

Payday Loans and Debt  
Recovery Regulation Unit

Unité de la réglementation des prêts sur  
salaire et du recouvrement des dettes

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To: All registrants under the Collection and Debt Settlement Services Act

## Registrar's Bulletin – January 2018

### **Item 1 – Amendments to the Collection and Debt Settlement Services Act; amendments to R.R.O., Reg. 74: General; and the enactment of O. Reg. 461/17: Administrative Penalties**

The Collection and Debt Settlement Services Act (the “Act”) was amended by Bill 59, the Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017 (“Bill 59”), which received Royal Assent on April 13, 2017. The changes to the Act made by Bill 59 required supporting regulations to take effect. Regulations to implement the changes to the Act were published on e-laws on November 30, 2017. They were informed by comments received from a consultation over the summer of 2017. The changes to the Act and the new regulations come into force in two phases: January 1, 2018 and July 1, 2018.

Selected changes are described below. This summary does not cover all changes and is not a substitute for reviewing the Act and the regulations.

As of January 1, 2018:

- The Act no longer applies to corporate debts.
- Individual collectors are no longer required to register. However, collectors’ conduct is still subject to the Act. They are subject to administrative penalties and collection agencies will be required to provide lists of their collectors when applying for or renewing registration.
- Applicants for registration are no longer required to be bonded.
- Fees are set by Minister’s Order rather than in regulation. The fees remain unchanged.
- The definition of collection agency includes “a person who purchases debts that are in arrears and collects them.” These debt purchasers must register as a collection agency or use a registered collection agency when collecting these debts.

- The prohibition against calling debtors in ways that incur costs on them is clarified.
- The administrative penalties regulation is enacted and in force. This regulation sets out what contraventions of the Act or the regulations are subject to administrative penalties and the amount of those administrative penalties.

As of July 1, 2018:

- Collection agencies can use e-mail or other electronic communications for first notices and subsequent communications, subject to a debtor withdrawing consent.
- The first notice to a debtor must include more detailed information about the debt, the collection agency, and the debtor's rights to request additional information about the debt.
- If a collection agency does not have a debtor's identity, home address or email address, the collection agency can initiate limited communications with persons believed to be the debtor in order to confirm that information for the purposes of sending the first notice.
- Trust account rules specify how trust funds received from debtors in Ontario are to be handled and how trust accounts in another jurisdiction in Canada outside of Ontario may be used.

The change to trust account requirements sets out a new notification procedure. Using a trust account in another Canadian jurisdiction outside of Ontario includes notifying the Registrar and obtaining the Registrar's consent. A new form is being developed to support this notification and consent process. It will be circulated in advance of July 1, 2018.

**Reference:**

Collection and Debt Settlement Services Act: <https://www.ontario.ca/laws/statute/90c14>  
 R.R.O., Reg. 74: General: <https://www.ontario.ca/laws/regulation/900074>  
 O. Reg. 461/17: Administrative Penalties: <https://www.ontario.ca/laws/regulation/170461>

**Item 2 –Compliance with Certain Terms and Conditions of Registration**

The existing terms and conditions of registration include requirements to include certain information in the renewal application. Failing to provide this information can delay the approval of your renewal application and may result in its refusal.

As a reminder, R.R.O., Reg. 74: General (the "Regulation") subsection 13(6) requires a copy of the current financial statement prepared by a person licensed under the Public Accounting Act, 2004 to be attached to the application for renewal. The person who prepares the financial statement must include a statement that the registrant has complied with the trust account provisions, as per section 14 of the Regulation.

Please ensure that your renewal applications satisfy these terms and conditions.

**Reference:**

Subsection 13(6) and section 14 of R.R.O., Reg. 74: General.

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**Item 3 – Compliance with Certain Trust Funds Requirements**

Subsection 17(1) of the Regulation defines trust funds. Please note that the funds deemed trust funds include not only funds received from debtors but also certain kinds of funds received from clients. For your convenience, subsection 17(1) is reproduced below.

17. (1) All funds received by a collection agency in the normal course of business from clients or debtors, other than those which clearly represent payment for fees earned, and all advance payments or deposits for services to be rendered or expenses to be incurred at some future date are deemed to be trust funds.

Trust accounts must be maintained in respect of all trust funds that come into a collection agency's hands.

As a reminder, maintaining more than one trust account requires notifying and obtaining the consent of the Registrar.

17(3) For the purposes of this section, no collection agency or branch thereof shall maintain more than one account designated as a trust account without first notifying the Registrar and obtaining the Registrar's consent in writing.

**Reference:**

Subsections 17(1) and 17(3) of R.R.O., Reg. 74: General.

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**Item 4 – Compliance with Requirements for Dealing with Debtors under the Name of a Creditor**

It is understood that there is a demand for collection agencies to provide customer service for creditors' past due accounts prior to these accounts being considered "in collections." In some cases, the creditor may wish the collection agency's collectors to represent themselves as the creditor.

Generally, the Act prohibits collection agencies from dealing with a debtor in a name other than that authorized by the registration. Section 19.1.1 of the Regulation allows collection agencies to represent themselves as the creditor if certain conditions are met. Please see the excerpt below.

19.1.1 (1) Subsection 4 (2) and clause 22 (d) of the Act and section 21 of this Regulation do not apply to a collection agency that is contacting a debtor in the name of a creditor pursuant to a written contract between the collection agency and the creditor under which,

- (a) the collection agency is authorized to act in the name of the creditor to collect money owed that is no more than 60 days past due;
- (b) the collection agency is not compensated contingent on or based on the amount, if any, collected from the debtor;
- (c) the collection agency does not receive payment directly from the debtor and may not request that the debtor make any payment to the collection agency or collector; and
- (d) the collector is required to give the debtor the name of the creditor and his or her own name in every contact with the debtor.

(2) The exemptions in subsection (1) only apply to a registered collection agency while engaged in the collection of money owed as described in that subsection and do not apply to the same collection agency while engaged in any other activity.

(3) A collection agency that is exempt under subsection (1) shall, before engaging in the activity described in that subsection, notify the Registrar in writing,

- (a) that the collection agency has entered into a contract as described in that subsection; and
- (b) of the name and address of the creditor.

Those conditions include notification to the Registrar. Until directed otherwise, this notification requirement can be met by sending an email that contains the information required by 19.1.1(3) to [shane.gallagher@ontario.ca](mailto:shane.gallagher@ontario.ca).

**Reference:**

Section 19.1.1 of R.R.O., Reg. 74: General.

Please contact my office if you have any questions about these items.



Shane Gallagher  
Registrar of Collection Agencies