

Chapter 11

AN ACT TO AMEND THE CONSUMER PROTECTION ACT

(Assented to June 8, 2012)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

- 1. This Act amends the *Consumer Protection Act*.**
- 2. The heading “ASSIGNEES AND GUARANTORS” preceding section 80 is repealed and “ASSIGNEES, GUARANTORS AND COLLECTION AGENTS” is substituted.**

3. The following is added after section 83:

Dealing with borrower

83.1. A credit grantor may only deal with a borrower for payment of a debt under the name in which the debt is lawfully owing or through a licensed collection agent.

Amount owing on debt

83.2. (1) A credit grantor or collection agent shall not add to the amount owing by the borrower on the debt, any charges made or incurred by a collection agent in respect of the collection of a debt, or incurred by a credit grantor in employing a collection agent to collect a debt.

No collection of additional money

(2) A collection agent shall not collect, or attempt to collect, any money in addition to the amount owing on the debt by the borrower.

Court proceeding

83.3. A collection agent shall not commence or continue any court proceeding for the recovery of a debt in the name of the collection agent unless a credit grantor has, by written instrument, assigned the debt to the collection agent, in good faith and for valuable consideration, and written notice of the assignment has been provided to the borrower.

Prescribed practices

83.4. (1) A collection agent shall adhere to the prescribed practices in respect of the collection of debts.

Prohibited practices

(2) A collection agent shall not engage in any practice prohibited by this Act or the regulations in the collection of debts.

- 4. Subsection 85(1) is amended by striking out "unless he or she is" and substituting "without being".**

5. (1) Subsection 96(1) is repealed and the following is substituted:

Warning of cancellation

96. (1) Where the Director has cause to believe that a person who is licensed under this Act, or an employee of a person licensed under this Act, has committed a breach of this Act or the regulations, or of any conditions or restrictions in respect of a licence, the Director may serve a notice on the person, by registered mail, stating:

- (a) the act or omission complained of and the approximate date on which it occurred;
- (b) the section of this Act or the regulations or the conditions or restrictions of licence of which the act or omission referred to in paragraph (a) is a breach; and
- (c) that if the person or an employee of the person commits a further breach of a similar nature, the licence may be cancelled.

(2) Paragraph 96(2)(b) is amended by adding "or the regulations" after "this Act".

6. Paragraph 97(1)(a) is amended by adding "or the regulations," after "under this Act".

7. Section 112 is amended by striking out "and" in the English version of paragraph (g) and adding the following after paragraph (g):

- (g.1) prescribing practices in respect of the collection of debts;
- (g.2) prohibiting practices in respect of the collection of debts; and

CONSEQUENTIAL AMENDMENTS

Consumer Protection Regulations

8. (1) The *Consumer Protection Regulations*, made under the *Consumer Protection Act*, are amended by this section.

(2) The following is added after section 8.4:

Debt Collection Practices

8.5. (1) Before a collection agent begins collecting a debt from a borrower, the collection agent shall provide, or make all reasonable attempts to provide, written notice to the borrower that the credit grantor has retained the collection agent to act in respect of the collection of the debt.

(2) A written notice referred to in subsection (1)

- (a) must be provided to the borrower in such a manner as to ensure the privacy of the written notice; and
- (b) must contain
 - (i) the name of the credit grantor,
 - (ii) the balance owing on the account,
 - (iii) the licenced name of the collection agent,
 - (iv) the name of the individual providing the notice, if different from the name of the collection agent, and
 - (v) the authority, in respect of the collection of the debt, of the individual providing the notice.

(3) No collection agent shall contact a borrower by telephone or in person before:

- (a) 10 days after the written notice referred to in subsection (1) has been mailed to the borrower; or
- (b) five days after delivery if the written notice referred to in subsection (1) is personally delivered to the borrower.

(4) If a borrower who is contacted by a collection agent in respect of the collection of a debt indicates that he or she did not receive the written notice referred to in subsection (1), the collection agent shall provide the borrower with a private written notice containing the information required under this section.

8.6. Each time a collection agent contacts a borrower in respect of the collection of a debt, the collection agent shall provide the borrower with:

- (a) the name of the credit grantor;
- (b) the balance owing on the account;
- (c) the licenced name of the collection agent;
- (d) the name of the individual contacting the borrower, if different from the name of the collection agent; and
- (e) the authority, in respect of the collection of the debt, of the individual contacting the borrower.

8.7. (1) Subject to subsection (2), no collection agent shall contact a borrower at the borrower's place of employment unless the borrower requests the collection agent to do so.

(2) A collection agent may contact a borrower at his or her place of employment to obtain an address or telephone number at which the borrower may be contacted:

- (a) on one occasion, if the borrower has not provided the collection agent with an address or telephone number at which the borrower may be contacted; and
- (b) on one occasion, if the collection agent has made a number of unsuccessful attempts to contact the borrower at a telephone number provided by the borrower.

8.8. (1) Subject to subsection (2), no collection agent shall contact a borrower's employer unless:

- (a) the employer has guaranteed to pay the debt and is being contacted in respect of the guarantee;
- (b) the collection agent is contacting the employer in respect of:
 - (i) payments from the employer pursuant to a wage assignment, or
 - (ii) an order or judgment made by a court in favour of the collection agent, or in favour of a credit grantor who is a client of the collection agent, if the contact relates to payments from the employer under that order or judgment or under a process issued under that order or judgment;
- (c) the borrower has, in writing, authorized the collection agent to contact the employer.

(2) A collection agent may contact a borrower's employer once a year, or more often if authorized by the borrower in writing, to verify the borrower's employment, business title and business address.

8.9. No collection agent shall contact any member of the borrower's family or household, or any relative, neighbour, friend or acquaintance of the borrower, in respect of the debt or collection of the debt, unless

- (a) the collection agent does not have the borrower's address or telephone number and the contact is for the purpose of obtaining the borrower's address or telephone number;
- (b) the individual contacted has guaranteed to pay the debt and is being contacted in respect of the guarantee; or
- (c) the borrower has, in writing, requested that the collection agent contact the individual and the individual does not object to the contact.

8.10. In the collection of a debt, no collection agent shall collect or attempt to collect money from a person who is not liable for the debt.

8.11. (1) No collection agent shall communicate or attempt to communicate with a borrower or with any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower, or the borrower's employer in such a manner as to constitute harassment of the borrower or the individual contacted because of the frequency, means or content of the contact.

(2) Without limiting the generality of subsection (1), communication constitutes harassment if it includes any of the following:

- (a) the use of threatening, profane, intimidating or coercive language;
- (b) the use of undue, excessive or unreasonable pressure;
- (c) a threat to publish the borrower's failure to pay a debt;
- (d) the publication of the borrower's failure to pay a debt.

8.12. Except on the request of the individual being contacted, no collection agent shall make a telephone call to, or personal call on, the borrower or any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower, or the borrower's employer:

- (a) on a Sunday, other than between the hours of 1 p.m. and 5 p.m.;
- (b) on a holiday; or
- (c) on any other day between the hours of 9 p.m. and 7 a.m.

8.13. No collection agent shall communicate or attempt to communicate with a borrower or with any member of the borrower's family or household, any relative, neighbour, friend or acquaintance of the borrower, or the borrower's employer, by a means that results or would result in the charges for the communication being payable by the borrower or by the individual to whom the communication is directed.

8.14. (1) No collection agent shall give, directly or indirectly, by implication or otherwise, any person any false or misleading information in respect of a debt or the collection of a debt.

(2) Without limiting the generality of the prohibition set out in subsection (1), no collection agent shall

- (a) misrepresent the purpose of a communication with any person or the identity of the collection agent; or
- (b) use, without lawful authority, any summons, notice, demand or other document that suggests or implies a connection with any court within or outside of Canada.

8.15. (1) Where a collection agent is collecting a debt from a person and the person informs the collection agent that he or she is not the borrower, the collection agent shall cease communicating with the person.

(2) If after inquiries there are reasonable grounds to believe that the person referred to in subsection (1) is the borrower, the collection agent may resume communicating with the person.

8.16. (1) A collection agent shall communicate with a borrower only in writing after the borrower has, in writing:

- (a) requested the collection agent to communicate with the borrower only in writing; and
- (b) provided the collection agent with an address at which the borrower may be contacted.

(2) A collection agent shall communicate with a borrower only through the borrower's legal counsel after the borrower has, in writing:

- (a) requested the collection agent to communicate only with the borrower's legal counsel; and

- (b) provided a name, address and telephone number for the legal counsel.

8.17. (1) Subject to subsection (2), a collection agent shall not communicate or continue to communicate with a borrower after the borrower has, in writing, notified the credit grantor and the collection agent that a debt is in dispute and that the borrower would like the credit grantor to take the matter to court.

(2) A collection agent may communicate with the borrower after notification has been given under subsection (1) if the borrower is not represented by legal counsel and the communication relates to a court proceeding:

- (a) in respect of a debt assigned to the collection agent under section 83.3 of the Act; or
- (b) which the credit grantor has provided express written authority to the collection agent to commence.

8.18. No collection agent shall directly or indirectly threaten to proceed with any action or state an intention to proceed with any action in respect of which the collection agent does not have lawful authority.

8.19. (1) No collection agent shall directly or indirectly threaten that the collection agent will commence any court proceeding on behalf of a credit grantor, or state an intention that the collection agent will commence any court proceeding on behalf of a credit grantor, for the recovery of a debt, unless the credit grantor has provided the collection agent with express written authority to commence such a proceeding.

(2) No collection agent shall recommend to a credit grantor that a court proceeding be commenced for the recovery of a debt unless the collection agent first provides written notice to the borrower that the collection agent intends to recommend that a proceeding be commenced.

(3) No collection agent shall commence a court proceeding for the recovery of a debt unless the collection agent first provides written notice to the borrower that the collection agent intends to commence such a proceeding.

(3) Each provision of the *Consumer Protection Regulations* listed in Column 1 of Schedule A of this Act is amended by striking out the words set out in the same row of Column 2 and substituting the words set out in the same row of Column 3.

SCHEDULE A

(Subsection 8(3))

Consumer Protection Regulations

Provisions Amended	Word or Words Struck Out	Word or Words Substituted
<ul style="list-style-type: none"> • Paragraph 5(c) • Paragraph 2(c) of Form 2 in Schedule B 	" <i>Bankruptcy Act (Canada)</i> "	" <i>Bankruptcy and Insolvency Act (Canada)</i> "
<ul style="list-style-type: none"> • Section 8.3 • The affidavit in Form 1 in Schedule B • Paragraph 3(2) of Form 2 in Schedule B 	"Consumer Services Department of Municipal and Community Affairs Government of the Northwest Territories # 500, 5201 - 50 AVENUE YELLOWKNIFE NT X1A 3S9", in both upper or lower case letters	"Consumer Affairs Department of Community & Government Services Government of Nunavut Box 440 Baker Lake, NU X0C 0A0"
<ul style="list-style-type: none"> • Subsection 10(3) preceding paragraph (a) 	"agency"	"agent"
<ul style="list-style-type: none"> • In Schedule B, wherever they appear 	"the Northwest Territories", "the Nortwest Territories", and "THE NORTHWEST TERRITORIES"	"Nunavut"
<ul style="list-style-type: none"> • Form 2 in Schedule B, wherever it appears 	"the Territories"	"Nunavut"