

**BILL NO. 53**

(as introduced)



4th Session, 61st General Assembly  
Nova Scotia  
61 Elizabeth II, 2012

Private Member's Bill

**Debt Settlement Protection Act**

Kelly Regan  
Bedford-Birch Cove

First Reading: April 26, 2012

Second Reading:

Third Reading:

**An Act Respecting Debt Settlement Agencies**

Be enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Debt Settlement Protection Act.

2 In this Act,

(a) "agent" means a person employed, approved or authorized by a debt settlement agency to solicit business or arrange debt settlements on behalf of debtors for the debt settlement agency;

(b) "agreement" means an agreement between a debtor and a debt settlement agency or agent authorizing the debt settlement agency or agent, as the case may be, to arrange a debt settlement on behalf of the debtor in respect of one or more debts owing by the debtor to the debtor's creditors;

(c) "debt settlement" means an arrangement in which a creditor allows a debtor to satisfy a debt owing to the creditor by paying an amount less than the amount owing on the debt;

(d) "debt settlement agency" means a person who deals with a creditor for the purpose of arranging a debt settlement on behalf of a debtor, or holds out to the public that the person provides such a service, and includes a person who provides or holds out to the public that the person provides one or more of the following services:

- (i) debt arbitration,
- (ii) debt negotiation,
- (iii) credit settlement;

(e) "licence" means a licence granted under this Act;

(f) "Minister" means the Minister of Service Nova Scotia and Municipal Relations;

(g) "Registrar" means the Registrar for the purpose of this Act.

3 This Act does not apply to

- (a) a lawyer or law firm as defined by the Legal Profession Act; or
- (b) a not-for-profit debt counselling organization.

4 (1) The Director of Consumer Services appointed under the Consumer Services Act or a person appointed by the Governor in Council is the Registrar for the purpose of this Act.

(2) The Registrar shall exercise the powers and perform the duties conferred or imposed by this Act and by the Minister.

5 (1) Except as may be otherwise permitted under this Act or the regulations, no person shall

- (a) carry on business as a debt settlement agency unless that person holds a licence to operate a debt settlement agency; or
- (b) act as an agent unless that person holds a licence to act as an agent of a licensed debt settlement agency.

(2) A licensed debt settlement agency shall not carry on business under a name other than the name in which it is registered.

(3) A licensed debt settlement agency shall not carry on business at a place other than that authorized by the licence issued by the Registrar.

6 (1) Every application for a licence must be made to the Registrar upon a form provided by the Registrar and must be accompanied by the fee prescribed in the regulations.

(2) The applicant may be required by the Registrar to verify by affidavit or otherwise the statements made in the application.

(3) An applicant for a licence as a debt settlement agency shall file with the Registrar

- (a) a copy of each form of agreement that the debt settlement agency uses or proposes to use; and
- (b) a bond in the form prescribed by the regulations.

(4) The agreement must set out particulars of the fees charged or proposed to be charged by the debt settlement agency and must be written in plain language outlining the terms, conditions and responsibilities of all parties.

(5) The agreement must contain a cancellation or opt-out policy.

(6) A new application for a licence must be made if there is evidence of a change of material circumstances since the date of the previous application.

7 (1) Every applicant for a licence shall state in the application an address for service in the Province, and any notice required under this Act or the regulations is for the purpose of this Act deemed to have been received if delivered or sent by registered mail to that address or to the address for service stated or shown in a notice of change of address provided under subsection (2).

(2) Every licensee shall notify the Registrar in writing of any change of address for service.

8 (1) Every application for a licence as an agent must be accompanied by a statement in writing given by a licensed debt settlement agency that the applicant, where granted a licence, is authorized to act as an agent representing that debt settlement agency.

(2) A licence issued to an agent must indicate thereon the name of the debt settlement agency who furnished the statement required under subsection (1) and on whose behalf the agent is authorized to act.

9 An agent who is the holder of a licence is deemed to be authorized by the debt settlement agency specified in the licence to act for or on behalf of that debt settlement agency.

10 (1) Where an agent ceases to represent a debt settlement agency, the debt settlement agency shall forthwith give notice in writing to the Registrar that the agent has ceased to represent the debt settlement agency and the receipt of such notice by the Registrar shall operate as a termination of the licence of the agent.

(2) A debt settlement agency that fails to give the notice required at subsection (1) within five days after the agent has ceased to represent the debt settlement agency is guilty of an offence.

11 The transfer of the licence of an agent from one debt settlement agency to another is prohibited.

12 Where an agent whose licence is terminated is appointed by another debt settlement agency or is re-appointed by the debt settlement agency with whom the agent was previously licensed, the agent shall make a new application to the Registrar for a licence.

13 (1) The Registrar may

- (a) grant a licence;
- (b) by notice to the licensee, make the licence subject to such terms, conditions and restrictions as are prescribed by the Governor in Council; and
- (c) renew a licence in accordance with the regulations.

(2) Every licensee shall comply with the terms, conditions and restrictions placed on that person's licence by the Registrar.

14 Unless previously terminated or cancelled, every licence expires at the end of the day on April 30th of each year.

15 (1) The Registrar may suspend or cancel a licence if the licensee

- (a) has violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions placed by the Registrar on the licence;

(b) has made a material misstatement in the licence application or in any of the information or material submitted to the Registrar pursuant to Section 6;

(c) is found guilty of misrepresentation, fraud, or dishonesty, false or misleading advertising; or

(d) has demonstrated incompetency, unfitness or untrustworthiness to carry on the business in respect of which the licence was granted.

(2) Where a bond filed under this Act does not meet the requirements set out in the regulations, it is deemed to be invalid and the licence of the debt settlement agency is automatically suspended until the debt settlement agency files with the Registrar a new bond in the amount and in the form required by the regulations.

(3) When the licence of a debt settlement agency is suspended or cancelled, the licences of all agents of the debt settlement agency are automatically suspended or cancelled.

16 The Registrar may request further information or material from the applicant for a licence or from a licensee within a specified time and may require verification by affidavit or otherwise of any information or material provided.

17 (1) A person who is dissatisfied with a decision of the Registrar under this Act may, within thirty days from the date of the decision, appeal by filing a notice of appeal, to a judge of the Supreme Court of Nova Scotia who may, upon hearing the appeal, order any one or more of the following:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) vary the appeal subject to terms and conditions;
- (d) vary the decision appealed against;
- (e) refer the matter back to the Registrar for further consideration and decision;
- (f) award costs of the appeal;
- (g) make such other order as seems just.

(2) The appeal to the Supreme Court of Nova Scotia shall be made in accordance with the appeal provisions in Rule 7 of the Nova Scotia Civil Procedure Rules.

(3) A party to the appeal before the Supreme Court of Nova Scotia may appeal from the order issued by that court to the Nova Scotia Court of Appeal on a question of law or jurisdiction in accordance with the appeal provisions in Rule 90 of the Nova Scotia Civil Procedure Rules.

18 Every holder of a licence to operate a debt settlement agency shall, in accordance with the regulations,

- (a) keep proper records and books of account showing money received and money paid out, including a receipt book, cash book, clients ledger, debtors ledger, and journal or equivalent machine accounting records satisfactory to the Registrar;

(b) maintain a trust account in a chartered bank, credit union or trust company, and deposit all money received on behalf of a client in the trust account; and

(c) file returns with the Registrar as prescribed by the regulations.

19 (1) No debt settlement agency or agent shall

- (a) make false or unsubstantiated claims about the service being provided;
- (b) advise the client's creditors of an address change, unless it is a change to the client's permanent address;
- (c) charge a fee to a person for whom the debt settlement agency acts in addition to or in excess of the fee provided for in the agreement; or
- (d) advertise in any form unless
  - (i) the advertisement clearly states that the debt settlement agency or agent is a debt settlement agency or agent of a debt settlement agency, as the case may be, and
  - (ii) where the advertisement includes examples of possible outcomes to debt settlement, the examples of possible outcomes reflect actual debt settlements achieved by the debt settlement agency or agent.

(2) No debt settlement agency or agent shall collect any fee from a debtor in respect of a debt unless

(a) the debt settlement agency or agent has arranged a debt settlement in accordance with the agreement, or otherwise the debtor's satisfaction;

(b) the debt settlement has been agreed to in writing by the debtor and creditor; and

(c) the debtor has made one payment to the creditor in accordance with the debt settlement.

(3) Where an agreement authorizes a debt settlement agency or agent to settle more than one debt on behalf of a debtor and the debt settlement agency or agent settles one debt in accordance with the agreement or the debtor's satisfaction, the debt settlement agency or agent may collect a fee in respect of the debt pro-rated by the ratio that

(a) the original amount of the debt settled bears to the total original amount of the debts authorized to be settled under the agreement; or

(b) the amount of the reduction of the debt settled bears to the anticipated amount of the reduction of all the debts authorized to be settled under the agreement,

if provided for under the agreement.

20 (1) The Registrar, or any person authorized in writing by the Registrar, may investigate and inquire into any matter the investigation the Registrar considers expedient for the administration of this Act.

(2) The person making an investigation pursuant to subsection (1) may at all reasonable times demand the production of and inspect all or any of the books, documents, papers, correspondence and records of the person in respect of whom the investigation is being made, and any person who has the custody, possession or control of any such books, documents, papers, correspondence or records shall produce them and permit the inspection thereof by the person making the investigation.

(3) For the purpose of subsection (1), the Registrar or any person designated in writing by the Registrar may at any reasonable time enter upon the business premises of the debt settlement agency to make an investigation.

21 (1) No person shall knowingly engage or use the services of a debt settlement agency that is not licensed under this Act.

(2) No debt settlement agency shall employ an agent or appoint or authorize an agent to act on its behalf unless the agent is licensed under this Act.

22 A person who

- (a) does anything that is prohibited by this Act or the regulations; or
- (b) omits to do anything that is required by this Act or the regulations to be done,

is guilty of an offence against this Act.

23 (1) A person who is guilty of an offence against this Act or the regulations is liable on summary conviction to a fine of not less than one hundred dollars and not more than one thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

(2) Notwithstanding subsection (1), where the person convicted of an offence under this Act or the regulations is a debt settlement agency, the maximum penalty is ten thousand dollars.

24 Where in a prosecution for an offence under this Act it is alleged that the accused carried on the business of a debt settlement agency without being the holder of a licence, evidence of one transaction is prima facie evidence that the accused carried on such business.

25 A certificate under the hand of the Registrar stating that

(a) a debt settlement agency, agent or other person named in the certificate was or was not licensed under this Act;

(b) a licence was granted to a debt settlement agency or agent; or

(c) the licence of a debt settlement agency or agent was suspended, cancelled or reinstated,

is without proof of the office or signature of the Registrar admissible in evidence as prima facie proof of the facts stated in the certificate for all purposes in any action, proceeding or prosecution.

26 No prosecution for any offence under this Act may be commenced after two years from the date of the offence.

27 (1) The Governor in Council may make regulations

- (a) governing applications for licences or renewal of licences and prescribing terms and conditions of licences;
- (b) requiring the payment of fees on application for licences or renewal of licences and prescribing the amount thereof;
- (c) prescribing forms for the purpose of this Act and providing for their use;
- (d) requiring and governing the books, accounts and records that must be kept by debt settlement agencies;
- (e) requiring debt settlement agencies to make returns and furnish information to the Registrar;
- (f) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (g) prohibiting the use of any particular method in the settlement of debts;
- (h) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act;
- (i) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

28 This Act has effect on and after on April 1, 2013.



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