to use his true name and the name of the employing collection agency. However a collection agency is required to use its true name while carrying on its

business. The draftsman may have been thinking of the agency's dealings with its creditor-clients. However the business of an agency includes location of debtors. If a collector engaged in finding debtors does not reveal the agency's name, the collector has not committed an offence under CPA 13(1)(f), but the agency, acting through the collector, may have committed an offence under CPA 13(1)(e).

7.88 The policy considerations are equally difficult. One may distinguish three classes of case where CPA 13(1)(e and f) may have some application.

7.89 The first case is that of the collection agency or collector talking to his creditor-client. It is no doubt useful for the agency to give its true name, but it is not necessary to legislate this result.

7.90 The second type of case where CPA 13(1)(e and f) may apply is that of finding debtors. The problems can best be developed by considering some hypothetical cases:

(1) The collector is trying to locate the debtor. He contacts the debtor's brother and says that he wants to talk to the debtor "on personal business." He makes no reference to his true employment.

(2) Same as (1) except that the collector says falsely that he wants the debtor, a trucker, to move some goods for him.

(3) The collector, trying to locate the debtor, telephones his employer and volunteers that he is employed by a collection agency.

(4) Same as (3) except that the collector indicates his connection with the collection agency only after the employer says that he will not talk further unless the collector reveals

his reason for calling.

7.91 In the debtor-finding hypotheticals, the brother and perhaps the employer are unlikely to volunteer any information about the debtor if they know that the questioner is employed by a collection agency. A requirement to reveal that fact will substantially impair the legitimate activity of locating the debtor.

7.92 In all of these cases, one is tempted to think that, if the collector can get the desired information or result without revealing who he is, the reputation of the debtor has been saved unnecessary blackening. A rigid rule would force the collection agency and the collector to give this information to the third person when it is not requested. An employer or the brother who does request the name and purpose of the telephoner can always hang up if such information is not forthcoming.

7.93 The third type of case where CPA 13(1)(e and f) have application is where the collector is trying to collect the debt. Again some hypotheticals may be useful:

(1) The collector, engaged in debt collection, phones the debtor's brother and asks him to pay the debt in order to avoid the creditor having to sue the brother.

(2) Same as (1) except that the collector asks the brother to persuade the debtor to pay the debt.

7.94 These cases are easier than the debtor-finding hypotheticals. The third person is being asked to involve himself in the debt problems of someone else. The choice is to accept or reject the invitation. Legislation would not appear to add anything useful.

7.95 The upshot is that we do not favour legislation in any of

the three groups of cases discussed above. The debtor-finding hypotheticals are the most difficult but, on balance, we think that the law should not impose positive requirements on the collector to convey information about the debt. We have already proposed a new section 13.2 restricted to communications directly with the debtor. We now recommend that CPA 13(1)(e and f) be repealed and that, except for section 13.2, nothing be put in their place.

7.96 Recommendation 14. We recommend the addition to the CPA of section 13.2 which provides:

> 13.2 No collection agency or collector shall collect or attempt to collect a debt from the debtor unless he has told the debtor
>
> (a) the name of the collector,
>
> (b) the name of the collection agency that employs or authorizes him to act as a collector, as that name appears on the collection agency licence, and
>
> (c) the name of the creditor whose account is being collected, or the name of the assignee of the debt from the creditor.

7.97 Recommendation 15. We recommend the repeal of CPA 13(1)(e and f).

(4) The House Agency Problem

7.98 CPA 1(b) defines "collection agency" in part as follows:

> (b) "collection agency" means a person, other than a collector, who carries on the business
>
> (i) of collecting or attempting to collect debts for other persons,
>
> (ii) of collecting or attempting to collect debts under any name which differs from that of the creditor to whom the debt is owed.

The effect of CPA 1(b)(ii), taken with CPA 4(1), is to require a creditor attempting to collect his own debts under a name other than his own to obtain a collection agency licence. The purpose of these sections is to deal with the phenomenon known as the house agency.

7.99 MacGuigan described the house agency practice as follows in Cases and Materials on Creditors' Rights:[48]

> These house agencies are actually the creditor himself (and so exempt from the law) but take the name of a fictitious collection agency (and so intimidate the debtor). Their common method of operation is to send out legal-like letters on the letterhead of a false-front collection agency threatening to sue, to garnish wages, and to ruin a debtor's credit rating. This device is used principally by book and magazine publishers and distributors..... The letters usually presuppose a favorable judicial finding in a way that a licensed collection agency would not be allowed to do and make threats on the basis of the presupposition.

7.100 Beside Alberta, six jurisdictions[49] have legislated about the house agency.

7.101 We are informed by the Administrator of Collection Practices that, since the introduction of CPA 1(b)(ii), the Department has experienced no problems with house agencies. Some creditors have stopped following the practice, while others have considered the possibility of obtaining collection agency licences. The Administrator is happy with the present law as it forces creditors using house agencies either to stop or to obtain a licence and therefore submit themselves to the supervision of the Department.

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48 (2nd ed., 1967) 15.

49 British Columbia, Manitoba, Newfoundland, Ontario, Saskatchewan and the Yukon Territory. As to the B.C. legislation, see B.C. Report, supra., note 8, at paragraphs 117 - 123.

7.102 We agree with the Administrator and recommend no change in CPA 1(b)(ii).

n. Communication with the Debtor

(1) Generally

7.103 To this point, we have assumed that communication between the creditor or collector and the debtor will take place, and have made proposals to regulate its manner or form. A more radical approach is to prohibit communication altogether in certain circumstances. American legislation has gone a substantial distance along this path, and there is some analogous Canadian legislation. We will concentrate on the relevant sections of the Fair Debt Collection Practices Act[50] to see if they seem appropriate in Alberta. We will also refer to similar Canadian legislation where useful.

(a) No Communication where Represented by Lawyer

7.104 FDCPA 1692c(a)(2) prohibits communication if the debt collector knows that the consumer is represented by an attorney with respect to the debt, and knows or can readily ascertain the attorney's name and address "unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer." The rule does not apply where the consumer has given a prior consent directly to the debt collector or where a court of competent jurisdiction expressly permits communication.

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50 15 USCS, ss. 1692-1692o (hereafter FDCPA).

(b) Validation of Debts

7.105 FDCPA 1692g provides that, within five days after the initial communication with a consumer to collect a debt, the collector shall send the consumer a written notice containing information about the creditor, the amount of the debt, and certain statements of the law. If the consumer notifies the collector in writing within thirty days of receipt of the statement (i) that the debt or a portion thereof is disputed or (ii) that the consumer wants the name and address of the original creditor, then the debt collector shall cease collection efforts "until the debt collector obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector." The term "verification of the debt" is not defined. Quebec and Nova Scotia are the only Canadian jurisdictions with similar provisions.[51]

(c) Terminating Communication

7.106 FDCPA 1692c(c) provides that, "if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer", the debt collector shall not communicate further with the consumer except to say that his collection efforts are being terminated or that he intends to invoke specified remedies.

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51 See Debt Collection Act, S.Q. 1979, c.70, s. 34(1); Collection Agencies Act, C.S.N.S. 1979, c. C-20, s.20(f).

7.107 FDCPA 1692a(3) defines "consumer" to mean "any natural person obligated or allegedly obligated to pay any debt." For the purposes of FDCPA 1692c(a)(2) (lawyer representation) and1692c(c) (terminating communication) but not for FDCPA 1692g (validation of debt), "consumer" is further defined to include "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."[52]

7.108 We will next consider whether any of these prohibitions on communication should be incorporated into Alberta law.

(2) No Communication where Represented by Lawyer

7.109 The prohibition against communication directly with a debtor represented by a lawyer rests on an analogy which is, in our view, false. If the creditor and debtor were both represented by counsel, it would be improper in the usual situation for the creditor's lawyer to circumvent the debtor's lawyer in order to deal with the debtor. This rule rests on the ethics of the legal profession which do not apply to the collection agency business. Moreover, the FDCPA rule would create opportunities for the debtor to stonewall by referring the collector to a lawyer who might not represent the debtor as to the debt or at all. We reject the American rule both on theoretical grounds and because of the practical problems it would create.

(3) Validation of Debts

7.110 We have already provided in section 13.2 of the proposed amendments that collection agencies and collectors engaged in the activity of collecting debts must tell the debtor the names

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52 See FDCPA, s. 1692c (d).

of the collector, the collection agency and the creditor. We have not provided that the debtor must be told the present address of the creditor or the amount of the debt, although this information will probably appear on the last bill sent by the creditor. FDCPA 1692g would appear to be unnecessary because of our proposed section 13.2 and because the debtor will likely have or be able to get this information.

7.111 While we do not know how FDCPA works in practice, we think that section 1692g would add excessive structure to what should be a relatively simple, straightforward process. The provision appears to require that the written notice be "received" by the debtor, a requirement which may be difficult to meet. We do not understand what is meant by "verification of the debt." On the other hand, the copy of the "verification of the debt" or the creditor's address need only be mailed, not necessarily received.

7.112 The more basic question is whether the debtor, by disputing the existence or amount of the debt or by simply refusing to pay, ought to be able to bring collection efforts to an end. This issue will be discussed below.

### (4) Terminating Communication

7.113 At common law, there would appear to be no legal limit to the creditor's right to continue collection efforts, either directly or through an agent. Even after an action on the debt is barred by the Statute of Limitations or discharged by the debtor's bankruptcy, there would appear to be no reason why the creditor cannot continue to hound the debtor for payment. Our recommendations to this point will affect the quality of that communication but will not enable the debtor to bring it to an end. Even if the debtor tells the creditor to sue or to stop collection efforts, the creditor is under no duty to restrict

himself to these alternatives.

7.114 The FDCPA attacks this problem in two ways. The validation of debts section (FDCPA 1692g) enables the debtor to stop communication by (i) disputing the debt and asking the collector to verify it, and (ii) asking for the creditor's present address. It is not uncommon that debt collectors are faced with the debtor's assertion that he has paid or that he was never indebted. At present, the collector is under no obligation to check these facts, although most collectors will want to do so in order to avoid fruitless collection work where there is a defence. The debtor may alternatively want to check directly with the creditor. Hence the requirement to provide the creditor's present address.

7.115 The terminating communication provision - FDCPA 1692c(c) - goes much further and provides that a debtor may bring all communications to an end by notifying that collector in writing that he (i) refuses to pay the debt or (ii) wishes communications to cease. Thereupon communication from the collector must stop, except to advise the debtor of specific remedies which the collector or creditor may invoke in the future. The creditor is not caught by this prohibition nor apparently is any other collection agency employed by the creditor.

7.116 The American sections are intended to prohibit communication by collection agencies and collectors, and we turn first to the consideration of similar provisions in Alberta. We have earlier recommended controls on abusive or threatening communications. The issue here is whether we should go further and recommend prohibition of non-abusive communication by agencies and collectors.

7.117 Underlying the American legislation is the fear that agencies or their employees will phone or write repeatedly,

ignoring the debtor's assertion that he does not owe the money and his expressed desire to be left alone. However collection agencies work on a no collect no pay basis. There is therefore a real economic limit on the amount of communication which an agency will carry out, particularly if the debtor has said that he does not owe the money. At worst, an agency or a collector may be tempted to indulge in abusive tactics over a short period of time in an effort to jar the debtor into paying. We have recommended controls on this type of practice, and we see no reason to go further and to empower the debtor to bring all communication to an end, either by disputing the debt or by refusing to pay.

7.118 If the agent should not be prevented from continued collection efforts unless they become abusive or threatening, clearly the creditor should not. Like the collection agency, the creditor has real economic constraints on how long he will prolong his attempts to collect a debt. More fundamentally, we do not think that the lines of communication should ever be broken, where the communication remains civilized and businesslike. What is offensive is intimidation or abuse, and we have recommended the prohibition of such tactics earlier in this report.

### (5) Canadian Sections Prohibiting or Regulating Communications

#### (a) Set-Off or Counterclaim

7.119 Subsection 100 (k) of the Manitoba Consumer Protection Act[53] provides that no person shall

> (k) make further demand for payment of an account or seize

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53 C.C.S.M., c. C200.

goods or levy distress if the debtor gives notice by registered mail to the credit grantor, his assignee or collection agent, of a claim for set-off or counterclaim under this Act or any other statute or regulation, or under any right of contract, until

(i) the credit grantor, his assignee or collection agent has submitted the matter to a court of competent jurisdiction for adjudication, or

(ii) the debtor and the credit grantor, his assigns or collection agent, have agreed in writing to the amount still owing by the debtor in respect of the account after deducting an amount agreed upon for the claim for set-off or counterclaim;

The Yukon Territory has a similar provision in its Consumers' Protection Ordinance,[54]

7.120 The idea that creditors' remedies are modified when the defendant files a counterclaim is not foreign to Alberta. See Alberta Rules of Court, rules 151, 155. However, apart from the fact that there is no procedure by which the creditor can submit a counterclaim to a court, we do not think that the bald statement of a counterclaim should by itself paralyze collection efforts. We do not recommend the section for Alberta.

(b) No Verbal Communication

7.121 Subsection 34(2) of the Quebec Debt Collection Act[55] provides that no collection agency or collector shall "communicate verbally with a debtor who has notified him in writing to communicate with him in writing only." The provision purports to limit the form of communication only, leaving communication by letter available to the collector. Bearing in mind that the preferred and most effective form of communication is verbal, the Quebec section amounts in fact to a general bar on communication. As such, it is subject to many of the criticisms advanced above against the FDCPA sections. We do not recommend the Quebec section for Alberta.

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54 R.O.Y.T. 1971, c. C-13, s. 71(k).

55 S.Q. 1979, c.70.

## o. Threatened or Actual Communication with Third Persons

### (1) Generally

7.122 In the previous section, we considered whether communications directly with the debtor should be prohibited and concluded that there should be no such prohibition. Different considerations arise when we consider communication during the process of debt collection with persons other than the debtor.

7.123 In chapter 3, we recorded some cases where debt collectors contacted persons other than the debtor during the debt collection process.[56] The literature indicates that contacts with third persons, especially the debtor's employer, happen often enough to suggest the need for legislation.

7.124 In chapter 6, we noted the debtor's interest in preserving his reputation from defamation and his privacy from unreasonable invasion. We also observed that the debtor seeks to maintain his existing network of relationships with other persons, including family, friends, other creditors and his employer. The last relationship is particularly important because it is often the principal if not the only source of income for the debtor which will permit him to survive and to pay off his debts. Again there is substantial evidence, supported by Ramsay's study for the Institute[57], that pressure

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56 See paragraphs 3.6(3), 3.7(7), 3.10, 3.11 and 3.15.

57 Supra, note 17, at pp. 255-256.

by creditors on the employers of debtors has led to employers taking action against their employees, up to and including dismissal.

7.125 The law of defamation is only useful to control third person communications in outrageous cases where false defamatory statements are published. The tort of privacy has developed in the United States (although not in Canada), but this tort has limitations which make it less useful in the context of debt collection. As a result, most North American jurisdictions have included in their collection practices statutes provisions which regulate or prohibit third person communications as part of debt collection.

(2) Legislation in Other Jurisdictions

7.126 The Nova Scotia Collections Agencies Act[58] is a useful example. Subsection 20(1) provides in part that no collection agency or collector shall

> (l) give, by implication, inference or statement, directly or indirectly, any false or misleading information to any person that may be detrimental to a debtor, his spouse or any member of his family;
>
> (m) give, or threaten to give, by implication, inference or statement, directly or indirectly, to the person who employs a debtor, his spouse or any member of his family information that may adversely affect the employment or employment opportunities of the debtor, his spouse or any member of his family;
>
> .....

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58 S.N.S. 1975, c.7.

> (o) except to obtain the debtor's address, communicate with the employer, acquaintances, friends, relatives or neighbours of the debtor except in the case of a person who is surety for the debtor.

Three points may be made about the Nova Scotia legislation.

(1) Subsections (l) and (m) assume that communication may take place and seek to regulate its conduct to eliminate material which may be detrimental or may adversely affect the employment of the debtor or his family.

(2) Subsection (m) but (curiously) not subsection (l) outlaws a threat to make the forbidden communication. The theory apparently is that the threat to do something unlawful is as objectionable as the act itself.

(3) Subsection (o) goes further and forbids communication to certain persons except for a limited purpose.

7.127 Other Canadian and American jurisdictions have either regulated or prohibited third party communication, and sometimes both. FDCPA 1692c(b) opts for prohibition, subject to exceptions:

> (b) Communication with third parties. Except as provided in section 804 [the skip tracing section], without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

7.128 One might have thought that 1692c(b) covered the subject, but FDCPA contains several other prohibiting or regulatory provisions.

(1) Under the heading "Harassment or abuse", FDCPA 1692d prohibits a debt collector from engaging in the following:

> (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to [an appropriate recipient of a credit report].
>
> (4) The advertisement for sale of any debt to coerce payment of the debt.

(2) In FDCPA 1692e (False or misleading representations), the following conduct by a debt collector is prohibited:

> (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(3) Finally, FDCPA 1692f (Unfair Practices) prohibits a debt collector from the following activities:

> (7) Communicating with a consumer regarding a debt by post card.
>
> (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

The last three quoted sections are not subject to the exceptions which attach to 1692c.

7.129 Other Canadian and American statutes appear to focus on a different policy against third party communication, namely, that it is wrong to collect or try to collect a debt from a person who does not owe the money. For example, clause 14(1)(m) of Alberta Bill 89 provided that no person engaged in debt collection shall

> (m) except in the case of a person who is a surety for the debtor, attempt to collect a debt from the debtor's

relatives, friends, acquaintances or neighbours.

The evil struck at here appears to be the collection of the debt from a person other than the debtor, rather than the dissemination of information about the debtor.

7.130 A clearer example of this policy is clause 13(1)(d) of Regulation 27 under the New Brunswick Collection Agencies Act[59] which says that no collection agency shall

> (d) include the spouses of debtors in Court actions and other attempts in the collection of outstanding accounts when it is clear that only one party is liable for the debt.

(3) Policy Difficulties

7.131 Earlier in this chapter, we made recommendations which would regulate (but not prohibit) communications between the collector and persons other than the debtor. Indeed most of our proposals are broad enough to affect communications with third persons.

7.132 When we go beyond the relatively straightforward proposals already made, however, we are faced with difficult questions of social policy. There can be no doubt that the debtor has an interest in his privacy and reputation, and in the maintenance of his existing relationships. On the other hand, the creditor has a right to collect his debt by reasonable means. Moreover he has a right to communicate with people about the debtor so long as those communications are not defamatory or otherwise destructive. The problem is to strike an appropriate balance between these competing goals.

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59 R.S.N.B. 1973, c. C-8.

7.133 If the intention of the legislation discussed above is to prevent collectors or creditors from attempting to collect debts from persons other than the debtor, we again see the issue as difficult. Such advances can be annoying, particularly if they are accompanied by misrepresentations of the law or by threats to the third person or the debtor. We have already proposed amendments to prohibit threats of violence or criminal conduct, accusations against the debtor, and threats to take any action which cannot legally be taken. Apart from these prohibited tactics, the creditor has an interest in exploring other avenues of payment, even if they involve third persons. Any third person who does not want to become involved can say so.

7.134 On the question of collector or creditor contact with the employer, we do think that legislation is needed. We are convinced that collection efforts communicated directly or indirectly to the employer are dangerous to the employee. They threaten the continuance of his job in some cases; in others they can lead to diminished chances of promotion. A "suggestion" by an employer is the most potent of threats to the debtor-employee, and it can lead him to stop payment on his other debts to pay the claim which the employer knows about. There is substantial evidence that employees threatened in this way will sometimes stop work rather than face the pressure generated by the creditor's involvement of the employer in the debt collection process.

7.135 The employer has a direct financial interest in his employee's debt problems. If the creditor sues the employee and serves a garnishee summons on the employer, it will be necessary to pull the employee's file and make the relatively complicated and uncertain calculation of the amount to be paid into court. This process will have to be repeated for each garnishee summons until the debt and other execution debts in the sheriff's office are paid off, or until the problem is "solved", a euphemism for

the debtor paying the debt (perhaps by neglecting other legitimate claims), resigning or being fired.

7.136 It is true that section 102 of the Employment Standards Act[60] provides that an employer shall not terminate or lay off an employee "for the sole reason that garnishment proceedings are being or may be taken against an employee." Our impression is that the section is relatively weak and is rarely enforced. It does however indicate a legislative concern with the preservation of the employment relationship in the face of legal action by an employee's creditor. Similar considerations lead us to the conclusion that collection efforts which involve the employer should, within suitable limits, be prohibited.

7.137 Communications with third persons other than the employer raise more difficulties. Here the possibility of harm is not as clear nor is the possible harm as serious. Discussions with the debtor's family, neighbors and friends are embarrassing, especially in their revelation of the debtor's problems, but there are at present legal controls over defamatory statements. If the statement were to cause serious harm to the debtor, he or she might have an action in defamation. The issue is whether the law should go further and prohibit such communications entirely or impose limits on them.

7.138 The strongest argument for regulation exists in the situation where facts regarding the debt are published to the public at large. Examples of tactics actually used either presently or in the past are:

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60 R.S.A. 1980, c. E-10.1.

(1) the posting of an N.S.F. cheque from the debtor in the creditor's store (often on the cash register),

(2) the publication (or threat of publication) of a list of debts for sale (the so-called deadbeat list),

(3) the sending of postcards regarding the debt to the debtor, or

(4) the sending of letters to the debtor with the name of the collection agency on the outside of the envelope.

7.139 These tactics may be unpleasant and embarrassing to the debtor. Moreover they may be deliberately calculated to embarrass the debtor or family member into paying the claim. If the statements made are defamatory, the law provides a remedy, and the case of Green v. Minnes[61] suggests that the court will use that tort creatively to curb sleazy collection practices. The problem is whether the law should go further and prohibit such communications entirely. We have concluded that, with the exception of communication with the debtor's employer or his fellow employees, the law should not interfere with the freedom of the creditor or collector to communicate with third persons, subject to the limits imposed by the common law and the proposals made earlier in this report.

7.140 As a result, we have concluded that prohibition of communications with third persons is appropriate only in the case of the debtor's employer. We see that prohibition as being subject to the following limits and rules:

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61 (1892) 22 O.R. 177 (C.A.)

(1) The rule against communication obviously cannot apply to efforts to locate the debtor. One of the principal sources of such information is the last known employer, and the location of debtors would be made more difficult if such contacts were made illegal. Our proposed amendment draws the debtor-finding exception narrowly.

(2) The no communication rule must be subject to an exception where the communication occurs or will occur through a legal action or process, including an attempt to enforce a wage assignment.

(3) On the other hand, there is no reason why the rule should not apply to creditors as well as collection agencies and collectors. There is no distinction between the two situations, and the danger of such a communication is the same.

(4) We think that the rule should prohibit communications to fellow employees as well as to the employer directly. The danger is the same, whether the employer learns of the debtor's problems directly or from another employee.

7.141 The result of the above discussion is section 13.4 of our proposed amendments.

7.142 Recommendation 16. We recommend the addition to the CPA of section 13.4 which provides:

> 13.4(1) No person shall, in collecting or attempting to collect a debt, communicate or attempt or threaten to communicate with the employer of the debtor or with any other employees of the debtor's employer.

(2) Subsection (1) does not apply to a communication or to an attempted or threatened communication which

(a) occurs or will occur through a legal action or process, including a demand on a valid assignment of the wages of the debtor, or

(b) is for the sole purpose of verifying the debtor's employment or obtaining his address or telephone number.

(4) Information which may Adversely Affect Employment

7.143 Recommendation 16 prohibits communications with the debtor's employer or fellow employees as a part of the debt collection process and subject to exceptions. The result is that communications with other persons would not be prohibited at all, and communications with the employer and with fellow employees would be acceptable outside the ban created by section 13.4. The next question is whether these acceptable communications should be regulated as to form or content in order to protect the employment relationship.

7.144 One common Canadian statutory requirement relates directly to our concern to protect the debtor's job. The Nova Scotia Collection Agencies Act,[62] followed by other Canadian statutes, provides in clause 20(1)(m) that no collection agency or collector shall

(m) give, or threaten to give, by implication, inference or statement, directly or indirectly, to the person who employs a debtor, his spouse or any member of his family information that may adversely affect the employment or employment opportunities of the debtor, his spouse or any member of his family.

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62 S.N.S. 1975, c.7.

7.145 We have decided not to recommend anything like the Nova Scotia section for Alberta. The recommendations made earlier in this report, especially Recommendation 16, taken with common law limits on defamatory speech, are sufficient to protect the debtor's employment in those situations where communication with the debtor's employer is permitted.

### (5) False and Detrimental Information

7.146 There is another common Canadian section which gives us problems. The Nova Scotia Consumer Creditors Conduct Act[63] provides in subsection 4(i) that no creditor shall

> (i) give by statement, expressly or impliedly, directly or indirectly, any false or misleading information to any person that may be detrimental to a borrower, his spouse or a member of his family.

Similar provisions appear in other Canadian statutes, although not in Bill 89.

7.147 The Nova Scotia section may be an attempt to create a statutory equivalent to the torts of defamation and intentional infliction of mental suffering, but, if so, it is substantially wider and vaguer than its ancestors. (1) It applies to information that may be, not is, detrimental. No damage need have occurred. (2) The word "detrimental" is ambiguous. If I am given false information and, as a result, pay the debt by not paying my rent or my cable T.V. rental, have I suffered a detriment? The Nova Scotia provision is vague at the very point where it should be precise. (3) The word "information" is also vague. If it embraces legal advice, the section would impose a very high standard of knowledge on debt collectors.

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63 S.N.S. 1981, c.2.

7.148 We do not recommend the adoption of Nova Scotia subsection 4(i).

### (6) Controlling the Dispersion of False or Incomplete Information

7.149 Several American jurisdictions attempt to control the dispersion of false or incomplete credit information. FDCPA 1692e(8) provides that no debt collector shall engage in the activity of

> (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

Other jurisdictions prohibit false accusations that a debtor is wilfully refusing to pay a just debt. The intention is to prevent the destruction of a debtor's reputation for credit-worthiness, especially by false or incomplete statements to credit reporting agencies.

7.150 There is no doubt that American and Canadian creditors occasionally send false information to credit reporting agencies and others. This may take the form of reporting the overdue debt but not reporting payment or dispute. The tort of defamation is some control over this, but for legal and practical reasons is not very effective. We have (at present) no tort of privacy, although other tort actions in part fill the gap.

7.151 Such tactics seem offensive, but we do not recommend legislation like the FDCPA section. We are convinced that the recommendations made earlier in this paper, coupled with the tort of defamation, are enough to control this type of abuse.

(7) The Form of Communication

7.152 Several American statutes prohibit the use of communication devices which unnecessarily convey to the outside world information about the debt. For example, FDCPA 1692f(7 and 8) prohibit the following conduct by a debt collector:

> (7) Communicating with a consumer regarding a debt by post card.
>
> (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

7.153 There is other U.S. legislation, for example, the FDCPA sections quoted earlier at paragraph 7.126(1), which prohibits the advertisement for sale of a debt, the publication of a deadbeat list, the addressing of an envelope to "Deadbeat, John Doe" (expressly dealt with in Florida!) and similar tactics. Some more broadly drafted sections would catch the "Deadbeat, John Doe" case by prohibiting (as in MCCA 1973, s.6.204d):

> (d) [the] use of any form of communication to the consumer which ordinarily may be seen by other persons, that displays or conveys any information about the consumer other than the name, address and phone number of the debt collector.

7.154 We recommend none of these prohibitions for Alberta. We found no evidence that advertisements for sale of debts (as collection devices) or deadbeat lists had ever occurred in this province, and we conclude that our earlier proposals will catch serious abuses without the proliferation of detailed and technical rules.

## Chapter 8. Other Issues

### a. Exemptions

8.1 CPA 3 presently provides:

> 3(1) This Act, except sections 14, 19, 20 and 23, does not apply
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> (a) to an insurer, agent, adjuster or broker licensed under the Insurance Act or to his employees acting in the regular course of their employment,
>
> (b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the Bankruptcy Act (Canada), the Companies Act, the Judicature Act or the Winding-up Act (Canada) or a person acting under a debenture or the order of any court,
>
> (c) to a real estate agent or salesman licensed under the Real Estate Agents' Licensing Act or to his employees acting in the regular course of their employment.
>
> (2) This Act does not apply to barristers and solicitors in the practice of their profession.
>
> (3) This Act or any provision of this Act does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Act or that provision.

8.2 The effect of CPA 3(2) is that "barristers and solicitors in the practice of their profession" are entirely exempted from the Act. The businesses and individuals listed in CPA 3(1) are exempted from all but selected sections of the Act. We are not aware of any people exempted by regulation under CPA 3 (3).

8.3 A second exempting provision is buried in the definitions in section 1. CPA 1(b) defines "collection agency" in part as follows:

> (b) "collection agency" means a person, other than a collector, who carries on the business

(i) of collecting or attempting to collect debts for other persons,

(ii) of collecting or attempting to collect debts under any name which differs from that of the creditor to whom the debt is owed.

A "collector" is defined in CPA 1(c) as a person employed or authorized by a collection agency to, among other things, "collect or attempt to collect money" or to "deal with or locate debtors" for the collection agency.

8.4 Two key points about the definition of "collection agency" should be made:

(1) It applies to a person "who carries on the business" of debt collection, etc. It does not include people who occasionally collect debts or perhaps people who habitually collect debts without remuneration. It may or may not cover the cases of (a) people who collect debts for each other on a reciprocal basis, or (b) people who collect debts as a small part of another business, e.g. a credit reporting agency.

(2) The definition is limited to persons who collect or attempt to collect debts "for other persons." It does not apply to creditors collecting their own debts unless they do so in a name other than their own.

8.5 It is obvious why the classes of persons listed in CPA 3 should be exempted from the licensing rules. In every case, they are subject to the control of another licensing or regulating body or, in the case of clause 3(1)(b), the court.

8.6 It is not so obvious why the present prohibitions against some collection practices in CPA 13 should not apply to the exempted classes of persons. No doubt lawyers, insurance agents, real estate agents and the like should not be licensed under the CPA, but it does not follow that they should also be exempt from, for example, the rule forbidding telephone calls

for debt collection after 10:00 p.m. However CPA 13 does not apply at present to any of the exempted classes in CPA 3.

8.7 It is interesting to compare CPA 3 with the equivalent section (also section 3) in Bill 89 which provided that that statute, "except sections 14, 15, 21 and 25" did not apply to the list of people exempted under CPA 3(1) and CPA 3(3). Section 14 of Bill 89 created a list of prohibited collection practices applicable to all people, whether collecting debts for themselves or for others. The philosophy of Bill 89 was therefore that the classes of persons listed in section 3 were exempted from the licensing system of the Bill but not from the list of prohibited practices in section 14.

8.8 We have already noted that section 14 was deleted from Bill 89 before it became the CPA. One is tempted to think that the draftsman forgot to remove the reference to section 14 in section 3 (or to change it to refer to section 13). As a result, the present CPA 3 still makes section 14 apply to the exempted classes listed in CPA 3 (1 and 3), despite the change in content of that section.

8.9 One more point should be made about Bill 89. Like the present CPA, it exempted "barristers and solicitors in the practice of their profession" from the complete Act. On that point, no change occurred between Bill and Act.

8.10 Other Canadian and Commonwealth jurisdictions have created a wide variety of exempt businesses and occupations, including banks, trust and loan companies, credit unions, mortgage brokers, debt counselling services and people engaged in isolated collections other than as a regular business. Some jurisdictions make their lists of prohibited practices override these exemptions. As to lawyers, a few jurisdictions draw a distinction where a lawyer carries on a collection agency business in a

name other than his own.[64] Several commentators on the American Fair Debt Collection Practices Act note that its provisions may extend to lawyers who run collection mills or who are closely related to or employed by collection agencies.

8.11 We have no difficulty in deciding that the classes listed in CPA 3 should be exempt from the licensing requirements of the Act, an issue which is in any event beyond the scope of this report. We do not have any comment on possible additions to or subtractions from the exempted classes, or on the definition of "collection agency" in CPA 1(b). We have however considered whether the exemptions in CPA 3 should extend to our proposed sections listing prohibited collection practices.

8.12 To obtain advice on this issue, Professor Dunlop wrote to the Superintendent of Real Estate, the Superintendent of Insurance and the Secretary-Treasurer of the Law Society of Alberta. The Superintendent of Real Estate replied that real estate licensees do collect money for others, and that, if there were a complaint of unacceptable collection practices, the Superintendent has power to investigate and to suspend or cancel a licence after a hearing. However the Superintendent later wrote to say that "the recommendation [in the draft version of the present report] to change the present law and subject real estate agents to the list of prohibited collection practices in the Collection Practices Act appears to be a reasonable approach."

8.13 The Deputy Secretary of the Law Society told us that there had been complaints to the Society about lawyers' collection practices which had resulted in reprimands. (The Administrator

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64 See e.g., Collection Agencies Act, R.S.N.B. 1973, c. C-8, s. 8.

of Collection Practices has also received a number of complaints about lawyers.[65] The Deputy Secretary of the Law Society told us that the Law Society has no policy regarding debt collection by lawyers except for the general power to discipline for unbecoming conduct. He thought that the Society's experience had not demonstrated that lawyers were abusing their exemption to any appreciable extent.

8.14 We start from the proposition that our recommended list of prohibited collection practices which applies to all people should not be subject to exceptions. These practices are offensive, no matter who does them. It seems to us that the burden should be on those seeking an exemption from the proposed sections 4(3.1), 13.1 and 13.4 to demonstrate why they should not have to follow the rules which apply to everyone else. Even though the exempted groups are regulated by a disciplinary body or by a court, they are generally subject to the law of the land and should be subject as well to the rules regarding abusive collection of their own or other people's debts.

8.15 CPA 3(1) presently provides that the Act, except sections 14, 19, 20 and 23, does not apply to the three classes of people listed in that subsection. It is necessary to consider more carefully CPA 14 which is as follows:

> 14 No person shall place an account for collection with a collection agency without first withdrawing in writing any previous placement of that account with any other collection agency.

As we say earlier, the reference to section 14 was probably intended to refer to section 14 in Bill 89, which was a list of objectionable debt collection practices applicable to all

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65 See paragraphs 3.6(4), 3.8.

persons collecting debts. When section 14 was dropped from Bill 89, the reference in CPA 3(1) was not changed.

8.16 CPA 14 places an obligation on all persons not to place an account with a collection agency without first withdrawing in writing any previous placement with another collection agency. We do not wish to comment on the merits of CPA 14, although it is somewhat difficult to justify its existence. Assuming that CPA 14 remains in the Act, it is apparently intended to apply to all persons, whether creditors, collection agencies or other agents of the creditor. It should therefore continue to apply to the three exempted classes in CPA 3(1), and we so recommend. However CPA 14 has never applied to lawyers, and we think that it should not do so.

8.17 The result of the above discussion is that the Act should not apply to the three exempted classes of persons listed in CPA 3(1) except for sections 4(3.1), 13.1, 13.4, 13.5, 13.6, 14, 19, 20 and 23. It is not necessary to say that sections like CPA 13, which apply only to collection agencies or collectors, should apply to the three exempted classes. Our proposed section 3(1) exempts insurance agents and real estate agents only when acting in the regular course of their employment. If an insurance agent or a real estate agent does so many collections that he falls within the definition of a collection agency or a collector in CPA 1, he ceases to be entitled to the protection of our proposed section 3(1) because he is no longer acting in the regular course of his employment as an insurance agent or a real estate agent. The problem is unlikely to arise in the case of those persons referred to in CPA 3(1)(b).

8.18 In our view, lawyers must be dealt with somewhat differently. A barrister and solicitor in the practice of his profession should be exempt from the Act except for sections 4(3.1), 13.1, 13.4 and 23. These sections apply to all persons, and we see no reason why they should not apply to lawyers as well. We would not apply to lawyers the Administrator's

power to issue cease and desist orders under sections 13.5 or 13.6 because such instructions can more effectively emanate from the Law Society in the exercise of its general power to discipline lawyers under the Legal Profession Act.

8.19 We do not think that CPA 19 and 20, which allow the Administrator to investigate the affairs of a person collecting debts and to get a court order authorizing him to examine and seize records, should apply to lawyers. This recommendation is not for the protection of lawyers but to preserve the confidentiality and privilege of information given to them by their clients.

8.20 Sections like CPA 13, which apply only to collection agencies and collectors, should not apply to lawyers for the reason set out in paragraph 8.17. The result is our proposed subsection 3(2).

8.21 The exemption of lawyers from most of the Act should extend to professional corporations permitted to practise law pursuant to the Legal Profession Act. There is no reason for the exemption to apply to lawyers' management companies. Section 3(3) is proposed to accomplish this result.

8.22 In view of the enactment of Bill 52, the 1984 amendments to the Real Estate Agents' Licensing Act, we propose to delete any reference in our section 3(1)(c) to real estate salesmen. If legislation regarding the licensing of insurance agents is changed, as was suggested in the Speech from the Throne to the spring session of the Legislature in 1984, then it may be necessary to review our proposed section 3 in light of such changes.

8.23 Recommendation 17. We recommend that CPA 3 be repealed and replaced by the following:

> 3(1) This Act, except sections 4(3.1), 13.1, 13.4, 13.5, 13.6, 14, 19, 20 and 23, does not apply
>
> (a) to an insurer, agent, adjuster or broker licensed under the Insurance Act or to his employees acting in the regular course of their employment,
>
> (b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the Bankruptcy Act (Canada), the Business Corporations Act, the Canada Business Corporations Act, the Companies Act, the Judicature Act or the Winding-up Act (Canada) or a person acting under a debenture or the order of any court, or
>
> (c) to a real estate agent licensed under the Real Estate Agents' Licensing Act or to his employees acting in the regular course of their employment.
>
> (2) This Act, except sections 4(3.1), 13.1, 13.4 and 23, does not apply to a barrister and solicitor in the practice of his profession.
>
> (3) In section 3(2), "barrister and solicitor" includes a professional corporation which is permitted to practise law pursuant to the Legal Profession Act.
>
> (4) This Act or any provision of this Act does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Act or that provision.

b. Collection Agencies or Collectors as Assignees

8.24 CPA 13(2) presently provides as follows:

> (2) Subsection (1) applies to a collection agency or collector notwithstanding that he is collecting or attempting to collect a debt that has been assigned to him by a creditor.

The section reflects the intention to erase in part the distinction between the agency which collects purely as agent,

and the agency which takes an assignment of the debt and then collects as assignee.

8.25 Other Canadian jurisdictions have gone further in this direction than has Alberta. Subsection 2(b) of the Saskatchewan Collection Agents Act[66] defines the term "collection agent" to include "a person who takes an assignment of a debt or debts due at the date of assignment from a specified debtor or debtors." Compare section 1 of the British Columbia Debt Collection Act[67] which defines "collection agent" to mean a person who for remuneration

> (e) carries on the business of, or represents to another person that he is available to carry on the business of, taking an assignment of a debt due to another for the purpose of collecting, negotiating payment of, or demanding payment of it.

Section 13 of the same Act prohibits an unlicensed collection agent from collecting a debt extrajudicially or by court action "on behalf of, or as assignee of" another person.

8.26 In British Columbia and Saskatchewan, the collection agency which takes assignments of debts is subject to all the provisions of the legislation, including the requirement to be licensed. In Alberta, the definitions of collection agency and collector do not extend (at least expressly) to the person who takes assignments of debts. CPA 13(2) is much more restricted as it simply extends the list of prohibited practices in CPA 13(1) to a collection agency or a collector attempting to collect a debt that has been assigned to him by a creditor.

8.27 In paragraphs 2.5 - 2.6, we observed that assignments of debts for the purpose of collection are apparently uncommon,

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66 R.S.S. 1978, c. C-15.

67 R.S.B.C. 1979, c.88.

although it is not uncommon for creditors to assign finance contracts to acceptance or finance companies well before the first payment is due. The inclusion of the words "due at the date of assignment" in the Saskatchewan definition is intended to discriminate between these two cases. CPA 13(2) does not draw this distinction. In this sense, the Alberta section is broader than the Saskatchewan legislation.

8.28 We do not in this report want to make recommendations on the definition of "collection agency" because we have restricted our examination of the CPA to those sections which affect abusive collection practices. However we do want to consider whether sections 13 and 13.2 should apply to collection agencies which are assignees of the debts sought to be collected.

8.29 The argument for CPA 13(2) is that our proposed amendments create one set of rules for collection agents and collectors in sections 13 and 13.2 and a second, less strict set of rules for other people in sections 13.1 and 13.4. Agencies or collectors who want to evade the stricter rules applicable to themselves may try to take sham assignments of the debts for the purpose of collection, and then masquerade as creditors. The motivation behind CPA 13(2) appears to be the fear that collection agencies will engage in wholesale sham assignments to avoid the restrictions of CPA 13. We heard of no such abuses in Alberta, although there is some evidence of this practice in British Columbia.[68]

8.30 In our consideration of the problem, we distinguish four cases:

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68 See Valley Credits Ltd. v. Key (1977) 75 D.L.R. (3d) 281 (B.C. Prov. Ct.)

(1) A debt is assigned to a debt collection agency solely to facilitate collection by the agency on behalf of the assignor.

(2) An assignee purchases a debt and takes an assignment so that he may collect it for his own use.

(3) A creditor takes from his debtor an assignment of book debts, and later has to collect the book debts in order to realize upon that security.

(4) A contract involving a debt is financed by a finance company, and the obligation is assigned to it.

8.31 We conclude that the stricter list of prohibited practices applicable to collection agencies should also apply to the assignee in case number 1 but in none of the others. Cases 2, 3 and 4 involve genuine and not sham assignments in which the assignee becomes the creditor of the debtor. The assignee is still governed by sections 13.1 and 13.4 of our proposed amendments. Only in case 1 should the law look behind the assignment and treat the assignee as a collection agency, despite the paper which has changed hands.

8.32 In the light of this analysis, CPA 13(2) is too wide because it would appear to embrace all four cases, so long as the assignee fits the definition of a "collection agency" in CPA 1(b). The Saskatchewan section referred to above, while better, could still catch case (2) and sometimes case (3). We therefore propose that CPA 13(2) be repealed and that section 13.3 be enacted which will draw a more precise line between collection agencies collecting the debts of others on the one hand, and persons collecting their own debts on the other.

8.33 Recommendation 18. We recommend the addition to the CPA of section 13.3 which provides:

> 13.3 Sections 13 and 13.2 apply to a collection agency or collector, notwithstanding that he is collecting or attempting to collect a debt that has been assigned to him by a creditor, where the debt is assigned solely to facilitate collection by the assignee on behalf of the assignor.

8.34 Recommendation 19. We recommend the repeal of CPA 13(2).

## c. Sanctions

### (1) Sanctions in CPA and Bill 89

8.35 The success or failure of the legislation recommended in this report will turn on the effectiveness of its enforcement machinery. We will first look at the sanctions contained in the Collection Practices Act and in Bill 89 before deciding whether we should recommend changes to the Act.

8.36 CPA 13 applies only to collection agencies and collectors. The sanctions for breach of that section are three in number:

(1) CPA 23(1) makes it an offence to contravene CPA 13. There is a fine up to a maximum of $500. The Administrator informs us that charges are rarely laid under this section.

(2) CPA 13(4) provides that, where a collection agency or collector is contravening or has contravened a provision of the Act,

> the Administrator may issue an order directing that collection agency or collector, as the case may be, to
>
> (a) stop engaging in any practice that is described in the order, and
>
> (b) take any measures specified in the order that, in the opinion of the Administrator, are necessary to ensure that this Act or the regulations will be complied with, within the time specified in the order.

(3) The third and most potent sanction lies in the Administrator's control over the licensing machinery. CPA 15 provides that the Administrator may refuse to issue or renew a licence, inter alia, on the grounds that

> the applicant or one or more of the partners, directors or employees of the applicant or licensee
> .....
> (b) refuses or neglects to comply with any provision of this Act or the regulations or an order made under this Act, or
>
> (c) is not, in the opinion of the Administrator, a financially responsible person or if his record of past conduct is such that the Administrator considers it in the public interest to refuse to issue or renew a licence or to cancel or suspend the licence.

CPA 16 provides for an appeal from the Administrator's decision. Licences are required to be renewed at the beginning of each calendar year under CPA 18.

8.37 The combined effect of CPA 15 and 18 is that the Administrator can (and, we are satisfied, does) exercise a continuing supervision over the licensed collection agents and collectors of the province.[69] If the Administrator receives a complaint, investigates it and then gives instructions to the agency or collector about the instant case or about future conduct, those instructions carry considerable force because of the implicit threat to the all-important collection licence.

8.38 Sanctions 1 (prosecution) and 3 (suspension of licence) are common in other Canadian statutes, while sanction 2 (cease and desist order) is more often found in American legislation. Another American remedy which has been adopted in four Canadian jurisdictions (but not Alberta) is to give the debtor a cause of

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69 See also CPA 19-20.

action for damages against the collection agency. We will say more below about the idea of a civil sanction in Alberta.

8.39 There is another peculiar section in the Collection Practices Act which should be mentioned. CPA 20 empowers the Administrator to investigate the affairs of a person who collects debts for himself or others, and to obtain without notice a court order allowing the Administrator to enter the person's business premises and to examine and seize records, which may then be used in evidence against the person.

8.40 CPA 20 appeared in roughly the same form in Bill 89 as section 21. The reference in subsection (1) to a person "engaged in the business of collecting debts on his own behalf" made sense in the Bill because of the presence of section 14, which applied to the conduct of such persons. The reference should have been removed when section 14 was removed. That revision did not occur, with the result that CPA 20 today in part at least makes no sense. If our proposed list of prohibited practices which applies to all people is adopted, then CPA 20 will make sense again. If, however, the list of prohibitions remains limited to collection agencies and collectors, then CPA 20 should be redrafted to reflect that intention.

8.41 Bill 89 contained a list of prohibitions directed to everyone, and the draftsman therefore had to include enforcement mechanisms which could be effective against people other than licensed agencies and collectors. Against those people, the Bill contained two sanctions:

(1) The counterpart of CPA 23(1) made it an offence to contravene section 14. The fine was not more than $500.

(2) Subsections 14(2 and 3) of Bill 89 provided for cease and desist orders against people violating subsection 14(1).

8.42 Bill 89 did not of course impose any licence requirement on persons other than agencies and collectors, nor did it provide for a civil sanction.

(2) Licensing

8.43 We think that the Administrator's supervision over licensed agencies and collectors, including his power to refuse licences, should continue, and we make no proposals for change to those sections. The real problem flows from our recommendations to control collection practices of people other than licensees. We keep those proposals in mind in the discussion which follows.

(3) Prosecution

8.44 We think that the prosecution sanction set out in CPA 23 should continue but that it should be broadened to cover breaches of our proposed sections 13.1, 13.2, 13.3 and 13.4. We urge the Government to consider raising the maximum fine of $500 to reflect the inflation which has occurred since 1978 as well as the serious nature of this legislation. We also note that the prosecution sanction is relatively more important against persons who have committed an offence under sections 13.1 or 13.4 but who do not have to be licensed and are therefore not subject to the licensing sanction. We therefore propose an amendment to CPA 23(1)(a). We also recommend that the government should review the maximum fine, although we do not propose a new dollar amount.

8.45 Recommendation 20. We recommend that CPA 23(1) be amended by repealing clause (a) and substituting the following:

(a) contravenes section 4, 13, 13.1, 13.2, 13.3 or 13.4.

8.46 Recommendation 21. We recommend that, in light of the inadequacy of the maximum fines in section 23, the government should consider raising them to a more appropriate amount.

### (4) Cease and Desist Orders

8.47 As to cease and desist orders, we think that the substance of CPA 13(4) should continue but in a separate section. We also recommend that subsection 14(2) of Bill 89 should be made part of our proposed amendments. In both cases, we think that there should be a right of appeal to a Queen's Bench judge who should have an unfettered discretion to set aside the cease and desist order. We therefore propose sections 13.5 and 13.6.

8.48 The penalty for failing to comply with a cease and desist order is set out in CPA 23(1)(b). We think that the present section should be modified to fit with our earlier recommendations and also to limit the offence to a knowing failure to comply. We have proposed a redrafted CPA 23(1)(b) to reflect these ideas.

8.49 Recommendation 22. We recommend the repeal of CPA 13(4).

8.50 Recommendation 23. We recommend the addition to the CPA of sections 13.5 and 13.6 which provide:

> 13.5(1) When, in the opinion of the Administrator, a person is contravening or has contravened any provision of this Act or the regulations, the Administrator may issue an order directing that person to
>
> (a) stop engaging in any practice that is described in the order, and
>
> (b) take any measures specified in the order that, in the opinion of the Administrator, are necessary to ensure that this Act or the regulations will be complied with, within the time specified in the order.

(2) A copy of the order shall be served on the person to whom the order is directed.

13.6 (1) A person to whom an order under section 13.5 is directed may appeal from the order to a judge of the Court of Queen's Bench in chambers at any time within 6 months after the date of the service of the order of the Administrator on him.

(2) Notice of the appeal shall be filed in an office of the Court of Queen's Bench and a copy thereof served on the Administrator within the required time.

(3) The Administrator, after the service of notice of appeal and on request, shall file in an office of the Court of Queen's Bench and furnish to the appellant a copy of all documents required for the consideration of the judge.

(4) An appeal does not operate as a stay of proceedings under the order being appealed except as ordered by the Court of Queen's Bench.

(5) The judge shall consider the documents and evidence before him, and may receive further evidence by oral examination or by affidavit.

(6) The judge may direct a trial to determine all or any of the matters in issue.

(7) The judge on the hearing of the appeal may

(a) confirm the order of the Administrator,
(b) set aside or modify the order of the Administrator, or
(c) make any other order that seems just to him,

and award costs in his discretion.

8.51 Recommendation 24. We recommend that CPA 23 (1) be amended by repealing clause (b) and substituting the following:

(b) knowingly fails to comply with an order issued under section 11(2) or section 13.5.

(5) Civil Sanction

8.52 Several Canadian and American jurisdictions have enacted legislation permitting a debtor to bring a civil action for damages for breach of statutes like the CPA. I.D.C. Ramsay has made a similar proposal to the Institute[70]. In order to assess the merits of the civil sanction, we will first look at existing examples of this type of provision, and then consider its usefulness for Alberta.

8.53 Section 20 of the British Columbia Debt Collection Act[71] provides:

> 20. Where a debtor has suffered loss, damage or inconvenience as a result of a contravention of this Act or the regulations, he has a cause of action against the person who contravened this Act or the regulations and is entitled, if the court finds that he has suffered loss, damage or inconvenience, to a judgment for the damages suffered or $100, whichever is greater.

The section was added to the Debt Collection Act against the recommendation of the British Columbia Law Reform Commission in its 1971 report. The Commission's discussion is a useful account of the alternatives. It is as follows[72]:

> 75. The Commission has considered the desirability of recommending that, in addition to penal sanctions, violation of the recommended prohibitions should be attended by civil consequences as well. Three possibilities were canvassed--
>
> (a) That a violation of the harassment provisions should be made a tort, actionable without proof of damage:
>
> (b) That violations should constitute a complete defence to any action on the debt, subject to the

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70 Ramsay, Debt Recovery in Alberta: Proposals for Reform, (May, 1982) 32 (an unpublished study prepared for the Institute).

71 R.S.B.C. 1979, c. 88.

72 B.C. Report, supra, note 8, at p. 24.

discretion of the Court to order otherwise in appropriate cases:

(c) The adoption of a provision analogous to section 102(1) of the Manitoba Consumer Protection Act, 1970. After careful consideration, however, the Commission has decided against recommending the imposition of civil liability. The short ground for this conclusion is the Commission's opinion that the effectiveness of the penal sanction should be tested before more elaborate civil consequences are applied.

8.54 Despite this negative recommendation, section 20 was added to the British Columbia Debt Collection Act in 1975[73] and has not been amended subsequently.

8.55 The analogous Manitoba provision, section 102 of the Consumer Protection Act[74], is as follows:

> Section 102. Penalty for wrongful collection.--(1) Where a collection agent, or a creditor, or any other person, charges a debtor with any amount that is not rightfully collectible from the debtor by reason of any provision of section 100, the debtor may
>
> (a) if the amount has been paid by the debtor, recover from the creditor an amount equal to three times the amount of the charge as a debt due to the debtor; or
>
> (b) if the amount has not been paid or partly paid, set-off an amount equal to three times the amount of the charges against the amount rightfully owing to the creditor and, if the amount of the set-off is greater than the amount rightfully owing, recover the excess from the creditor as a debt due to the debtor.

The Yukon Territory has a provision almost identical to that of Manitoba.[75] The Quebec Debt Collection Act also provides for a civil action for damages.[76]

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73 Attorney General Statutes Amendment Act, 1975, S.B.C. 1975, c.4, s.4. The section passed without debate or comment, at least as revealed by Hansard.

74 C.C.S.M., c. C200.

75 See Consumers' Protection Ordinance, R.O.Y.T. 1971, c.C-13, s.73(1).

76 S.Q. 1979, c.70, ss.49-50.

8.56 Professor Dunlop wrote letters to officials of the British Columbia Consumer and Corporate Affairs Department and to others regarding the effectiveness of section 20. From the responses, it appears that the section has proved to be a successful addition to the controls on excessive debt collection practices. There are two reported cases in which the provision has been considered. In Bowman v. Valley Credits Ltd.,[77] a provincial court judge awarded $100 to the plaintiff who had been the subject of improper debt collection demands, especially as he owed nothing to the creditor and had apparently been mistaken for the true debtor. Our informants suggest that there have been other unreported cases in which the section has been applied or at least used as a threat to induce agencies and collectors to stop collection attempts which are prohibited by the Act. The section was also applied in Traill v. Yellow Line Towing.[78]

8.57 We also wrote to the Minister of Consumer and Corporate Affairs, Government of Manitoba, who informed us of three instances known to the Government in which section 102 of the Manitoba Act had been invoked.

8.58 An American statute which has been effective (perhaps too much so) is the Federal Truth-In-Lending Act, passed in 1969.[79] It provides for a scheme of disclosure of the true annual percentage rate of interest in certain transactions. Any creditor failing to make the required disclosures is liable to the consumer in an amount equal to twice the finance charge, but in no case less than $100 or more than $1,000. Creditors have complained that the Truth-In-Lending Act has resulted in numerous actions for technical breaches, a complaint which resulted in substantial modifications to the Act in 1980.

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77 (1978) 8 B.C.L.R. 1 (B.C. Prov. Ct.).

78 (1980) 9 M.V.R. 110 (B.C. Prov. Ct.).

79 15 U.S.C.S., s. 1601.

8.59 As a result of the experience with the Truth-In-Lending Act, the Fair Debt Collection Practices Act adopted a different form of civil remedy. FDCPA 1692k provides in part as follows:

> (a) Amount of damages. Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of--
>
> (1) any actual damage sustained by such person as a result of such failure;
>
> (2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or
>
> (B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector.
>
> .....
>
> (b) Factors considered by court. In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors--
>
> (1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or
>
> (2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

The debt collector has defences for (i) unintentional and bona fide error, and (ii) good faith reliance on an advisory opinion of the Federal Trade Commission. There has been much less reported litigation under FDCPA than under TILA.

8.60 Commentators on FDCPA 1692k argue that debtors will find it difficult to establish actual damages under s. 1692k(a)(1) and that the success of the statute as a deterrent will depend on the willingness of the courts either to relax the standard of proof of actual damages or to grant additional damages under s. 1692k(a)(2). It has been argued that few debtors are likely in the absence of a minimum dollar recovery to sue under FDCPA

with the result that the fear of civil action, taken alone, is unlikely to deter debt collectors.

8.61 There are forceful arguments for the creation of a civil cause of action. A criminal prosecution or licence suspension does not of itself make good the actual loss inflicted upon a debtor or alleged debtor by abusive debt collection practices, nor does it compensate him for embarrassment and for injury to his feelings. If he has a civil cause of action a debtor may look after himself rather than looking to government to do so, and it will give him recourse if an under-staffed or unduly cautious public service should refuse to take action. From the point of view of a collection agency or a collector, it might even be better to be faced with a comparatively minor sanction rather than with the possibility of losing its licence or being subjected to what amounts to a criminal prosecution; and if the offender is not a collection agency, there is no licence to revoke and a criminal sanction is rarely used and may not be sufficient.

8.62 We have, however, though not unanimously, decided that we should recommend against the creation of a new civil cause of action. First, our proposals would provide an administrative machinery which would in general protect debtors much more effectively than would a right to undertake the trouble and expense of going to court. Second, it seems to us unfair to do so; debt collectors and creditors would be subjected both to a system of administrative regulation with the possibility of criminal sanctions and (in the case of collection agencies and collectors) loss of licence, and to a system of self-help by debtors, and this seems to us, at least on present evidence, to be too much regulation. Third, while we think that the relative precision and simplicity of the rules which we recommend would mean that the experience under the American Truth in Lending Act

would not be precisely repeated in Alberta, the creation of a new civil cause of action for which damage would not have to be proved (and anything less would not give the debtor an efficient remedy) would, a majority of us think, expose debt collectors and creditors to the possibility of nuisance claims. Fourth, at least some of our members think that there should be a unified philosophy behind whatever measures are adopted, and that a mixture of government regulation and self-help would cause confusion and should not be applied.

8.63 Whatever decision is made about the creation of a new civil cause of action, we think that the Act should give clear effect to the decision so that those affected by it will not have to engage in expensive and uncertain litigation to determine whether or not it creates one. In view of our recommendation, we propose recommendation 25, which will make it clear that no civil cause of action is created by sections 13, 13.1, 13.2, 13.3, 13.4, 13.5 or 13.6. We propose that CPA 25(2) be modified to provide that nothing in the Act will interfere with the development of other legal principles by the courts.

8.64 Recommendation 25. We recommend that CPA 25(2) be repealed and replaced by the following:

> (2) Nothing in sections 13, 13.1, 13.2, 13.3, 13.4, 13.5 or 13.6 creates a civil cause of action.
>
> (3) Except as expressly provided in this Act, nothing in this Act restricts, limits or derogates from any cause of action or remedy that a person has at common law or by statute.

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W.F. BOWKER
J.W. BEAMES
C.W. DALTON
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W.H. HURLBURT
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D.B. MASON
R.S. NOZICK
R.M. PATON

CHAIRMAN

DIRECTOR

June, 1984

## Part III. Proposed Legislation

### Collection Practices Amendment Act, 1983

### Chapter 1

Her Majesty, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. The Collection Practices Act is amended by this Act.

2. Section 3 is repealed and replaced by the following:

3(1) This Act, except sections 4(3.1), 13.1, 13.4, 13.5, 13.6, 14, 19, 20 and 23, does not apply

(a) to an insurer, agent, adjuster or broker licensed under the Insurance Act or to his employees acting in the regular course of their employment,

(b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the Bankruptcy Act (Canada), the Business Corporations Act, the Canada Business Corporations Act, the Companies Act, the Judicature Act or the Winding-up Act (Canada) or a person acting under a debenture or the order of any court, or

(c) to a real estate agent licensed under the Real Estate Agents' Licensing Act or to his employees acting in the regular course of their employment.

(2) This Act, except sections 4(3.1), 13.1, 13.4, and 23, does not apply to a barrister and solicitor in the practice of his profession.

(3) In section 3(2), "barrister and solicitor" includes a

professional corporation which is permitted to practise law pursuant to the Legal Profession Act.

(4) This Act or any provision of this Act does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Act or that provision.

3. Section 4 is amended as follows:

(a) by repealing subsection (3) and substituting the following:

> (3) No collection agency or collector shall employ, authorise or use the services of a collection agency or collector who is not licensed under this Act where the services are to be performed in Alberta.

(b) by adding the following after subsection (3):

> (3.1) No person other than a collection agency or a collector shall knowingly employ, authorize or use the services of a collection agency or a collector who is not licensed under this Act where the services are to be performed in Alberta.

Comments

1. Subsection 4(3) is self-explanatory. The terms "collection agency" and "collector" are defined in section 1 of the Act.

2. The purpose of subsection 4(3.1) is to extend the policy of subsection 4(3) to the situation where a person other than a collection agency or a collector employs or uses an unlicensed collection agency or collector, as those terms are defined in CPA 1. The effect of the insertion of the word "knowingly" in subsection 4(3.1) but not in subsection 4(3) is that subsection 4(3.1) creates a mens rea offence whereas subsection 4(3) creates a strict liability offence.

4. Section 5(1)(e) is repealed.

5. Section 7(1)(d) is repealed.

6. Section 13(1) is amended

(a) by repealing clauses (b), (e) and (f);

(b) by adding the following after clause (j):

(k) if a collection agency, falsely represent to the debtor or to any other person the status or powers of the collection agency, or the services rendered by it,

(l) if a collector, falsely represent to the debtor or to any other person the status or powers of his employer or himself, or the services rendered by his employer or himself.

7. Section 13(2) is repealed.

8. Section 13(3) is repealed and replaced by the following:

(3) The Administrator may refuse to approve any form of agreement that he considers to be objectionable.

9. Section 13(4) is repealed.

Comment

1. The preamble to CPA 13(1) makes it clear that the subsection applies only to collection agencies and collectors, as those terms are defined in CPA 1.

2. CPA 13(1) (e and f), repealed by the above section, are replaced in part by CPA 13.2.

3. CPA 13(1) (k and l) apply only to false representations. The clauses are intended to apply to all

false representations, whether the person making the representation is aware of the falsity or not.

4. The repealed CPA 13(2) is replaced in part by CPA 13.3.

5. The new CPA 13(3) is what remains of the old subsection after the elimination of any reference to "forms" and "forms of letters." We have deleted CPA 13(3)(a-c) because those clauses appear to have reference only to form letters. If they also refer to forms of agreement, they should be put back into CPA 13(3).

6. The repealed CPA 13(4) is replaced by CPA 13.5 and 13.6.

10. The following is added after section 13:

13.1 No person, in collecting or attempting to collect a debt or in obtaining or attempting to obtain information about a debtor, shall

(a) use or threaten to use violent or other criminal means to cause harm to the person, reputation or property of the debtor or any other person,

(b) accuse or threaten to accuse falsely any person of fraud, crime or conduct which, if true, would tend to disgrace a person or to subject him to ridicule or the contempt of society,

(c) make or attempt to make telephone calls or personal calls with such frequency as to constitute abuse or oppression of the debtor, his spouse or any member of his family,

(d) send a telegram or make a telephone call to a debtor for which the telegraph or telephone charges are payable by the addressee of the telegram or the person to whom the telephone call is made,

(e) represent that, failing payment, the debtor is liable to arrest or criminal proceedings,

(f) use or distribute any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by

(i) a court,

(ii) the federal government, a provincial government or a municipal government, or a department or agency of a government,

or

(iii) a lawyer,

(g) falsely hold himself out, by implication or otherwise, as being employed by or representing or being affiliated or associated with

(i) a court,

(ii) the federal government, a provincial government or a municipal government, or a department or agency of a government,

or

(iii) a lawyer,

(h) threaten that he, the collection agency, the creditor or an assignee of the debt from the creditor will take any action which he knows or ought reasonably to know cannot legally be taken.

Comment

1. The preamble to CPA 13.1 makes it clear that the subsection applies to all people, whether collecting debts for others or for themselves.

2. The preamble to CPA 13.1 also makes it clear that the section applies both to debt collection and to the gathering of information about the debtor.

3. CPA 13.1(b) prohibits only false accusations or the threat to make false accusations.

4. The critical element of the offence created by CPA 13.1(c) is the frequency of the calls. One abusive call would not be a breach of CPA 13.1(c), although it might infringe other clauses in the Act.

5. CPA 13.1(e) applies to true or false representations.

6. CPA 13.1(f) is not intended to repeal or modify section 38 of the Judicature Act.

7. In both CPA 13.1(f) and 13.1(g), the gravamen of the offence is the falsity of the document or the representation.

8. The offence created by CPA 13.1(h) is limited by the requirement that the person who makes the threat must know or ought reasonably to know that the action which is threatened cannot legally be taken. The standard of reasonableness may vary according to the experience of the spokesman. CPA 13.1(h) is broad enough to cover the case of the collector who asserts the creditor's intention to take an unlawful action, as well as the assertion by the collector of his own intention to act unlawfully.

13.2 No collection agency or collector shall collect or attempt to collect a debt from the debtor unless he has told the debtor

(a) the name of the collector,

(b) the name of the collection agency that employs or authorizes him to act as a collector, as that name appears on the collection agency licence, and

(c) the name of the creditor whose account is being collected, or the name of the assignee of the debt from the creditor.

Comment

1. CPA 13.2 is limited to collection agencies and collectors, as those terms are defined in CPA 1.

2. CPA 13.2 applies to debt collection and not to the activity of obtaining or attempting to obtain information about a debtor.

13.3 Sections 13 and 13.2 apply to a collection agency or collector, notwithstanding that he is collecting or attempting to collect a debt that has been assigned to him by a creditor, where the debt is assigned solely to facilitate collection by the assignee on behalf of the assignor.

13.4(1) No person shall, in collecting or attempting to collect a debt, communicate or attempt or threaten to communicate with the employer of the debtor or with any other employees of the debtor's employer.

(2) Subsection (1) does not apply to a communication or to an attempted or threatened communication which

(a) occurs or will occur through a legal action or process, including a demand on a valid assignment of the wages of the debtor, or

(b) is for the sole purpose of verifying the debtor's employment or obtaining his address or telephone number.

Comment

1. CPA 13.4 applies to all persons, whether collecting their own or other people's debts, but is restricted to debt collection.

2. CPA 13.4 does not extend to the activity of obtaining or attempting to obtain certain information about a debtor.

13.5(1) When, in the opinion of the Administrator, a person is contravening or has contravened any provision of this Act or the regulations, the Administrator may issue an order directing that person to

(a) stop engaging in any practice that is described in the order, and

(b) take any measures specified in the order that, in the opinion of the Administrator, are necessary to ensure that

this Act or the regulations will be complied with, within the time specified in the order.

(2) A copy of the order shall be served on the person to whom the order is directed.

13.6(1) A person to whom an order under section 13.5 is directed may appeal from the order to a judge of the Court of Queen's Bench in chambers at any time within 6 months after the date of the service of the order of the Administrator on him.

(2) Notice of the appeal shall be filed in an office of the Court of Queen's Bench and a copy thereof served on the Administrator within the required time.

(3) The Administrator, after the service of notice of appeal and on request, shall file in an office of the Court of Queen's Bench and furnish to the appellant a copy of all documents required for the consideration of the judge.

(4) An appeal does not operate as a stay of proceedings under the order being appealed except as ordered by the Court of Queen's Bench.

(5) The judge shall consider the documents and evidence before him, and may receive further evidence by oral examination or by affidavit.

(6) The judge may direct a trial to determine all or any of the matters in issue.

(7) The judge on the hearing of the appeal may

(a) confirm the order of the Administrator,
(b) set aside or modify the order of the Administrator, or
(c) make any other order that seems just to him,

and award costs in his discretion.

11. Section 23(1) is amended

(a) by repealing clause (a) and substituting the following:

(a) contravenes section 4, 13, 13.1, 13.2, 13.3 or 13.4.

(b) by repealing clause (b) and substituting the following:

(b) knowingly fails to comply with an order issued under section 11(2) or section 13.5.

Comment

1. The effect of CPA 23(1)(b) as amended is to limit that offence to a knowing failure to comply.

12. Section 25(2) is repealed and replaced by the following:

(2) Nothing in sections 13, 13.1, 13.2, 13.3, 13.4, 13.5 or 13.6 creates a civil cause of action.

(3) Except as expressly provided in this Act, nothing in this Act restricts, limits or derogates from any cause of action or remedy that a person has at common law or by statute.

Comment

1. The intent of CPA 25(2) is to provide that nothing in the named sections, taken alone, creates a new cause of action.

2. The new CPA 25(3) is an expanded version of the old CPA 25(2). It provides that the Act is not intended to affect rights otherwise conferred by law, or the development of those rights by the courts.

APPENDIX A

BILL 89

1977

# THE COLLECTION PRACTICES ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act,

(a) "Administrator" means the Administrator of Collection Practices appointed under section 2;

(b) "collection agency" means a person, other than a collector, who carries on the business

(i) of collecting or attempting to collect debts for other persons,

(ii) of collecting or attempting to collect debts under any name which differs from that of the creditor to whom the debt is owed,

(iii) of offering or undertaking to act for a debtor in arrangements or negotiations with his creditors or receiving money from a debtor for distribution to his creditors in consideration of a fee, commission or other remuneration that is payable by the debtor,

(iv) of offering or undertaking to act for a creditor in realizing on any security given to the creditor for a debt, or

(v) of selling or offering to sell any collection system, device or scheme intended or calculated to be used to collect debts;

(c) "collector" means a person employed or authorized by a collection agency to

(i) collect or attempt to collect money,

(ii) solicit business,

(iii) realize on a security, or

(iv) deal with or locate debtors,

for a collection agency;

(d) "Court" means the Supreme Court of Alberta or the District Court of Alberta;

(e) "Minister" means the Minister of Consumer and Corporate Affairs.

2(1) In accordance with *The Public Service Act* there may be appointed an Administrator of Collection Practices and such other persons as may be necessary for the administration of this Act.

(2) Where the Administrator is given any power or duty under this Act or the regulations, he may authorize one or more persons to exercise or perform that power or duty upon such conditions or in such circumstances as the Administrator prescribes.

3(1) This Act, except sections 14, 15, 21 and 25, does not apply

(a) to an insurer, agent, adjuster or broker licensed under *The Alberta Insurance Act* or to his employees acting in the regular course of their employment,

(b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy Act* (Canada), *The Companies Act*, *The Judicature Act* or the *Winding-up Act* (Canada) or a person acting under a debenture or the order of any court,

(c) to a real estate agent or salesman licensed under *The Real Estate Agents' Licensing Act* or to his employees acting in the regular course of their employment, or

(d) to any person or a member of any class of persons designed in the regulations as exempt persons.

(2) This Act does not apply to barristers and solicitors in the practice of their profession.

4(1) No person shall carry on the business of a collection agency unless he is the holder of a collection agency licence issued under this Act.

(2) No person shall act as a collector for a collection agency unless he is the holder of a collector's licence issued under this Act.

(3) No collection agency shall employ or authorize any person as a collector unless that person is the holder of a collector's licence.

(4) No person shall

(a) advertise himself, or

(b) hold himself out,

as a collector or as carrying on the business of a collection agency unless he holds a collector's licence or a collection agency licence, as the case may be.

5(1) An application for a collection agency licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) an affidavit made by or on behalf of the applicant in the form prescribed by the Minister,

(d) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts,

(e) copies of forms and forms of letters that the collection agency uses or proposes to use in making demands for the collection of debts, and

(f) any other information required by the regulations.

(2) An application for a collector's licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) an affidavit made by or on behalf of the applicant in the form prescribed by the Minister,

(d) a letter from a collection agency stating that the applicant will be employed or authorized by the agency to act as a collector, and

(e) any other information required by the regulations.

(3) A licence shall not be issued to any person until there is deposited with the Administrator security in the amount and form prescribed by the regulations.

(4) The Administrator may exempt any collection agency that carries on business of the kind described in section 1(b)(ii) from the requirements of subsection (3).

6(1) Where a security filed under section 5(3) is terminated or returned, the licence of the collection agency is suspended and remains suspended until the collection agency files with the Administrator a new security and receives notification from the Administrator that the security is acceptable.

(2) The licence of a collector

(a) is cancelled upon his ceasing to be employed or authorized by a collection agency to act as a collector, and

(b) is suspended or cancelled, as the case may be, upon the suspension or cancellation of the collection agency licence of the collection agency that employed or authorized him to act as a collector.

7(1) An application for renewal of a collection agency licence shalll be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts, and

(d) copies of forms and forms of letters that the collection agency uses or proposes to use in making demands for the collection of debts.

(2) An application for a renewal of a collector's licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by the licence fee and security, if any, prescribed by the regulations.

(3) Where the holder of a collection agency licence or a collector's licence has applied for renewal of his licence and forwarded the security and fee prescribed by the regulations within the time prescribed by the Minister, or, if no time is prescribed, before the expiry of his licence, his licence continues

(a) until the renewal licence is issued, or

(b) where he is served with notice that the Administrator refuses to grant the renewal, until the time for serving notice under section 18 of an appeal from the refusal has expired, or, where a notice of appeal is served on the Minister, until the appeal is concluded or the appeal is withdrawn.

8 The holder of a collection agency licence shall display in a conspicuous place

(a) his licence or a copy thereof at each office or place of business indicated on the licence, and

(b) the licences of collectors employed or authorized by him at the office where those persons are engaged in or carry on business as collectors.

9(1) Every collection agency shall keep proper accounting records and other records relating to his business including the following:

(a) a register of the trust accounts in which is entered all money collected or received from a debtor for distribution to the debtor's creditors;

(b) duplicates of the vouchers referred to in subsection (2).

(2) Every collection agency shall acknowledge the receipt of any money the collection agency or his collector or the employee of either of them collects or receives from a debtor for distribution to the debtor's creditors by means of consecutively numbered vouchers which shall contain in each case

(a) the date the amount is received,

(b) the name of the debtor,

(c) the name of the person for whom the collection agency acts, and

(d) the gross amount received in respect of that account.

10(1) Subject to subsection (2), a collection agency shall deposit all money collected or received from a debtor for distribution to his creditors before the expiry of 2 days following its receipt in a trust account maintained in a

(a) bank,

(b) treasury branch,

(c) trust company registered under *The Trust Companies Act*, or

(d) credit union incorporated under *The Credit Union Act*,

at an office thereof located in Alberta.

(2) Where the Administrator is of the opinion that the requirements of subsection (1) can be varied with respect to any collection agency without harm to the public interest, he may, in writing,

(a) authorize the collection agency to deposit money collected or received from a debtor for distribution to his creditors in a trust account in a financial institution or class of financial institution approved by the Administrator located outside Alberta, and

(b) prescribe the time within which money referred to in clause (a) shall be deposited.

(3) No collection agency shall withdraw money from a trust account except for the purpose of

(a) paying a creditor money received on behalf of and deposited to the credit of that creditor,

(b) paying the collection agency the commission and disbursements to which it is entitled,

(c) correcting an error caused by money being deposited in the trust account by mistake, or

(d) making a payment under subsection (6).

(4) In paying creditors money withdrawn under subsection (3)(a), a collection agency shall do so by means of consecutively numbered cheques which shall be accompanied in the case of each payment by a statement containing

(a) the date or dates on which the money was received by the collection agency,

(b) the name of the debtor,

(c) the gross amount collected,

(d) the amount of commission and disbursements retained by the collection agency,

(e) the net amount payable to the creditor, and

(f) the current balance owing by the debtor.

(5) Subject to subsection (6), a collection agency shall account for all money collected and remit the money less commission and disbursements to the person entitled thereto on or before the 20th day of the month following the month in which the money was collected.

(6) Where a collection agency is unable to locate the person entitled to money within 6 months after the money has been collected, the collection agency shall pay the money less commission and disbursements to the Provincial Treasurer in trust.

(7) The Provincial Treasurer may pay the money received under subsection (6) to the person entitled thereto upon being satisfied that the person is entitled to receive the money.

(8) Where the Provincial Treasurer does not pay the money received under subsection (6) to the person entitled thereto within 5 years from the time that the money is received by him, the money shall be paid into the General Revenue Fund.

11(1) A collection agency shall

(a) at least once a year submit his records and books to an audit by an accountant or firm of accountants acceptable to the Administrator, and

(b) provide the auditor with access to every book and record of the collection agency that, in the opinion of the auditor, is necessary to carry out his audit.

(2) The auditor shall forthwith report to the Administrator any defect or deficiency in the form or maintenance of any book or record maintained by the collection agency.

(3) Upon completion of the audit, the auditor shall report his findings to the collection agency and file one copy of the report signed by him with the Administrator.

(4) The Administrator may issue an order to the collection agency to correct any defect or deficiency in the form or maintenance of any book or record.

(5) An order made under subsection (4) must be complied with within the time specified in the order.

12 A collection agency shall maintain in Alberta all of his records, files, books, papers, documents or other things created or received while engaged in the business of a collection agency and shall continue to maintain them in Alberta for the period prescribed in

the regulations.

13(1) No collection agency or collector shall

(a) enter into any agreement with a person for whom he acts unless a copy of the form of agreement is filed with and approved by the Administrator;

(b) use any form or form of letter to collect or attempt to collect a debt unless a copy of the form or form of letter is filed with and approved by the Administrator;

(c) collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the debtor to the creditor;

(d) charge any fee to a person for whom he acts in addition to those fees provided for in the form of agreement or in the information pertaining to fees filed with the Admistrator;

(e) if a collection agency, carry on the business of a collection agency in a name other than the name in which he is licensed, or invite the public to deal anywhere other than at a place authorized by the licence;

(f) if a collector, use any name while engaged in the business of collecting debts except his true name and the name of the collection agency that employs or authorizes him to act as a collector, as that collection agency's name is shown on the collection agency's licence;

(g) collect from a debtor any amount greater than that provided by the regulations for acting for the debtor in making arrangements or negotiating with his creditors on behalf of the debtor or receiving money from the debtor for distribution to his creditors;

(h) 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 full and final settlement without the prior written approval of the creditor;

(i) fail to provide any person for whom he acts with a written report on the status of that person's account in accordance with the regulations.

(2) Subsection (1) applies to a collection agency or collector notwithstanding that he is collecting or

attempting to collect a debt that has been assigned to him by a creditor.

(3) The Administrator may refuse to approve any form that he considers to be objectionable and, without restricting the generality of the foregoing, he may refuse any form that

(a) misrepresents the rights and powers of a person collecting or attempting to collect a debt,

(b) misrepresents the obligations or legal liabilities of a debtor, or

(c) is misleading as to its true nature and purpose.

(4) Where, in the opinion of the Administrator, a collection agency or collector is contravening or has contravened any provision of this Act or the regulations, the Administrator may issue an order directing that collection agency or collector, as the case may be, to

(a) stop engaging in any practice that is described in the order, and

(b) take such measures as are specified in the order that, in the opinion of the Administrator, are necessary to ensure that this Act or the regulations will be complied with, within the time specified in the order.

14(1) No person shall, in collecting or attempting to collect a debt or locate a debtor, unreasonably oppress, harass or abuse the debtor or any other person, and without restricting the generality of the foregoing, no person shall

(a) collect or attempt to collect money in addition to or in excess of the amount payable by the debtor to the creditor;

(b) send any telegram or make a telephone call to a debtor for the purpose of demanding payment of a debt for which the telegraph or telephone charges are payable by the addressee of the telegram or the person to whom the call is made;

(c) use any name while engaged in collecting debts except his true name or the true name of the firm he represents;

(d) use any summons, notice, demand, written communication or instrument

(i) that simulates or is falsely represented

to be a document authorized, issued, used or approved by or under the authority of any law or is printed or written in the general appearance or format of such a document, and

(ii) that creates a false impression about its source, authorization or approval;

(e) falsely represent that he has information in his possession or something of value for the debtor for the purpose of soliciting or discovering information about the debtor;

(f) communicate with the debtor for the purpose of demanding payment of the debt without clearly disclosing the name of the creditor with whom the acount was incurred;

(g) threaten that non-payment of an alleged debt will result in the arrest of any person;

(h) falsely hold himself out, by implication or otherwise, as being employed by or representing or being affiliated or associated with the Government of Canada or a provincial or municipal government or a department or agency of any of those governments;

(i) falsely represent to any person the status or true nature of the services rendered by him;

(j) falsely represent that an existing obligation of the debtor may be increased by the addition of legal fees, investigation fees, service fees or any other fees or charges;

(k) make personal calls at times other than during daylight hours or of such nature or with such frequency as to cause mental anguish, fear or anxiety to the debtor or any other person;

(l) make telephone calls during the hours of midnight to 6:00 a.m. or of such nature or with such frequency as to cause mental anguish, fear or anxiety to the debtor or any other person;

(m) except in the case of a person who is a surety for the debtor, attempt to collect a debt from the debtor's relatives, friends, acquaintances or neighbours.

(2) Where, in the opinion of the Administrator, a person is engaging or has engaged in any practice referred to in subsection (1), the Administrator may issue an order directing that person to discontinue the practice specified in the order.

(3) Where

(a) the Administrator has reason to believe that a person is using a form or a form of letter to collect or attempt to collect a debt from a debtor, and

(b) the Administrator is of the opinion that the form or form of letter is objectionable on any of the grounds on which an approval may be refused under section 13(3),

the Administrator may issue an order directing that person to cease using that form or form of letter by a date specified in the order and not to use any other form or form of letter of a similar nature.

15 No person shall place an account for collection with a collection agency without first withdrawing in writing any previous placement of that account with any other collection agency.

16(1) In considering an application for a collection agency licence or a collector's licence or a renewal of either, the Administrator may make inquiries regarding

(a) an applicant for a licence or for the renewal of a licence,

(b) where the applicant is a partnership, each partner, or

(c) where the applicant is a corporation, each director.

(2) The Administrator may refuse to issue or renew the licence applied for or may suspend or cancel a licence issued under this Act where the applicant or one or more of the partners, directors or employees of the applicant or licensee

(a) makes an untrue statement or knowlingly makes a material omission in an application for a licence or renewal of a licence under this Act or in a return made or other information produced to the Administrator,

(b) refuses or neglects to comply with any provision of this Act or the regulations or an order made under this Act, or

(c) is not, in the opinion of the Administrator, a financially responsible person or his record of past conduct is such that the Administrator considers it in the public interest to refuse to issue or renew a licence or to cancel or suspend the licence.

(3) Where the Administrator refuses to issue or renew a licence or suspends or cancels a licence under subsection (2), he shall forthwith serve the applicant or licensee with notice of the refusal, cancellation or suspension.

(4) Where a licensee is served with notice that the Administrator refuses to renew his licence or has cancelled or suspended his licence under subsection (2), the licence remains in force until the time for serving notice under section 17 of an appeal from the refusal, cancellation or suspension has expired, or, where a notice of appeal is served on the Minister, until the appeal is concluded or the appeal is withdrawn.

17(1) A person who has been refused a licence or the renewal of a licence or whose licence has been cancelled or suspended under section 16 may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being served with notice of the refusal, cancellation or suspension.

(2) The Minister shall, within 30 days of being served with a notice of appeal, appoint an appeal board to hear the appeal.

(3) The Minister may prescribe the time within which the appeal board is to hear the appeal and render a decision and may extend that time.

(4) An appeal board that hears an appeal under this section may, by order, either

(a) confirm the refusal, cancellation or suspension,

(b) order that the licence or renewal of a licence be issued,

(c) reinstate the cancelled licence, or

(d) remove or vary the suspension.

(5) An appeal board appointed under this section shall consist of the following members:

(a) a person (who is not the Administrator, a representative of the Administrator or a person registered under this Act), who is designated as chairman of the appeal board by the Minister, and

(b) not less than 2 or more than 4 other persons who are persons licensed under this Act.

(6) The minister may pay those fees and reasonable

living and travelling expenses that he considers proper to the members of an appeal board.

(7) A person whose appeal is heard by an appeal board, or the Administrator, may appeal the decision of the appeal board by filing an originating notice with the Supreme Court of Alberta within 30 days of being notified in writing of the decision, and the court may make any order that an appeal board may make under subsection (4).

18 A document or other notice under this Act may be served on a collection agency or collector by leaving it at or by sending it by registered mail to the address shown on the collection agency or collector's licence.

19 A licence issued pursuant to this Act expires on the 31st day of December of the year in which it is issued unless the licence has been previously cancelled.

20 Where the Administrator receives a complaint in respect of any matter which pertains to this Act or has reason to believe that a contravention of the Act has taken place, he may inquire into the complaint or alleged contravention and require in writing from any person such information as he considers to be relevant to the inquiry.

21(1) The Administrator may inquire into and examine the affairs of any person whom he has reason to believe is engaged in the business of collecting debts on his own behalf or on behalf of other persons and may, at any reasonable time, enter the business premises of the person so engaged and search for, examine and remove, take extracts from or obtain reproduced copies of any records, books, documents, files or things that are or may be relevant to the subject matter of the inquiry.

(2) The Administrator shall

(a) give to the person from whom anything is taken under the provisions of subsection (1) a receipt for the things taken, and

(b) forthwith make copies of, take photographs of or otherwise record the things removed and forthwith return the things to the person to whom the receipt was given under clause (a).

(3) No person shall withhold, destroy, conceal or refuse any information or records, books, papers, files, documents or any other things required by the

Administrator.

(4) A copy of a record, book, paper, file or document made in accordance with subsection (2) and certified to be a true copy by the Administrator shall be admitted in evidence in any action, proceeding or prosecution under this Act as prima facie proof of the original book, file, paper or document without proof of the signature or appointment of the Administrator.

22(1) Where a collection agency or collector has been paid money by a debtor in respect of a debt and

(a) the collection agency or collector has absconded from Alberta, or

(b) the Administrator has reasonable and probable grounds to believe that the collection agency or collector

(i) is about to abscond from Alberta,

(ii) has attempted to remove any of his property out of Alberta,

(iii) has attempted to sell or dispose of his property, or

(iv) is dissipating money or other assets paid or delivered to him by a debtor, the Administrator may, notwithstanding that an action may not have been commenced, apply ex parte to a Court for an order.

(2) An order applied for under subsection (1) may

(a) prohibit any person having on deposit or under his control or for safekeeping any money, property or other assets being held on behalf of the collection agency or collector from dispersing or otherwise dealing with the money, property or other assets except as approved by the Court;

(b) appoint a trustee or receiver or both to hold or take possession of the money, property or assets of that collection agency or collector upon such terms and conditions as the Court approves;

(c) direct the collection agency or collector not to dispense any money or deal with any property or assets owing to him except as approved by the Court or as directed by the trustee or receiver.

(3) The Court may make an order under this section upon such terms and conditions as the Court considers proper.

(4) Upon the order being made under this section, any person affected by the order may, upon notice to the Administrator, apply to the Court to have the order varied or set aside and upon hearing the matter the Court may refuse the application or vary or set aside the order upon such terms and conditions as the Court considers proper.

23(1) Where a person in respect of whom security is deposited under section 5 is liable to another person for damages sustained by that other person by reason of an act or omission of the secured person or his employee or agent

(a) during the course of the business or employment in respect of which the security was given, and

(b) during the period in respect of which the security was given,

the surety or insurer on the security is, to the amount set out in the bond or policy, liable to indemnify the person who sustained the damage and that person may in an action for the damages join the surety on the security, notwithstanding that he is not a party to the security.

(2) This section does not apply to any action commenced more than 2 years after the expiration or cancellation of the licence to which the security relates.

24(1) A person who

(a) contravenes section 4, 13 or 14(1),

(b) fails to comply with an order issued under section 11(4), section 13(4) or section 14(2) or (3), or

(c) fails to provide information required under section 20.

is guilty of an offence and liable on summary conviction to a fine of not more than $500.

(2) A person who contravenes any provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and liable on summary conviction to a fine of not more than $500.

(3) A prosecution under this section may be commenced within 3 years after the commission of an offence but not thereafter.

25(1) A certificate purporting to be signed by the Administrator and to the effect that the person named therein did or did not at any given time or during any given period hold a licence as

(a) a collection agency, or

(b) a collector

shall be admitted in evidence as prima facie proof of the facts stated therein, without proof of the signature or appointment of the person signing the certificate.

(2) A statement in a letter, advertisement, card or other document or paper issued by or under the authority of a person who is engaged in the business of a collection agency or is acting as a collector shall be admitted in evidence as prima facie proof that he is so engaged or acting, as the case may be.

26(1) The provisions of this Act apply notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided under this Act is against public policy and void.

(2) Except as expressly provided in this Act nothing in this Act restricts, limits or derogates from any remedy that a person has at common law or by statute.

27(1) The Lieutenant Governor in Council may make regulations

(a) designating any person or any class of persons as exempt persons for the purpose of section 3(1)(d);

(b) prescribing the fees payable for the issue or renewal of collection agency licences or collector's licences;

(c) providing for different classes of collection agency licences or collector's licences;

(d) prescribing for any collection agency, collector or class of collection agency or collector the amount, terms, conditions and form of security to be given under section 5;

(e) prescribing the period of time during which a collection agency must keep any of his records, files, books, papers, documents or other things under section 12;

(f) governing reports under section 13(1)(i);

(g) prescribing the information that is required to be submitted to the Administrator for the issue or renewal of a collection agency licence or collector's licence;

(h) requiring records to be kept and returns to be made to the Administrator;

(i) respecting advertising by persons licensed under this Act;

(j) requiring and governing the surrender of licences that have been suspended or cancelled or that have expired;

(k) governing the transfer of collector's licences from one collection agency to another;

(l) governing the imposition of any term, condition, qualification or restriction on different classes of licences;

(m) governing the fees, commissions or disbursements charged by any collection agency or class of collection agency in performing its services.

28 *The Collection Agencies Act* is repealed.

29 This Act comes into force on December 31, 1978.

# APPENDIX B

## COLLECTION PRACTICES ACT

## CHAPTER C-17

## 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act,

(a) "Administrator" means the Administrator of Collection Practices appointed under section 2;

(b) "collection agency" means a person, other than a collector, who carries on the business

(i) of collecting or attempting to collect debts for other persons,

(ii) of collecting or attempting to collect debts under any name which differs from that of the creditor to whom the debt is owed,

(iii) of offering or undertaking to act for a debtor in arrangements or negotiations with his creditors or receiving money from a debtor for distribution to his creditors in consideration of a fee, commission or other remuneration that is payable by the debtor,

(iv) of offering or undertaking to act for a creditor in realizing on any security given to the creditor for a debt, or

(v) of selling or offering to sell any collection system, device or scheme intended or calculated to be used to collect debts;

(c) "collector" means a person employed or authorized by a collection agency to

(i) collect or attempt to collect money,

(ii) solicit business,

(iii) realize on a security, or

(iv) deal with or locate debtors,

for the collection agency;

(d) "Court" means the Court of Queen's Bench;

(e) "Minister" means the Minister of Consumer and Corporate Affairs.

2(1) In accordance with the *Public Service Act* there may be appointed an Administrator of Collection Practices and any other persons necessary for the administration of this Act.

(2) Where the Administrator is given any power or duty under this Act or the regulations, he may authorize one or more persons to exercise or perform that power or duty on the conditions or in the circumstances that the Administrator prescribes.

3(1) This Act, except sections 14, 19, 20 and 23, does not apply

(a) to an insurer, agent, adjuster or broker licensed under the *Insurance Act* or to his employees acting in the regular course of their employment,

(b) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy Act* (Canada), the *Companies Act*, the *Judicature Act* or the *Winding-up Act* (Canada) or a person acting under a debenture or the order of any court, or

(c) to a real estate agent or salesman licensed under the *Real Estate Agents' Licensing Act* or to his employees acting in the regular course of their employment.

(2) This Act does not apply to barristers and solicitors in the practice of their profession.

(3) This Act or any provision of this Act does not apply to any person or class of persons designated by the regulations as a person or class of persons exempt from the operation of this Act or that provision.

4(1) No person shall carry on the business of a collection agency unless he is the holder of a collection agency licence, in the form prescribed by the Minister, issued under this Act.

(2) No person shall act as a collector for a collection agency unless he is the holder of a collector's licence, in the form prescribed by the Minister, issued under this Act.

(3) No collection agency shall employ or authorize any

person as a collector unless that person is the holder of a collector's licence.

(4) No person shall

(a) advertise himself, or

(b) hold himself out,

as a collector or as carrying on the business of a collection agency unless he holds a collector's licence or a collection agency licence, as the case may be.

5(1) An application for a collection agency licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) an affidavit made by or on behalf of the applicant in the form prescribed by the Minister,

(d) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts,

(e) copies of forms and forms of letters that the collection agency uses or proposes to use in making demands for the collection of debts, and

(f) any other information required by the regulations.

(2) An application for a collector's licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) an affidavit made by or on behalf of the applicant in the form prescribed by the Minister,

(d) a letter from a collection agency stating that the applicant will be employed or authorized by the agency to act as a collector, and

(e) any other information required by the regulations.

(3) A licence shall not be issued to any person until there is deposited with the Administrator security in the amount and form prescribed by the regulations.

(4) The Administrator may exempt any collection agency that carries on business of the kind described in section 1(b)(ii) from the requirements of subsection (3).

6(1) When a security filed under section 5(3) is terminated or returned, the licence of the collection agency is suspended and remains suspended until the collection agency files with the Administrator a new security and receives notification from the Administrator that the security is acceptable.

(2) The licence of a collector

(a) is cancelled upon his ceasing to be employed or authorized by a collection agency to act as a collector, and

(b) is suspended or cancelled, as the case may be, on the suspension or cancellation of the collection agency licence of the collection agency that employed or authorized him to act as a collector.

7(1) An application for renewal of a collection agency licence shalll be made to the Administrator in the form prescribed by the Minister and shall be accompanied by

(a) the licence fee prescribed by the regulations,

(b) the security, if any, prescribed by the regulations,

(c) copies of forms of agreement to be entered into with the collection agency by persons for whom the collection agency acts, and

(d) copies of forms and forms of letters that the collection agency uses or proposes to use in making demands for the collection of debts.

(2) An application for a renewal of a collector's licence shall be made to the Administrator in the form prescribed by the Minister and shall be accompanied by the licence fee and security, if any, prescribed by the regulations.

(3) When the holder of a collection agency licence or a collector's licence has applied for renewal of his licence and forwarded the security and fee prescribed by the regulations within the time prescribed by the

Minister, or, if no time is prescribed, before the expiry of his licence, his licence continues

(a) until the renewal licence is issued, or

(b) if he is served with notice that the Administrator refuses to grant the renewal, until the time for serving notice under section 16 of an appeal from the refusal has expired, or, if a notice of appeal is served on the Minister, until the appeal is concluded or the appeal is withdrawn.

8 The holder of a collection agency licence shall display in a conspicuous place

(a) his licence or a copy thereof at each office or place of business indicated on the licence, and

(b) the licences of collectors employed or authorized by him at the office where those persons are engaged in or carry on business as collectors.

9(1) Every collection agency shall keep proper accounting records and other records relating to his business including the following:

(a) a register of the trust accounts in which is entered all money collected or received from a debtor for distribution to the debtor's creditors;

(b) duplicates of the vouchers referred to in subsection (2).

(2) Every collection agency shall acknowledge the receipt of any money the collection agency or his collector or the employee of either of them collects or receives from a debtor for distribution to the debtor's creditors by means of consecutively numbered vouchers which shall contain in each case

(a) the date the amount is received,

(b) the name of the debtor,

(c) the name of the person for whom the collection agency acts, and

(d) the gross amount received in respect of that account.

10(1) Subject to subsection (2), a collection agency shall deposit all money collected or received from a debtor for distribution to his creditors before the

expiry of 2 days following its receipt in a trust account maintained in a

(a) a bank,

(b) a treasury branch,

(c) a trust company, or

(d) a credit union, Union Act,

at an office thereof located in Alberta.

(2) When the Administrator is of the opinion that the requirements of subsection (1) can be varied with respect to any collection agency without harm to the public interest, he may, in writing,

(a) authorize the collection agency to deposit money collected or received from a debtor for distribution to his creditors in a trust account in a financial institution or class of financial institution approved by the Administrator located outside Alberta, and

(b) prescribe the time within which money referred to in clause (a) shall be deposited.

(3) No collection agency shall withdraw money from a trust account except for the purpose of

(a) paying a creditor money received on behalf of and deposited to the credit of that creditor,

(b) paying the collection agency the commission and disbursements to which it is entitled,

(c) correcting an error caused by money being deposited in the trust account by mistake, or

(d) making a payment under subsection (6).

(4) In paying creditors money withdrawn under subsection (3)(a), a collection agency shall do so by means of consecutively numbered cheques which shall be accompanied in the case of each payment by a statement containing

(a) the date or dates on which the money was received by the collection agency,

(b) the name of the debtor,

(c) the gross amount collected,

(d) the amount of commission and disbursements retained by the collection agency,

(e) the net amount payable to the creditor, and

(f) the current balance owing by the debtor.

(5) Subject to subsection (6), a collection agency shall account for all money collected and remit the money less commission and disbursements to the person entitled thereto on or before the 20th day of the month following the month in which the money was collected.

(6) If a collection agency is unable to locate the person entitled to money within 6 months after the money has been collected, the collection agency shall pay the money less commission and disbursements to the Provincial Treasurer in trust.

(7) The Provincial Treasurer may pay the money received under subsection (6) to the person entitled thereto on being satisfied that the person is entitled to receive the money.

(8) When the Provincial Treasurer does not pay the money received under subsection (6) to the person entitled thereto within 5 years from the time that the money is received by him, the money shall be paid into the General Revenue Fund.

11(1) A collection agency shall

(a) within 120 days after the end of his fiscal year, provide the Administrator with a report of his financial affairs in the form prescribed by the Minister and signed by an auditor acceptable to the Administrator, and

(b) provide the auditor with access to every book and record of the collection agency that, in the opinion of the auditor, is necessary to carry out his examination.

(2) The Administrator may order a collection agency to correct any defect or deficiency in the form or maintenance of any book or record.

(3) An order made under subsection (2) must be complied with within the time specified in the order.

12 A collection agency shall maintain in Alberta all of his records, files, books, papers, documents or other things created or received while engaged in the business of a collection agency and shall continue to maintain them in Alberta for the period prescribed in the regulations.

13(1) No collection agency or collector shall

(a) enter into any agreement with a person for whom he acts unless a copy of the form of agreement is filed with and approved by the Administrator;

(b) use any form or form of letter to collect or attempt to collect a debt unless a copy of the form or form of letter is filed with and approved by the Administrator;

(c) collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the debtor to the creditor;

(d) charge any fee to a person for whom he acts in addition to those fees provided for in the form of agreement or in the information pertaining to fees filed with the Admistrator;

(e) if a collection agency, carry on the business of a collection agency in a name other than the name in which he is licensed, or invite the public to deal anywhere other than at a place authorized by the licence;

(f) if a collector, collect or attempt to collect a debt without using his true name and the name of the collection agency that employs or authorizes him to act as a collector, as that collection agency's name is shown on the collection agency's licence;

(g) collect from a debtor any amount greater than that prescribed by the regulations for acting for the debtor in making arrangements or negotiating with his creditors on behalf of the debtor or receiving money from the debtor for distribution to his creditors;

(h) 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 full and final settlement without the prior written approval of the creditor;

(i) fail to provide any person for whom he acts with a written report on the status of that person's account in accordance with the regulations;

(j) make any personal call or telephone call for the purpose of demanding payment of a debt on any day except between 7 a.m.. and 10 p.m.

(2) Subsection (1) applies to a collection agency or collector notwithstanding that he is collecting or attempting to collect a debt that has been assigned to

him by a creditor.

(3) The Administrator may refuse to approve any form, form of agreement or form of letter that he considers to be objectionable and, without restricting the generality of the foregoing, he may refuse any form, form of agreement or form of letter that

(a) misrepresents the rights and powers of a person collecting or attempting to collect a debt,

(b) misrepresents the obligations or legal liabilities of a debtor, or

(c) is misleading as to its true nature and purpose.

(4) When, in the opinion of the Administrator, a collection agency or collector is contravening or has contravened any provision of this Act or the regulations, the Administrator may issue an order directing that collection agency or collector, as the case may be, to

(a) stop engaging in any practice that is described in the order, and

(b) take such measures specified in the order that, in the opinion of the Administrator, are necessary to ensure that this Act or the regulations will be complied with, within the time specified in the order.

14 No person shall place an account for collection with a collection agency without first withdrawing in writing any previous placement of that account with any other collection agency.

15(1) In considering an application for a collection agency licence or a collector's licence or a renewal of either, the Administrator may make inquiries regarding

(a) an applicant for a licence or for the renewal of a licence,

(b) if the applicant is a partnership, each partner, or

(c) if the applicant is a corporation, each director.

(2) The Administrator may refuse to issue or renew the licence applied for or may suspend or cancel a licence issued under this Act if the applicant or one or more of the partners, directors or employees of the applicant or licensee

(a) makes an untrue statement or knowlingly makes a material omission in an application for a licence or renewal of a licence under this Act or in a return made or other information produced to the Administrator,

(b) refuses or neglects to comply with any provision of this Act or the regulations or an order made under this Act, or

(c) is not, in the opinion of the Administrator, a financially responsible person or if his record of past conduct is such that the Administrator considers it in the public interest to refuse to issue or renew a licence or to cancel or suspend the licence.

(3) When the Administrator refuses to issue or renew a licence or suspends or cancels a licence under subsection (2), he shall forthwith serve the applicant or licensee with notice of the refusal, cancellation or suspension.

(4) When a licensee is served with notice that the Administrator refuses to renew his licence or has cancelled or suspended his licence under subsection (2), the licence remains in force until the time for serving notice under section 17 of an appeal from the refusal, cancellation or suspension has expired, or, when a notice of appeal is served on the Minister, until the appeal is concluded or the appeal is withdrawn.

16(1) A person who has been refused a licence or the renewal of a licence or whose licence has been cancelled or suspended under section 15 may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being served with notice of the refusal, cancellation or suspension.

(2) The Minister shall, within 30 days of being served with a notice of appeal, appoint an appeal board to hear the appeal.

(3) The Minister may prescribe the time within which the appeal board is to hear the appeal and render a decision and may extend that time.

(4) An appeal board that hears an appeal under this section may, by order, either

(a) confirm the refusal, cancellation or suspension,

(b) order that the licence or renewal of a licence be issued,

(c) reinstate the cancelled licence, or

(d) remove or vary the suspension.

(5) An appeal board appointed under this section shall consist of the following members:

(a) a person (who is not the Administrator, a representative of the Administrator or a person licensed under this Act) who is designated as chairman of the appeal board by the Minister, and

(b) not less than 2 or more than 4 other persons who are persons licensed under this Act.

(6) The minister may pay those fees and reasonable living and travelling expenses that he considers proper to the members of an appeal board.

(7) A person whose appeal is heard by an appeal board, or the Administrator, may appeal the decision of the appeal board by filing an originating notice with the Court within 30 days of being notified in writing of the decision, and the Court may make any order that an appeal board may make under subsection (4).

17 A document or other notice under this Act may be served on a collection agency or collector by leaving it at or by sending it by registered mail to the address shown on the collection agency or collector's licence.

18 A licence issued pursuant to this Act expires on December 31 of the year in which it is issued unless the licence has been previously cancelled.

19 When the Administrator receives a complaint in respect of any matter which pertains to this Act or has reason to believe that a contravention of the Act has taken place, he may inquire into the complaint or alleged contravention and require in writing from any person any information that he considers to be relevant to the inquiry.

20(1) The Administrator may inquire into and examine the affairs of any person that he has reason to believe is engaged in the business of collecting debts on his own behalf or on behalf of other persons and may apply ex parte for an order of the Court allowing him, at any reasonable hour, to enter the business premises of the person that he believes to be so engaged and search for, examine and remove, take extracts from or obtain reproduced copies of any records, books, documents, files or things that are or may be relevant to the

inquiry.

(2) If the Administrator applies for an order under subsection (1), the Court may, if it is satisfied that the order is necessary for an inquiry under that subsection, make any order that it considers appropriate.

(3) The Administrator shall

(a) give to the person from whom anything is taken under subsection (1) a receipt for the things taken, and

(b) forthwith make copies of, take photographs of or otherwise record the things removed and forthwith return the things to the person to whom the receipt was given under clause (a).

(4) A copy of a record, book, paper, file or document obtained under this section and certified to be a true copy by the Administrator shall be admitted in evidence in any action, proceeding or prosecution under this Act as prima facie proof of the original book, file, paper or document without proof of the signature or appointment of the Administrator.

21(1) If a collection agency or collector has been paid money by a debtor in respect of a debt and

(a) the collection agency or collector has absconded from Alberta, or

(b) the Administrator has reasonable and probable grounds to believe that the collection agency or collector

(i) is about to abscond from Alberta,

(ii) has attempted to remove any of his property out of Alberta,

(iii) has attempted to sell or dispose of his property, or

(iv) is dissipating money or other assets paid or delivered to him by a debtor, the Administrator may, notwithstanding that an action may not have been commenced, apply ex parte to the Court for an order.

(2) An order applied for under subsection (1) may

(a) prohibit any person having on deposit or under his control or for safekeeping any money, property or other assets being held on behalf of the collection agency or collector from dispersing

or otherwise dealing with the money, property or other assets except as approved by the Court;

(b) appoint a trustee or receiver or both to hold or take possession of the money, property or assets of that collection agency or collector on any terms and conditions the Court approves;

(c) direct the collection agency or collector not to dispense any money or deal with any property or assets owing to him except as approved by the Court or as directed by the trustee or receiver.

(3) The Court may make an order under this section on any terms and conditions the Court considers proper.

(4) On the order being made under this section, any person affected by the order may, on notice to the Administrator, apply to the Court to have the order varied or set aside and upon hearing the matter the Court may refuse the application or vary or set aside the order on any terms and conditions the Court considers proper.

22(1) When a person in respect of whom security is deposited under section 5 is liable to another person for damages sustained by that other person by reason of an act or omission of the secured person or his employee or agent

(a) during the course of the business or employment in respect of which the security was given, and

(b) during the period in respect of which the security was given,

the surety or insurer on the security is, to the amount set out in the bond or policy, liable to indemnify the person who sustained the damage and that person may in an action for the damages join the surety on the security, notwithstanding that he is not a party to the security.

(2) This section does not apply to any action commenced more than 2 years after the expiration or cancellation of the licence to which the security relates.

23(1) A person who

(a) contravenes section 4 or 13,

(b) fails to comply with an order issued under section 11(2) or section 13(2),

(c) fails to provide information required under section 19, or

(d) obstructs the Administrator when he is engaged in an inquiry under section 20(1),

is guilty of an offence and liable to a fine of not more than $500.

(2) A person who contravenes any provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and liable to a fine of not more than $500.

(3) A prosecution under this section may be commenced within 3 years after the commission of an offence but not thereafter.

24(1) A certificate purporting to be signed by the Administrator and to the effect that the person named therein did or did not at any given time or during any given period hold a licence as

(a) a collection agency, or

(b) a collector

shall be admitted in evidence as prima facie proof of the facts stated therein, without proof of the signature or appointment of the Administrator.

(2) A statement in a letter, advertisement, card or other document or paper issued by or under the authority of a person who is engaged in the business of a collection agency or is acting as a collector shall be admitted in evidence as prima facie proof that he is so engaged or acting, as the case may be.

25(1) The provisions of this Act apply notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided under this Act is against public policy and void.

(2) Except as expressly provided in this Act, nothing in this Act restricts, limits or derogates from any remedy that a person has at common law or by statute.

26(1) The Lieutenant Governor in Council may make regulations

(a) designating any person or any class of persons as exempt persons for the purpose of section 3(3);

(b) prescribing the fees payable for the issue or

renewal of collection agency licences or collector's licences;

(c) providing for different classes of collection agency licences or collector's licences;

(d) prescribing for any collection agency, collector or class of collection agency or collector the amount, terms, conditions and form of security to be given under section 5;

(e) prescribing the period of time during which a collection agency must keep any of his records, files, books, papers, documents or other things under section 12;

(f) governing reports under section 13(1)(i);

(g) prescribing the information that is required to be submitted to the Administrator for the issue or renewal of a collection agency licence or collector's licence;

(h) requiring and governing the records to be kept and the returns to be made to the Administrator;

(i) respecting advertising by persons licensed under this Act;

(j) requiring and governing the surrender of licences that have been suspended or cancelled or that have expired;

(k) governing the transfer of collector's licences from one collection agency to another;

(l) governing the imposition of any term, condition, qualification or restriction on different classes of licences;

(m) governing the fees, commissions or disbursements charged by any collection agency or class of collection agency in performing its services.