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**Bill 55** **2013**  
**An Act to amend the Collection Agencies Act, the Consumer Protection Act, 2002 and the Real Estate and Business Brokers Act, 2002 and to make consequential amendments to other Acts**

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

**Contents of this Act**

**1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**Schedules**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**Different dates for same Schedule**

**(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3. The short title of this Act is the *Stronger Protection for Ontario Consumers Act, 2013*.**

**SCHEDULE 1**  
**COLLECTION AGENCIES ACT**

**1. The title of the *Collection Agencies Act* is repealed and the following substituted:**

**Collection and Debt Settlement Services Act**

**2. (1) The definitions of "collection agency" and "collector" in subsection 1 (1) of the Act are repealed and the following substituted:**

"collection agency" means,

(a) a person, other than a collector, who obtains or arranges for payment of money owing to another person or who holds oneself out to the public as providing such a service,

(b) any person who sells or offers to sell forms or letters representative of a collection system or scheme, or

(c) a person, other than a collector, who provides debt settlement services; ("agence de recouvrement")

"collector" means an individual employed, appointed or authorized by a collection agency to collect debts for the agency, to deal with or trace debts for the agency or to provide debt settlement services to debtors on behalf of the agency; ("agent de recouvrement")

**(2) Subsection 1 (1) of the Act is amended by adding the following definitions:**

"debt settlement services" means offering or undertaking to the parties that a debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor; ("services de règlement de dette")

"debt settlement services agreement" means an agreement under which a collection agency provides debt settlement services to a debtor; ("convention de services de règlement de dette")

**3. Section 2 of the Act is amended by adding the following subsection:**

**Application of Act**

(0.1) This Act applies to a collection agency or collector that deals with a debtor if either the debtor or the applicable one of the collection agency or the collector is located in Ontario when the dealing takes place.

**4. The Act is amended by adding the following sections:**

**Anti-avoidance**

**2.1** In determining whether this Act applies to an entity or transaction, a court or other tribunal shall consider the real substance of the entity or transaction and in so doing may disregard the outward form.

**DEBT SETTLEMENT SERVICES AGREEMENTS**

**Representations**

**16.3** (1) A collection agency or collector shall not communicate or cause to be communicated any representation relating to a debt settlement services agreement that is prescribed as a prohibited representation.

~~(2) A collection agency or collector shall communicate or cause to be communicated, in the circumstances that are prescribed, all representations relating to a debt settlement services agreement that are prescribed as required representations.~~

~~Required representations~~

~~(2) A collection agency or collector shall communicate or cause to be communicated, in the circumstances that are prescribed,~~

~~(a) all terms of a debt settlement services agreement that are necessary for understanding the agreement;~~

~~(b) a clear and detailed explanation of the effect that a debt settlement services agreement will have on the debtor's credit rating; and~~

~~(c) all representations relating to a debt settlement services agreement that are prescribed as required representations.~~

**False information**

**16.4** (1) No collection agency or collector shall falsely, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a debt settlement services agreement.

**Furnishing false information**

(2) No collection agency or collector shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false, misleading or deceptive information or documents relating to a debt settlement services agreement.

**Debt settlement services agreement**

**16.5** (1) No collection agency shall provide debt settlement services to a debtor and no collector shall provide those services to a debtor on behalf of a collection agency unless the agency has,

(a) entered into a debt settlement services agreement that is in writing and that meets the prescribed requirements, if any; and

(b) delivered a written copy of the agreement to the debtor no later than on entering into the agreement; and

~~(c) disclosed to the debtor in the agreement all information that is reasonably necessary to explain the sources of the agency's funding and all other information that is prescribed about the sources of the agency's funding.~~

**Only one agreement**

(2) No collection agency shall enter into more than one agreement for debt settlement services with the same debtor while there is a debt settlement services agreement between the parties that has not expired, and any other agreement under which the agency provides services to the debtor shall be deemed to be part of the debt settlement services agreement for the purposes of this Act, whether or not the other agreement comes within the definition of a debt settlement services agreement.

**Disclosure of information**

(3) If a collection agency or collector is required to disclose information under this Act relating to a debt settlement services agreement, the disclosure must be clear, comprehensible and prominent.

**Delivery of information**

(4) If a collection agency or collector is required to deliver information to a debtor under this Act relating to a debt settlement services agreement, the information must, in addition to satisfying the requirements in subsection (3), be delivered in a form in which it can be retained by the debtor.

**Amiguities to benefit debtor**

(5) Any ambiguity that allows for more than one reasonable interpretation of a debt settlement services agreement or of any information that a collection agency or collector is required to disclose under this Act shall be interpreted to the benefit of the debtor.

**Restrictions on payments for services**

**16.6** (1) No collection agency or collector that provides debt settlement services shall require or accept any payment or any security for the payment, directly or indirectly, in advance of providing the services, except as prescribed, or in excess of the maximum amount prescribed or determined in accordance with the regulations.

**Definition**

(2) In this section,

"payment" means any compensation, however described, that a debtor is or will be required to pay a collection agency or any other person as a condition of entering into a debt settlement services agreement.

**Security arrangement void**

(3) Every arrangement by which a collection agency or collector takes security in contravention of subsection (1) is void.

**Where no registration**

(4) A collection agency or collector that enters into a debt settlement services agreement before being registered shall not be entitled to receive any payment or security for payment under subsection (1) for debt settlement services provided under the agreement.

**Illegal payment**

(5) If a collection agency or collector requires or accepts a payment in contravention of this section, the debtor or person who has made the payment may demand a refund by giving notice in accordance with section 92 of the *Consumer Protection Act, 2002* and section 16.9 of this Act within one year of making the payment.

**Duty to provide refund**

(6) A collection agency that receives a notice demanding a refund under subsection (5) shall provide the refund within the prescribed period of time and in accordance with the prescribed requirements.

**Cancellation of debt settlement services agreement**

**16.7** (1) A debtor who is a party to a debt settlement services agreement may, without any reason, cancel the agreement at any time from the date of entering into it until 10 days after receiving the written copy of the agreement.

**Same**

(2) In addition to the right under subsection (1), a debtor who is a party to a debt settlement services agreement may cancel the agreement within one year after the date of entering into it if the debtor does not receive a copy of the agreement that meets the requirements of subsection 16.5 (1).

**Procedure for cancellation**

(3) A debtor who exercises a right under this section to cancel a debt settlement services agreement shall do so in accordance with sections 92 and 94 of the *Consumer Protection Act, 2002* and section 16.9 of this Act.

**Effect of cancellation**

(4) The cancellation of a debt settlement services agreement in accordance with subsection (3) operates to cancel, as if they never existed,

(a) the agreement;

(b) all related agreements;

(c) all guarantees given by the debtor or a guarantor in respect of money payable under the agreement;

(d) all credit agreements, as defined in Part VII of the *Consumer Protection Act, 2002*, and other payment instruments, including promissory notes;

(e) extended, arranged or facilitated by the person with whom the debtor entered into the agreement; or

(f) otherwise related to the agreement.

**Meaning of related agreement**

(5) For the purposes of clause (4) (b), a related agreement does not include any agreement that the debtor has entered into with a creditor.

**Refund after cancellation**

**16.8** (1) A debtor who cancels a debt settlement services agreement under section 16.7 may demand a refund of all payments made under the agreement by giving notice to the collection agency in accordance with section 92 of the *Consumer Protection Act, 2002* and section 16.9 of this Act within one year after entering into the agreement.

**Response of collection agency**

(2) A collection agency who receives a notice demanding a refund under subsection (1) shall,

(a) provide the refund within the prescribed period of time and in accordance with the prescribed requirements; and

(b) comply with all other obligations that are prescribed.

**Application of Consumer Protection Act, 2002**

**16.9** References in section 16.6, 16.7 or 16.8 to section 92 or 94 of the *Consumer Protection Act, 2002* shall be read as references to those provisions, reading,

(a) references to a consumer agreement as references to a debt settlement services agreement;

(b) references to that Act as references to this Act;

(c) references to matters that are prescribed as references to matters prescribed under this Act; and

(d) references to the regulations in those provisions as references to the regulations made under that Act and the regulations made under this Act.

**Debtor's right of action**

**16.10** (1) A debtor under a debt settlement services agreement may commence an action in the Superior Court of Justice to recover,

(a) any payment, as defined in subsection 16.6 (2), that the collection agency has charged the debtor for debt settlement services in contravention of this Act; or

(b) any payment that the collection agency has received in respect of debt settlement services provided to the debtor in contravention of this Act.

**Judgment**

(2) If the debtor is successful in the action, the court,

(a) shall order that the debtor recover the full payment to which the debtor is entitled under this Act, unless in the circumstances it would be inequitable to do so; and

(b) may order exemplary or punitive damages or other relief that the court considers proper.

**5. Section 22 of the Act is amended by striking out "or" at the end of clause (d), by adding "or" at the end of clause (e) and by adding the following clause:**

(f) engage in any prohibited practice or employ any prohibited method in providing debt settlement services or in respect of debt settlement services agreements.

**6. Subsection 24 (1) of the Act is repealed and the following substituted:**

**Use of unregistered collection agency**

(1) No person shall knowingly engage or use the services of a collection agency, other than debt settlement services, unless the agency is registered under this Act.

**7. Section 25 of the Act is repealed and the following substituted:**

**False advertising**

**25.** (1) No collection agency or collector shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material published by any means.

**Registrar's cessation order**

(2) If the Registrar believes on reasonable and probable grounds that a collection agency or a collector has contravened subsection (1), section 16.3 or 16.4 or clause 22 (e) or (f), the Registrar may order the immediate cessation of the contravention.

**Procedure**

(3) Section 8 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse registration.

**Effective time of order**

(4) The order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final.

**8. (1) Subsections 28 (1) and (2) of the Act are repealed and the following substituted:**

**Offences**

(1) A person is guilty of an offence if the person,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) knowingly fails to comply with any order, directions or other requirement made by this Act or the regulations; (2); (3)

(c) knowingly contravenes this Act or the regulations, except for section 16.3 or 16.4, subsection 16.5 (1), (2); (3) or (4); 16.6 (1) or (6) or 16.8 (2) or clause 22 (f) or (g); (2); (3) or (4); 16.6 (1) or (6) or 16.8 (2) or clause 22 (f) or (g) or contravenes section 16.3 or 16.4, subsection 16.5 (1), (2); (3) or (4); 16.6 (1) or (6) or 16.8 (2) or clause 22 (f) or (g) or regulations made under those provisions.

**Corporation**

(2) An officer or director of a corporation is guilty of an offence if he or she knowingly concurs in the commission of an offence mentioned in clause (1) (a), (b) or (c) or fails to take reasonable care to prevent the corporation from committing an offence mentioned in clause (1) (d).

**Attempt**

(2.1) Any person who attempts to commit any offence mentioned in subsection (1) is guilty of an offence.

**Penalties**

(2.2) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.

**2. Subsection 28 (1) of the Act is amended by adding "or (2)" after "subsection (1)".**

**9. (1) Section 30 of the Act is amended by adding the following clauses:**

(c) specifying anything that is described as prescribed in sections 16.3 to 16.8;

(c.1) specifying conditions that must be met to permit payment for the provision of debt settlement services;

(c.2) specifying the maximum amount of a payment for the purposes of subsection 16.6 (1) or specifying the method of determining that amount, including any formula, ratio or percentage to be used to calculate the amount;

(c.3) governing debt settlement services agreements, including information that a collection agency is required to disclose in a debt settlement services agreement;

(c.4) specifying requirements for making, amending, renewing or extending a debt settlement services agreement;

(c.5) specifying circumstances under which a collection agency is prohibited from providing debt settlement services to a debtor;

(d) providing for any transitional matter necessary for the effective implementation of this Act or the regulations.

**(2) Section 30 of the Act is amended by adding the following subsection:**

**Trust accounts**

~~(2) A trust account that a collection agency is required to hold shall be held in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation or a credit union.~~ (2) A trust account that a collection agency is required to hold shall be held in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation or a credit union. Bank Act. (2) A trust account that a collection agency is required to hold shall be held in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation or a credit union.

**10. The Act is amended by adding the following section:**

**Trust accounts**

**32.** Sections 16.3 to 16.10 do not apply to a debt settlement services agreement entered into before the day those sections come into force until the agreement is amended, renewed or extended on or after that day.

**City of Toronto Act, 2006**

**11. Section 240 of the City of Toronto Act, 2006 is amended by striking out "Collection Agencies Act" and substituting "Collection and Debt Settlement Services Act".**

**Employment Standards Act, 2000**

**12. Subsections 127 (3) and (5) of the Employment Standards Act, 2000 are amended by striking out "Collection Agencies Act" wherever that expression appears and substituting in each case "Collection and Debt Settlement Services Act".**

**Family Responsibility and Support Arrears Enforcement Act, 1996**

**13. Subsection 4 (3) of the Family Responsibility and Support Arrears Enforcement Act, 1996 is amended by striking out "Collection Agencies Act" at the end and substituting "Collection and Debt Settlement Services Act".**

**Financial Administration Act**

**14. Section 16.1 of the Financial Administration Act is amended by striking out "Collection Agencies Act" and substituting "Collection and Debt Settlement Services Act".**

**Licence Appeal Tribunal Act, 1999**

**15. Section 11 (1) of the Licence Appeal Tribunal Act, 1999 is amended by striking out "Collection Agencies Act" and substituting "Collection and Debt Settlement Services Act".**

**Municipal Act, 2001**

**16. Section 304 of the Municipal Act, 2001 is amended by striking out "Collection Agencies Act" and substituting "Collection and Debt Settlement Services Act".**

**Post-secondary Education Choice and Excellence Act, 2000**

**17. Subsections 10.5 (2) and (4) of the Post-secondary Education Choice and Excellence Act, 2000 are amended by striking out "Collection Agencies Act" wherever that expression appears and substituting in each case "Collection and Debt Settlement Services Act".**

**Private Career Colleges Act, 2005**

**18. Subsections 42 (2) and (4) of the Private Career Colleges Act, 2005 are amended by striking out "Collection Agencies Act" wherever that expression appears and substituting in each case "Collection and Debt Settlement Services Act".**

**Commencement**

**19. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 2**  
**CONSUMER PROTECTION ACT, 2002**

**1. The French version of the definition of "supplier" in section 1 of the Consumer Protection Act, 2002 is amended by striking out "en les vendant".**

**2. The French version of the following provisions of the Act is amended by adding "écrite" after "copie" wherever that expression appears:**

**1. Subsection 28 (1) at the end.**

**2. Section 35 (1).**

**3. Section 42 of the Act is amended by adding the following subsection:**

**Minister's regulations**

(2) In addition to the power of the Lieutenant Governor in Council to make regulations under section 123, the Minister may make regulations,

(a) governing contents of direct agreements and requirements for making, renewing, amending or extending direct agreements;

(b) requiring a supplier under a direct agreement to disclose to the consumer the information specified in the regulation, governing the content of the disclosure and requiring the supplier to take the other measures specified in the regulation to ensure that the consumer has received the disclosure.

**(3) The French version of subsection 43 (1) of the Act is amended by adding "écrite" after "copie" at the end.**

**4. (1) Section 43 (1) of the Act, as amended by section 1, is repealed and the following substituted:**

**Cancellation: cooling-off period**

(1) A consumer may, without any reason, cancel a direct agreement at any time from the date of entering into the agreement until,

(a) 20 days, or such other period as is prescribed, after the consumer has received the written copy of the agreement and the supplier has met all the requirements for entering into the agreement, in the case of a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed; or

(b) 10 days after the consumer has received the written copy of the agreement, in the case of all other direct agreements.

**5. The Act is amended by adding the following section:**

**Restriction on time for performance**

**43.1** (1) Except in the circumstances that are prescribed, if any, a supplier under a direct agreement that requires the supplier to supply to the consumer a water heater or other