

OFFICE DE LA
PROTECTION DU
CONSOMMATEUR

LAWS AND REGULATIONS APPLICABLE TO THE DEBT COLLECTION SECTOR

Study guide for debt collection
agent representatives

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A WORD FROM THE PRESIDENT

The *Office de la protection du consommateur* is proud to present this study guide. It contains all the information you need to prepare for the examination which is now a mandatory requirement for obtaining a collection agent representative certificate.

In order to ensure that your practice is compliant with the law and respectful of the public, you must observe a set of obligations and rules of conduct. They are laid out in detail in the following pages. This guide also provides a wealth of information that will help you to better understand the legal and regulatory context governing debt collection.

With this manual, you will have all the tools at hand to find out what your responsibilities are and how to fulfill them. Hold on to it: after your certification process, it will continue to be an essential reference guide for your debt collection activities.

Enjoy your reading!

Marie-Claude Champoux

President of the *Office de la protection du consommateur*



OBJECTIVES

After reading this manual, you will be able to:

1 List

List the **mandates** of the *Office de la protection du consommateur*;

2 Understand

Understand the **legal and regulatory context** of debt collection in Quebec;

3 Identify

Identify the **obligations** of debt collection agents and collection agent representatives, and what they entail;

4 Distinguish

Distinguish the **roles and obligations** of debt collection agents and agent representatives;

5 Define

Define the **powers of the Office's** president in relation to debt collection agent permit holders and holders of collection agent representative certificates;

6 Recognize

Recognize collection agents and agent representatives' **practice environment**, the **rules of conduct** that apply in this sector of activity, and the **sanctions** that can be imposed in the event of infringement.

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1

BECOMING FAMILIAR WITH THE APPLICABLE LAW AND THE AUTHORITIES INVOLVED

1.1

Role of the *Office de la protection du consommateur*

The *Office de la protection du consommateur* is a **Quebec government body** created in **1971** with the Consumer Protection Act's coming into force. It provides services to Quebec **consumers** and **merchants** doing business in Quebec.

Its mission consists, among other things, in **protecting** consumers and **overseeing** the implementation of the **laws** that are under its jurisdiction, as well as the **regulations** related thereto.

In addition, the Office receives, studies, and processes **consumer complaints**, and **supervises merchants**. Its mandates also include **information** and **consultation**.

1.1.1 Consumer protection and merchant supervision

Most **complaints** received by the Office come from consumers; some are filed by associations representing consumers and merchants denouncing competitor practices.

The Office can initiate **supervision** following a complaint against a merchant. This includes investigation, inspection, and audit, and can result in direct intervention with merchants who are potentially in breach of the applicable legal and regulatory provisions. The Office's intervention can range from reminding merchants of their obligations to filing penal charges.

Debt collection-related activities can be subject to complaints filed with the Office. In some cases, a complaint can originate from another **debt collection agent**.

From year to year, the number of complaints pertaining to debt collection varies between 600 and 1300. This sector of activity is subject to the Office's supervision, which is responsible for the application of the Act respecting the collection of certain debts and the Regulation respecting the application of the Act respecting the collection of certain debts.

The **issuing of permits and certificates** is also part of the Office's supervision mandate. Consequently, the Office knows the businesses and individuals working in a given sector. It can easily undertake the intervention warranted in the event of rule infringement, i.e. suspension or cancellation of the permit or certificate (thereby barring the agent or the agent's representative from conducting their activities),

signing of a **voluntary undertaking**, penal proceedings that can result in a fine, and so on. It is therefore in the context of a supervision mandate that the Office and its president issue permits to debt collection agents and certificates to collection agent representatives.

1.1.2 Information

The Office ensures that **consumers are informed of their rights and the legal recourses available to them**, in particular in relation to debt collection.

Office de la protection du consommateur **agents** answer questions from the public, in particular through a **telephone** service. Between 2000 and 3000 information requests pertaining to debt collection are answered each year. The Office's website also has a section dedicated to this topic.

In addition, the Office makes available other **information tools** to consumers, such as **brochures**. It also circulates information kits, whose objective is to encourage problem resolution with merchants. The responsibility to initiate such a process rests with the consumer.

Debt collection agents and their representatives are also informed of their obligations through various **information tools**, including the **Office's website**, where they can find complete and up-to-date information. *Office de la protection du consommateur* agents are also available to answer questions.

The Office is also visible in the **media**; it issues press releases, answers questions from journalists, and gives interviews.

Finally, Office representatives participate in **public events** (fairs, exhibitions, and so on) in order to meet with merchants and consumers, and to address specific issues.

Find out more

The legislation whose application the Office oversees is discussed in more detail in section **1.2 Legislation under the jurisdiction of the *Office de la protection du consommateur***.

1.1.3 Consultation

The Office collaborates with **consumer associations, retail groups, Quebec governmental departments and agencies, and partners** from various sectors. It promotes the interests of Quebec consumers and it is attentive to merchant requests.

The Office collaborates in particular with the **Receivables Management Association of Canada** with a view to consultation and information sharing.

1.2

Legislation under the jurisdiction of the *Office de la protection du consommateur*

Two pieces of legislation administered by the *Office de la protection du consommateur* pertain specifically to collection agent representatives: the **Consumer Protection Act (CPA)** and the **Act respecting the collection of certain debts (ARCCD)**.

1.2.1 The Consumer Protection Act, the Act respecting the collection of certain debts, and their implementing regulations

The **CPA** was adopted in **1971**. It has been updated several times in order to take into consideration the changing realities of the consumer environment. For example, this **Act**

- governs **contracts between consumers and merchants**, and establishes specific protections for certain types of contracts (credit contracts, contracts signed with itinerant merchants, e-commerce contracts, automobile sales, and so on);
- makes provisions for a **legal warranty**, which is automatic and free of charge, covering any goods or services bought or leased;
- determines the **fields of commercial activity** in which the issue of a **permit** is required;
- oversees **advertising intended for children under the age of 13 years**;
- prohibits merchants to engage in certain **practices**.

The **ARCCD** was passed in **1979**. It has been amended a number of times, including in 2006 and, more recently, in 2019. Unlike the CPA, the ARCCD doesn't relate to the concept of consumer but to that of **debtor** instead. It establishes a rigorous framework to govern the relationship between debtors and collection agents (or their representatives). More specifically, it

- requires a debt collection agent to hold a **permit** and provide **security**, and
- as of August 2019, requires a collection agent representative to hold a **certificate**.

The Act also lays down rules of conduct for **any person who collects debt**. Therefore, a merchant claiming the payment of a debt on their own behalf, i.e. not through a collection agency, is required to comply with a number of rules. For example, like collection agents, merchants are allowed to contact a debtor at the debtor's workplace only once.

The **CPA and the ARCCD are connected**. The provisions of the CPA are added to the provision of any other piece of legislation that grants a right or a remedy to consumers. Below are two examples of this relationship in the context of debt collection:

- › The ARCCD prohibits any individual from claiming a debt exceeding their due other than the interest accrued where applicable. The CPA adds another requirement in the event where the amount claimed is related to the use of a credit card. In fact, this Act provides that until the consumer receives a statement of account, the merchant may not exact credit charges on the unpaid balance. The CPA therefore specifies at what time the payment of interest can be claimed.
- › The ARCCD prohibits the holder of a collection agent permit or the holder of a collection agent representative certificate to also be holders of a debt settlement service merchant's permit. The latter is only defined in the CPA.

The implementing regulation pursuant to the Consumer Protection Act and the implementing regulation pursuant to the Act respecting the collection of certain debts (RRCCD) supplement and clarify the provisions of these two acts.

For example, under section 44.2 of the ARCCD, a person who applies for a collection agent representative certificate must meet the conditions prescribed by regulation. Section 33.1 of the RRCCD sets out the detail on these conditions: acting for one or several collection agents, passing an examination, not having made a false or misleading statement, and so on.

1.2.2 The rationale behind the Act respecting the collection of certain debts

The ARCCD's provisions are aimed at **mitigating the consequences** of debt collection for individuals. The government intended to **protect the public, including debtors**, against any pressure, intimidation, or harassment that they may be subject to by imposing rules of conduct on collection agents and their representatives.

Certain debt collection practices can result in **consequences** other than the financial repercussions for the **individuals concerned**. The more vulnerable among them can be affected psychologically or physically, and in their family, social, and professional life, for example. Collection agents and their representatives must perform their duties with honesty and competence, to the benefit of the public.

1.3

Role of the president of the *Office de la protection du consommateur*

The president of the *Office de la protection du consommateur* plays a key role in the implementation of the Act respecting the collection of certain debts and its **implementing regulation**.

Issuing **collection agent permits and agent representative certificates** are the responsibility of the president of the Office, as well as these documents' **renewal, suspension, cancellation**, and even the **refusal to issue or renew them**.

In addition, the president of the Office is in charge of **administering the funds** provided for individual **security** by collection agents. These funds can be used to compensate customers in certain cases where a court decision was rendered in their favour against a collection agent or an agent representative, for example.

Finally, the president can request from a collection agent permit holder to produce a **copy of the register of the representatives** employed by the permit holder or with whom the permit holder has a service contract. In fact, it is mandatory for agents to keep such a register up-to-date.

Find out more

The topic of security is discussed in greater detail under the heading **Security** in section **2.1.3 Applying for a permit**.



TEST YOUR KNOWLEDGE

True or false?

- | | | |
|---|-------------|--------------|
| 1. The Office supervises merchants, including collection agents, on a random basis. | TRUE | FALSE |
| 2. The Office makes available on its website information targeted at consumers about what collection agents are allowed and not allowed to do in order to collect a debt. | TRUE | FALSE |
| 3. The Act respecting the collection of certain debts is intended only for collection agents and their representatives. | TRUE | FALSE |
| 4. The implementing regulation pursuant to the Act respecting the collection of certain debts supplements and clarifies the provisions of the Act. | TRUE | FALSE |
| 5. The Act respecting the collection of certain debts is aimed at preventing debt collection. | TRUE | FALSE |
| 6. The president of the Office can refuse to issue a collection agent representative certificate. | TRUE | FALSE |

The answer key is on page 42.

2

OPERATING A DEBT COLLECTION AGENCY

2.1

The obligation for debt collection agents to hold a permit

All debt collection agents practicing in Quebec must obtain a **permit** issued by the president of the *Office de la protection du consommateur*. Agent representatives must be holders of a **certificate** issued by the same authority.

Each year, the Office reports 75 collection agent permit holders.

DID YOU KNOW THAT...

2.1.1 The requirement to hold a permit

Collection agents, who must hold a permit, may not authorize a **representative who is not a certificate holder** to act on their behalf.

Requirement for collection agents to hold a permit

The Act respecting the collection of certain debts (ARCCD) defines a collection agent as “**a person who personally or through a representative and for remuneration collects or attempts or offers to collect a debt for another person.**” Such a person is required to hold a permit. To find out whether an agent holds a valid permit, the public can use the “Get information about a merchant” tool available on the Office’s website.

The collection agent, who holds a valid permit, is thus mandated by a **creditor** to collect the sum of money from the debtor. The agent is then required to remit the money to the creditor.

Requirement for collection agent representatives to hold a certificate

In practice, it is the collection agent's representative, acting on the agent's behalf, who **contacts the debtor**. The representative can be employed by the agent or have a service contract with the agent.

Debt collection activities

The holder of a collection agent representative certificate can perform debt collection activities on behalf of **one or several agents**. This relationship or **relationships must be declared** to the Office president, i.e. the representative must provide the name of the agent or agents on behalf of whom the representative acts.

The agent (or the agent's representative) is **under no circumstances authorized to perform activities related to debt settlement**, within the meaning of the Consumer Protection Act (CPA). These activities are the prerogative of debt settlement service merchants, who must hold a special permit issued by the Office president.



Find out more

The debt collection mandate is discussed in more detail in section **3.3.1 The debt collection mandate**.



Find out more

Certification is presented in detail in section **3.1 The obligation for debt collection agent representatives to hold a certificate**.

**DID YOU
KNOW
THAT...**

A debt settlement service merchant is defined in the CPA as "a person who offers to enter into or enters into a contract with a consumer that has the following object:

- a) to negotiate the settlement of the consumer's debts with creditors;
- b) to receive amounts from or for the consumer in order to distribute them to the consumer's creditors; [...]."

2.1.2 Exceptions: where a permit is not required

There are cases where debt collection activities can be **carried out without a collection agent's permit**. In fact, certain individuals and certain institutions do not need a permit issued by the president of the *Office de la protection du consommateur* in order to collect a debt.

This is the case for **lawyers, notaries, claim adjusters, insurance representatives, bailiffs, court clerks, insolvency trustees, liquidators, receivers, public trustees and guardians**, and **trustees and licensed trust companies** when acting within the scope of their duties. **Banks** and **financial services cooperatives** don't need a permit either. **Individuals collecting rent** for property and **securities brokers** are also exempt.

The **director of a legal person** (a corporation, for example) does not need a permit if, as part of their duties, they are in charge of collecting debts owed to the legal person. This is also true for a **partner** acting on behalf of the partnership or an employee acting on behalf of an employer. Let's imagine a telecommunications company mandating one of its employees to collect sums owed by a client in default of payment for three months... A permit is not required in this case.

A permit is not required in order to collect a debt from a **merchant who owes money in conjunction with the merchant's business operations**.

A **merchant may collect a debt owed to another merchant**. For example, a business mandating an external accounting firm in charge of the merchant's accounting, to in addition collect sums owed to the business... In this situation, a permit is not required if **a certain number of conditions**, including the following, are fulfilled:

- › the two merchants are bound by a debt collection agreement;
- › the collection mandate is given by the merchant who is the creditor;
- › the debtor has been informed in writing of the name of the merchant who is the creditor or of the nature of the debt to be collected;
- › the main activity of the merchant mandated to collect the debt is the sale of goods and services that are not related to debt collection or credit reporting.

Even if these individuals or institutions don't have to hold a permit issued by the Office's president, they cannot proceed to debt collection as they please... The **ARCCD governs their communications with the public**.

2.1.3 Applying for a permit

In order to be able to collect debts through representatives, debt collection agents must apply for a permit with the president of the *Office de la protection du consommateur*. This responsibility does not rest with the agent's representative.

Collection agent's permit template

Office
de la protection
du consommateur
Québec

COMMERCE XYZ
XYZ
123 RUE XYZ
QUÉBEC QC G0K 0K0

MISE EN GARDE

La délivrance du permis n'est pas une garantie d'honnêteté ou de compétence, mais est basée sur le dépôt d'un cautionnement qui sert d'abord à garantir l'observance de la loi et qui, dans certaines conditions, peut indemniser les consommateurs en tout ou en partie en cas d'insolvabilité. En aucune façon, l'Office de la protection du consommateur ne se prononce sur la qualification des représentants.

Office
de la protection
du consommateur
Québec

Permis d'agent de recouvrement

Numéro du permis : 499999 Valide du : 2022-11-23 au 2024-10-31

COMMERCE XYZ
123 RUE XYZ
QUÉBEC QC G0K 0K0

Autres noms du commerçant :
– COMMERCE ABC


Présidente

Ce permis est délivré par le président de l'Office de la protection du consommateur. Toute personne peut en vérifier la validité et consulter la fiche de son titulaire, qui inclut les interventions de l'Office associées au commerçant, en balayant le code QR suivant ou en consultant opc.gouv.qc.ca/se-renseigner/409382.



Permit application and conditions for granting a permit

The Regulation respecting the application of the Act respecting the collection of certain debts (RRCCD) lays down the information and documents that must be provided in order to obtain a permit.

The applicant must **fill out a form** available on the Office's website. The applicant must provide, among other information, their name, personal contact information and the contact information for the establishment for which the permit is requested. The applicant must declare whether they are an **undischarged bankrupt** and whether they have been found guilty, in the three years prior to the application, of an **offence** against the ARCCD or its implementing regulation.

The applicant is also required to indicate the name, date of birth, and contact information for each of their representatives. It is important to remember that it is prohibited for an agent to employ a representative or enter into a service contract with a representative who doesn't hold a valid certificate.

In the event where changes occur regarding the information provided upon applying for a permit, the collection agent is required to inform the Office's president thereof. Let's imagine that you acted as a representative for collection agent ABC and that after relocating to a remote town you ceased to be employed by this agent. **The collection agent has 15 days following the event to forward this information to the Office.**

The application must be accompanied by the **duties for the issue of the permit** and a **security**. The amounts are set in the RRCCD. Since the amount of the applicable duties is indexed on July 1 of each year based on the general Consumer Price Index for Canada, this amount is published annually by the Office in the *Gazette officielle du Québec*.

Security

In order to ensure the protection of individuals from whom the collection agent collects debts and deals with through their representatives, the agent must provide a security to the Office. This is a **prerequisite** for the issue of a permit. The initial amount of the security is set at **\$20,000**. Upon renewal of the permit, every two years, the amount is **adjusted** (it can be higher or lower) depending on the sums of money collected in the course of the preceding fiscal period.

It is important to note that should the agent **use the security, the agent must supplement the amount** thereof in order to maintain the validity of their permit. This can happen for example if the Office used the security toward the payment of a fine issued against the agent or their representative by a court following a penal suit.

The collection agent can provide their security by means of an **individual or a group guarantee bond**. It can be obtained from an insurance company or a financial institution. The latter undertakes by contract to fulfill the agent's obligations in the event where they default. The agent must pay a surety bond premium depending on the amount of the surety.

The agent may also choose to provide a security by means of a **bond convertible at any time**, or ask a **third party** to furnish the surety for the agent. It is issued or guaranteed by the Government of Canada or a Canadian province. Its market value must be at least equal to the amount of security.

Finally, the security can be **paid by the agent themselves or by a third person** in cash, by certified cheque, postal money order, bank money order, or certified payment order drawn on a financial services cooperative.

Establishment: location and name

The holder of a collection agent's permit must have an **establishment located in Quebec**, in a building or portion of a building where they conduct their debt collection activities. Receiving money, transactions in the **trust account** (deposits, conservation, withdrawal, and so on) and issuing receipts and **acquittances** to be provided to the debtor are examples of **activities that must be carried out in Quebec** and are generally performed by agent representatives.

The **name under which the agent is doing business** must contain the expression "collection agency" or "collection agent." The intent of this requirement is to ensure that the debtor is aware that they are dealing with a collection agency.

Register and record keeping

Permit holders must keep up to date a range of registers, accounts, books, and records.

The agent must keep a **detailed register for each debt** to be collected. The agent's representatives also contribute to constituting this register. The information to be included is the following:

- › Name and address of the debtor
- › Name and address of the creditor
- › Amount of the debt to be collected
- › Date, amount, and method of each payment
- › Name of the person who made the payment if different from the debtor
- › Balance of the debt after each payment
- › Date on which the collection mandate was entrusted to the agent
- › Date on which the **notice of payment** was sent to the debtor
- › Date and nature of any other writing addressed to the debtor
- › Date on which the permit holder received the notice from the debtor requesting written communication only
- › Date and nature of any other writing received from the debtor
- › Date and nature of any writing sent to a person other than the debtor, except where the writing is addressed to the creditor
- › Date and the identification of any person other than the debtor whom the holder or his representative has contacted other than in writing
- › Date of any receipt remitted to the debtor
- › Date of any rendering of account made on the debtor's request
- › Date of any acquittance provided to the debtor
- › Date of any information sent to the debtor in writing on the debtor's request

The agent must also keep a **record for each debtor**. This record must contain

- › a copy of vouchers for any debt to be collected from the debtor where these vouchers were provided by the creditor;
- › for each debt to be collected from a debtor, a copy of the writings or documents referred to in the register.

In addition, the collection agent must keep up to date a **list of representatives** that they employ or with whom they are bound by a service contract. The president of the Office can demand that a copy of this list be forwarded, where applicable.

Finally, the agent must keep up to date a **register of the trust accounts**.

Trust accounts

The purpose of a **trust account** is to protect, in the interests of debtors and creditors, the money collected by an agency. It allows for keeping apart the amounts collected from debtors and those belonging to the agent. The agent is not allowed to use the trust account funds for their personal purposes or for the purposes of the business. The funds belonging to the business or the business's managers is deposited in a separate bank account, from which current transactions are carried out.

Collection agents can open a number of trust accounts for the purpose of their activities in Quebec. These accounts must be opened in a bank or an institution authorized to accept deposits under law, for example. Upon opening a trust account, the agent must inform the Office's president thereof and forward the account number and the name of the financial institution concerned. The agent is also required to inform the Office's president in writing **within 10 days of any change** in the place where the account is held or in the account number.

The agent has a responsibility to ensure the sound management of the funds entrusted to them. The agent must in particular enter in their registers the **accounting items** in regard to the sums placed in a trust account. They must also enter in a **register** the date and amount of any sum of money received for the account of another, as well as the date of each withdrawal, and the amount and the name of the beneficiary.

2.1.4 Applying for permit renewal

Collection agent permits are valid for a period of two years. If the agent wishes to continue operating after this period, they must apply for **renewal** from the *Office de la protection du consommateur*. The agent is asked to confirm that the information previously submitted, including concerning their representatives, is up to date, and to change it where appropriate.

Duties and security

There is a **duty to pay for permit renewal**. The amount thereof is laid down in the RRCCD and this applies to all agents. The agent must also adjust the amount of their security depending on the amount of debts collected in the course of the preceding fiscal year. The initial security required in the amount of \$20,000 can therefore be reduced to \$10,000 or \$15,000, or increased to \$25,000.

Find out more

Details about the format and purpose of the security can be found under the **Security** heading in section **2.1.3 Applying for a permit**.

Information about the last year covered by the financial statements must be sent to the Office within **six months** of the end of the agent's fiscal year. This information includes the total amount collected from debtors, the amount deposited in a trust account, and the amount remitted to creditors. They must be accompanied by a review engagement report, drawn by a chartered accountant auditor.

2.1.5 Consequences of operating without a permit

To ensure compliance with the ARCCD **inspectors** and **investigators** of the *Office de la protection du consommateur* verify, in particular, whether collection agents are indeed permit holders.

Penal sanctions

In the event where an investigator finds that there is an infringement relating to an absence of permit, the investigator can recommend **penal proceedings**. Proceedings are instituted by the Director of Criminal and Penal Prosecutions against anyone who violates a Quebec act or regulation. If convicted, the defendant is liable to a fine.

A **natural person** (the individual) is liable to a **fine of \$300 to \$6,000**. Natural persons representing a legal person (the director of an incorporated collection agency, for example) can be subject to the same fines if involved in the offence. Likewise, a representative is liable to the same penal **sanctions** if found to be performing debt collection for an agent while aware that the agent doesn't hold the required permit. The fine for a **legal person** (the company) ranges between **\$1,000 and \$40,000**. In the event of a repeated offense, **amounts are doubled**.

The payment of the abovementioned fines can also be claimed from a natural or legal person who helped or encouraged a collection agent to commit an offence, such as operating without a permit.

Civil sanctions

The Office's president can apply to the court for an **injunction** ordering a collection agent to cease their activities if the agent doesn't hold the required permit. An injunction forces a person to do or cease to do something. The court can also order the agent to reimburse the investigation costs that the Office incurred.

In the event where the collection agent doesn't comply with the injunction, the president can present an application for **contempt of court**. The party guilty of such an offence is subject to a fine, and even a prison sentence.

2.2

Permit refusal, suspension, and cancellation

The president of the *Office de la protection du consommateur* has the power to issue a permit to collection agents, but also to refuse the issue of a permit. The president can suspend or cancel a valid permit.

2.2.1 Grounds

The president of the *Office de la protection du consommateur* can **refuse to issue a permit, and suspend or cancel a permit** for various reasons. In either of these cases, the collection agent is not authorized to practice debt collection. The following are some of the grounds for refusing to issue, canceling, or suspending a permit:

- › the president believes that the applicant, by reason of their **financial condition**, is not in a position to assume their obligations. For example, based on the company's financial accounts and the precariousness of its financial situation, the president may deem that a collection agent is unable to continue operating;
- › the president has reasonable grounds to believe that the collection agent is **unable to perform their activities, in the public interest, with honesty and competence**. A high number of complaints filed by consumers against a collection agent can, among other things, lead the president to this conclusion;
- › an applicant who, **during the three years preceding their application, was found guilty of an offence** against the Act respecting the collection of certain debts (ARCCD) or its implementing regulation;
- › the applicant has made a **false statement** in order to obtain the permit;
- › the applicant doesn't meet a **requirement** prescribed by the ARCCD or its implementing regulation. For example, the applicant hasn't provided security;
- › the applicant has failed to comply with a **voluntary undertaking**.

2.2.2 Recourses available to agents

Before refusing to issue or suspending a permit, the president of the *Office de la protection du consommateur* sends a **notice** to the collection agent. This document explains the president's intention, the grounds for the decision, and sometimes the corrections required on the part of the agent to regularize their situation.

Upon receiving this notice, the agent has a **maximum of 10 days** to submit **comments** to the president of the Office. However, the Office's president may dismiss the agent's explanations and maintain the refusal to issue, or the decision to suspend or cancel the permit.

The agent may challenge the decision before **the Administrative Tribunal of Québec** within **30 days** of receiving the notice, along with the required fee.



TEST YOUR KNOWLEDGE

True or false?

- | | | | |
|-----|---|------|-------|
| 7. | A collection agent holding a permit issued by the president of the Office can, in some cases, authorize a representative to act on their behalf if the representative doesn't have a valid certificate. | TRUE | FALSE |
| 8. | The applicant for a collection agent's permit must forward to the president of the <i>Office de la protection du consommateur</i> the personal contact information of all their representatives. | TRUE | FALSE |
| 9. | The security provided by the collection agent serves in particular to protect debtors. | TRUE | FALSE |
| 10. | The name "Collection plus" is acceptable for a collection agency. | TRUE | FALSE |
| 11. | A debt collection agent representative having encouraged the latter to collect debts without a permit is subject to a fine of up to \$6,000. | TRUE | FALSE |
| 12. | A debt collection agent holding a permit issued by the president of the Office must cease their debt collection activities if their permit is canceled. | TRUE | FALSE |

The answer key is on page 42.

3

REPRESENTING A DEBT COLLECTION AGENT

3.1

The obligation for debt collection agent representatives to hold a certificate

The **debt collection agent representative** is a person who is **explicitly or implicitly authorized** to act for a permit-holding debt collection agent. The Act respecting the collection of certain debts (ARCCD) defines the debt collection agent representative as “a person acting for a collection agent or regarding whom a collection agent has given reasonable cause to believe that such person is acting for him.”

3.1.1 Mandatory certification

In Quebec, persons dealing with debtors are required to hold a debt collection agent representative **certificate**. This document is issued by the president of the *Office de la protection du consommateur*. The certificate contains information such as the representative's name, the agent or agents on behalf of whom they act, and the certificate status (valid, suspended, and so on).

The **collection agent can deal with debtors in their own name**, i.e. without the intermediary of certified representatives only if they hold a debt collection agent's permit as a natural person and not as a legal person such as a company. In all other situations, the agent is always expected to act through certified representatives.

Find out more +

The topic of debt collection agent's permit is discussed in detail in section **2.1 The obligation for debt collection agents to hold a permit.**

Collection agent representative certificate template

Office de la protection du consommateur
Québec

Certificat de représentant d'agent de recouvrement

Renseignements sur la certification

Numéro de dossier	CAR201912345678
Titulaire	M. XYZ
Statut du certificat	Valide
Période de validité	20 janvier 20XX au 19 janvier 20XX

Agent de recouvrement auquel le titulaire est lié

- 499999, COMMERCE XYZ, 123 RUE XYZ, QUÉBEC (Québec) G0K 0K0

Données en date du **2023-05-16 10:54:47**.

Ce certificat est délivré par le président de l'Office de la protection du consommateur.
Toute personne peut en vérifier la validité au opc.gouv.qc.ca.

Page 1 de 1

3.1.2 Applying for a certificate

Certificate applications are made through an **online service** on the Office's website. One of the conditions you must fulfill in order to obtain a certificate is **passing an examination** approved by the president of the Office. This examination is aimed at evaluating your knowledge of the legislative and regulatory provisions applicable to debt collection in Quebec. This manual will help you to prepare for this examination!

You must apply for a certificate within two years of passing the examination. If you fail to respect this deadline, whatever the reason, you will have to sit the examination again if you still wish to do debt collection.

Conditions

Aside from passing the examination, you must meet other conditions in order to be issued a certificate, such as

- › being bound by an **employment contract or a service contract** with one or several permit-holding debt collection agents, and having provided the name, address, and permit number of the agent or agents;
- › having paid the **duties** prescribed;
- › having sent the required personal **information**: your name, date of birth, personal and professional contact information, and so on;
- › not having committed, **during the three preceding years**, an **offence** against the ARCCD or its implementing regulation;
- › not having been found guilty, **during the three preceding years**, of a **criminal offence** in relation to debt collection (for example, you may not be issued a certificate if you have been found guilty of assault while performing debt collection for a pawnbroker);
- › not having made a **false or misleading statement** or concealed an important fact.

The responsibility to provide the required information and to make the declarations necessary for the issue and maintenance of a certificate rests with the representative. The representative is solely responsible for the information that concerns them personally that they are required to provide by law.

**DID YOU
KNOW
THAT...**

If you don't meet all the conditions laid down by the ARCCD and its implementing regulation, your **application for a certificate will be refused**.

Changes

Once you've been issued a certificate, it is your responsibility to **inform the president of the Office of any changes in your situation within 15 days** of such changes. The latter can concern your personal or professional contact information, a change of employer, or the signing of a service contract with a second agency, for example.

Certificate validity and renewal

Once obtained, the certificate has a **two-year validity**. Toward the end of this period, you will receive an **email reminding you to renew it**; this renewal is necessary in order to maintain it in effect and be allowed to practice. Renewal duties apply.

In order to renew your certificate, you must apply through the **online service** made available by the Office, but you don't have to sit the examination again. However, you must meet the other **conditions**, which are similar to those you had to fulfill to have the initial certificate issued.

You are terminating your employment? Note that **in the event of an employment cessation or service contract termination with a collection agent, your certificate will be suspended**. You have a **maximum of two years to enter into a new contract** with an agent and to declare your relationship to the Office's president. Failing that, once the two-year time period has elapsed, your certificate will no longer be valid. In this case, you will have to file a new certificate application, meaning that you will also have to sit the examination again.

To find out whether a collection agent holds a valid certificate, the public can use the **tool "Find a Collection Agent Representative,"** available on the Office website.

Informing the Office of a change in a situation: a shared responsibility

As mentioned under the heading **Permit application and conditions for granting a permit** in section 2.1.3 **Applying for a permit**, the collection agent is also required to inform the Office when a representative ceases to be in their employ within 15 days of the event.

3.2

Certificate refusal, suspension, and cancellation

The president of the *Office de la protection du consommateur* issues a certificate to debt collection agent representatives, and also has the power to **refuse its issuance or renewal**. The president can also **suspend** or **cancel** a certificate during its validity period.

3.2.1 Grounds

The president of the *Office de la protection du consommateur* can **refuse to issue or renew a certificate** for various reasons. In either of these cases, you are not authorized to practice debt collection. The following are some of the grounds for refusal:

- › the president believes that you are **unable to perform your activities with honesty and competence** (for example, you are known to have made threats against debtors);
- › **during the three years preceding, you were found guilty of an offence** against the Act respecting the collection of certain debts or its implementing regulation;
- › you made a **false statement or concealed** important information in order to obtain the certificate.

You've obtained your certificate? It can be suspended or cancelled on the same grounds, in particular if you have concealed an important fact to have it renewed. Here's an example: let's imagine that you have stopped working for collection agent A who fired you because you intimidated debtors. You now work for collection agent B... but you've failed to inform the Office's president that you have changed employers within the prescribed deadline. The president is authorized to suspend or cancel your certificate.

3.2.2 Recourses available to representatives

Before refusing to issue or renew a certificate, or before suspending or cancelling a valid certificate, the president of the *Office de la protection du consommateur* sends a **notice** to inform you thereof. This document explains the president's intention and the grounds for the decision.

Upon receiving this notice, you have a **maximum of 10 days to submit comments** to the president of the Office. However, the Office's president may dismiss your explanations and maintain the refusal to issue or renew a certificate, or the decision to suspend or cancel your certificate.

You wish to challenge the decision? You may bring a motion before **the Administrative Tribunal of Québec** within **30 days** of receiving the notice, along with the required fee.

3.2.3 Sanctions and offences

Inspectors and **investigators** of the *Office de la protection du consommateur* make sure, among other things by conducting inspections, that representatives of collection agents are indeed certificate holders.

In the event where an investigator finds that there is an infringement relating to an absence of certificate, the investigator can recommend **penal proceedings**. Penal proceedings are instituted by the Director of Criminal and Penal Prosecutions against anyone who violates a Quebec act or regulation. If convicted, the collection agent representative is liable to a **fine in an amount ranging between \$300 and \$6,000**.

If you perform your activities without holding a certificate, the **agent for whom you act can also be prosecuted and fined**. In fact, the agent is required to carry out debt collection activities solely through certificate holders. By their involvement in the commission of an offence, the **natural person** representing a legal person (the director of an incorporated debt collection agency, for example) can be forced to pay a fine in an amount also ranging between **\$300 and \$6,000**. Fines for a **legal person** (the company) range between **\$1,000 and \$40,000**. For any repeated offence, **amounts are doubled**.

The payment of the abovementioned fines can also be claimed from a natural or legal person who helped or encouraged a collection agent representative to collect debts without the required certificate.

3.3 Dealing with the public on behalf of a collection agent

The Act respecting the collection of certain debts (ARCCD) lays down the conditions that guide the practice of collection agent representatives in addition to the rules of conduct that apply to this activity sector.

Once you've obtained your certificate issued by the president of the *Office de la protection du consommateur* authorizing you to act as the representative of a debt collection agent, you must **comply with this legislative framework** when you collect a debt from a debtor. More specifically, there are rules that govern the collection mandate given to the agency that you represent, your communication with the public, and the collection of the payment. The Act also provides for the sanctions that you are subject to should you commit an offence, and the **recourses** available to debtors as the case may be.

3.3.1 The debt collection mandate

A **debt collection mandate** can be entrusted to the holder of a collection agent's permit by a creditor (a financial institution, a retailer, or a business that is owed money by the debtor, for example) for remuneration. The creditor thereby delegates the task of collecting the debt that they are owed from the debtor.

The debt collection mandate entrusted by a creditor must be drawn up in the form and respect the content laid out in Form N-42 provided in the RRCCD.

**DID YOU
KNOW
THAT...**

As representative of the collection agent, you act on their behalf in order to carry out the mandate that was entrusted to them by the creditor. In this context, you act as an **intermediary between the creditor and the debtor**.

It is possible for a creditor to assign a right or a bundle of rights to a third party, **the assignee**. In this case, it is important to ensure that the assignment was carried out in compliance with the provisions of sections 1641 and 1642 of the Civil Code of Québec. The representative thus ascertains the identity of the creditor to whom the debt is owed and precludes, among other things, any false representation in relation to the debtor in the context of the debt collection.

As a general rule, individuals have **three years to file a claim**. This is the prescription period applicable in all civil matters, except where otherwise provided for by law. A creditor wishing to claim the payment of a debt owed to them has three years to file a lawsuit from the time the debt becomes payable. After this time period, barring some exceptions, the claim is prescribed and the creditor no longer has the right to bring a case against the debtor in relation to this claim.

3.3.2 Prohibited practices

All individuals practicing debt collection, whether they are holders of a permit issued by the president of the *Office de la protection du consommateur* or not, must observe the rules relating to **communication with the public**. As the representative of a debt collection agent, you have an obligation to abide by these rules.

Under the ARCCD, you must handle the debtor's case **confidentially** and use **respectful means** to collect the debt.

Conversely, certain practices are prohibited. Among other things, you are not allowed to engage in **false representation or misrepresentation**, whether through an affirmation, an act, or an omission. For example, you are not allowed to act as a bailiff or claim to be a bailiff.

The **use of certain methods is also prohibited**, including

- › representing that, failing payment, the debtor is liable to arrest or penal proceedings;
- › using harassment, threats or intimidation;
- › representing that you will disclose to third parties that the debtor has unpaid debt or actually proceed to disclose information that might cause undue injury to the debtor, his or her **surety**, their married or civil union spouses, or members of their families;
- › using a writing that might be mistaken for a document issued by a tribunal, a government, a municipality, or an agency thereof.

In addition, certain **practices relating to payment collection are prohibited**, namely

- › claiming from a debtor a sum of money greater than that which is due, or claiming a collection fee or a percentage of the amount owed, or in consideration of a time allotted for payment;
- › claiming a sum of money from a person other than the debtor or their surety.

Certain **forms of communication are also prohibited**. For example, you are not allowed to

- › communicate with the debtor when the latter has notified you in writing to communicate with their legal adviser;
- › communicate with the debtor if the latter has informed you in writing that the debt is contested and that the creditor may proceed with legal action;
- › communicate verbally with a person believed to be the debtor but who, in the course of a prior communication, indicated that they were not the debtor.

For the collection of a debt by the Government or one of its departments, an individual can communicate verbally with the debtor prior to taking legal action up to 120 days following the sending of a demand for payment of the debt, even if the debtor has notified them in writing that the debt is contested and that the creditor may proceed with legal action.

**DID YOU
KNOW
THAT...**

Finally, your dealings with the creditor are also regulated. For example, **you are not allowed to**

- › provide the creditor with the letterhead of the agency that you represent or the text of a notice of claim that the creditor can send directly to the debtor;
- › encourage the creditor to take legal action against the debtor by pretending that you will assume the cost.

3.3.3 Communicating with the debtor

The ARCCD and its implementing regulation lay down specific rules governing communication with the debtor.

First, when you contact a debtor in order to claim the payment of a debt, you must **identify yourself**, give the **name** and the **permit number** of the collection agency on behalf of which you are acting, the **amount of the debt**, and the **name of the creditor**.

You must then execute a **specific sequence of actions** when you **contact a debtor for the first time** and, upon the latter's request, provide information relating to their debt. In addition, there are rules limiting the number of times you can attempt to contact a debtor at their workplace and requiring you to communicate with them only in writing.

Rules governing initial communication

Initial contact with the debtor must be established in writing. To this end, you must send the debtor a **paper copy** of a notice, referred to as "**notice of payment.**"

This document must conform to Form N-41 of the RRCCD:

FORMULE N-41 (s. 44)

NOTICE OF PAYMENT

(An Act respecting the collection of certain debts (chapter R-2.2, s. 34))

_____ (number of holder's permit)

Date: _____ (date on which notice of payment is sent)

Place: _____ (place from which notice of payment is sent)

_____ (name of permit holder)

_____ (address of permit holder)

_____ (name of debtor)

_____ (address of debtor)

_____ (name of creditor of debt to be collected)

_____ (amount of debt to be collected)

(Text of the notice of payment)

It is in the debtor's interest to become familiar with the Act respecting the collection of certain debts and, where necessary, to communicate with the *Office de la protection du consommateur*.

Communicating with the debtor after the notice is sent

To ensure that the debtor has had the time to read the notice of payment, you are allowed to communicate with them no earlier than **five days after the sending of a paper copy of the document**.

Section 269 of the Consumer Protection Act describes the manner in which deadlines are computed.

**DID YOU
KNOW
THAT...**

Communicating by telephone

Five days after sending a paper copy of the notice of payment, you can **phone** the debtor. If you are addressing the debtor, you must

- › **identify** yourself and the debt collection agency that you represent;
- › provide the **permit number** of the collection agency;
- › provide the **amount of the debt** and the **name of the creditor**.

Leaving a voice message or a message with a third party

If you are unable to speak directly with the debtor, you can leave a **voice message** or a message with a **third party** living at the same address who answered the call, indicating

- › the **name of the person** that the debtor must contact;
- › the **telephone number** to call in order to get in touch with this person.

You can provide a truncated name of the agency that you represent, but **you must in no way suggest that this is a debt collection agency or that the person that you are attempting to contact has debt**. For example, you can ask that the individual call Marie Bélanger from the company ABC at 514 555-5555, but you cannot ask them to call back Marie Bélanger from the debt collection company ABC at 514 555-5555 regarding a debt with the merchant XYZ.

You must not under any circumstances mention that

- › the debtor has debt;
- › that the call is about debt collection.

The notice was not received

If in the course of this initial communication with the debtor, they inform you that they haven't received the written notice, you must **send another paper copy** thereof. Five days after the sending of this new notice, you may contact the debtor.

Mistaken identity

The individual that you thought was the debtor informs you that you've made a mistake. Perhaps they were confused with another person with the same name... In this case, under the ARCCD, you are **not allowed to contact them again**.

Evidence relating to the debt

You are required to forward, **at no cost**, certain information to the debtor if they make the **request in writing**.

Within **10 days** of receiving the debtor's written request, you must forward

- the date of the debt to be collected;
- the name of the creditor;
- the address of the place where the debt to be collected was incurred;
- the nature of the debt to be collected.

If a debtor requests **in writing copy of the voucher** for the debt to be collected (a receipt or an account statement for example), you must forward the information within **30 days** of receiving the request.

Communicating with the debtor at their workplace

You may contact the debtor or the debtor's surety **at their workplace only once**.

However, you are allowed to proceed to this communication only if you are in one of the following situations:

- you have **neither the address nor the telephone number** of either the debtor or the debtor's surety;
- you **tried in vain to reach** the debtor or the debtor's surety by telephone at their home.

If the debtor has formally **authorized** you to contact them at their workplace, you are not limited to only one communication.

Communicating in writing

The debtor has sent you a **written notice** asking you to communicate with them only in writing? You have an obligation to observe their request.

This notice is valid for a period of **three months** following the date of expediting and it applies in relation to all the debts that the debtor has with a given creditor. This notice can be renewed for the same length of time if the debtor sends a new notice.

3.3.4 Communicating with the debtor's friends and family

As a general rule, **all communication** with the debtor's **spouse, civil union spouse, family members, friends, acquaintances, employer, or neighbours** is forbidden.

Nevertheless, there are **two exceptions** to this rule. In order for either of them to apply, your situation must correspond to one of the following:

- › you **don't know the address or the telephone number** of the debtor. In this case, you can contact one of the abovementioned persons and you can do this **only once**;
- › one of the abovementioned persons is the debtor's **surety**.

Where the situation permits communication with the debtor's spouse, civil union spouse, family members, friends, acquaintances, employer, or neighbours, you are **required to identify yourself**. However, **discretion** is crucial: you can mention the name of the agency on behalf of which you are acting but you are not to specify that this is a debt collection agency.

3.3.5 Time schedule to be respected

There are **limited** hours when you can contact the debtor (or the debtor's spouse, civil union spouse, family members, friends, acquaintances, employer, or neighbours).

You can only contact them **Monday to Saturday inclusive, between 8 a.m. and 8 p.m.** Contacting them outside of this time frame is a violation of the law.

In addition, it is **prohibited** to contact a debtor on **holidays**, i.e.

- › Sundays
- › January 1st
- › Good Friday
- › Easter Monday
- › National Patriots' Day, the Monday preceding May 25
- › The National Holiday, June 24
- › The anniversary of Confederation, July 1 or July 2 if the 1st is a Sunday
- › Labour Day, the first Monday of September
- › Thanksgiving, the second Monday of October
- › Christmas Day, December 25
- › Any other day fixed by proclamation of the Governor-General or by order of the Government as a public holiday.

The list of holidays is provided in section 61(23) of the Interpretation Act (RLRQ c I-16).

**DID YOU
KNOW
THAT...**

3.3.6 Collecting payment

As representative of a collection agent, it is your responsibility to ensure the **sound management of the money** that has been entrusted to you. To this end and to the extent that they do not belong to you, under the ARCCD you must deposit them in a trust fund. When a debtor pays a debt, all evidence of the payment along with a statement must be provided to the debtor.

Deposits and withdrawals from the trust account

When you receive funds from the debtor, you are required to deposit them in their entirety in an **agency trust account**, until they are remitted to the creditor. The deposit has to be made within **seven days** of receiving the money.

Every time a withdrawal is made for the purpose of reimbursing a creditor, the date, amount, and name of the beneficiary of the reimbursement must be entered in a **register** of the trust accounts held by the collection agent that you represent.

Receipt issue

You must always provide a debtor who pays you in **cash** with a receipt. You have a period of **10 days** following the payment in cash to provide the receipt. Where the debtor uses other methods of payment, you also have to provide a receipt if the debtor **requests one in writing** and you must proceed within **10 days** of receipt of the request. In both cases, the receipt must be **signed by yourself and by the agent** on behalf of whom you act.

There is some **mandatory information** that must be included **in the receipt**:

- › date of the payment and the date on which the receipt was issued;
- › name of the debtor;
- › amount received and the method of payment;
- › name of the creditor and the debt for which the amount was received;
- › name of the person who made the payment if different from the debtor;
- › name of the permit holder;
- › balance of the debt to be collected.

Finally, for every receipt that you issue, you must keep a **copy** in the debtor's record.

Find out more

The information concerning the trust account and its management by the debt collection agent is presented under the heading **Trust accounts** in section 2.1.3 **Applying for a permit**.

Find out more

You will find more detail on the information that the debtor's record must contain under the heading **Register and record keeping** in section 2.1.3 **Applying for a permit**.

Rendering of account

Within **10 days** of receipt of a **written request** from the debtor, you must render account, **without charge**, of the payments made.

This document must be **forwarded** to the debtor **in writing** and it must indicate the following items:

- date on which account is rendered;
- name of the creditor;
- initial amount of the debt to be collected;
- date and the amount of each payment of the debt made since the notice of payment was given, for a first rendering of account or, where applicable, since the last rendering of account;
- name of the permit holder on behalf of whom you act.

Acquittance and deadline

You've made a compromise and accepted as final a payment from the debtor? Within **10 days** of receipt of the payment, you must provide the debtor with an acquittance, **without charge**. This is a receipt confirming that a **final payment has been received**.

The acquittance must be drawn up in accordance with Form N-40 of the RRCCD.

FORMULE N-40 (s. 43)

ACQUITTANCE

(Regulation respecting the application of the Act respecting the collection of certain debts (chapter R-2.2, r. 1, s. 43))

_____ (number of holder's permit)

Date: _____ (date of the acquittance)

_____ (name of permit holder)

_____ (address of permit holder)

_____ (name of debtor)

_____ (address of debtor)

_____ (name of creditor of debt to be collected)

_____ (amount of debt to be collected)

In consideration of the payment in the amount of \$ _____ made on _____,
we hereby give to _____ (*name of debtor*), his heirs, successors and
those claiming under him, a complete and final acquittance in the amount of \$ _____ which we had
a mandate to collect for the creditor against the said debtor.

Note that you are not required to produce an acquittance in the event where you have given the debtor a receipt indicating that their debt is paid off and containing all the mandatory information.

3.3.7 Sanctions and offences

The rules of conduct provided for in the ARCCD and its implementing regulation are aimed at ensuring the honest and competent debt collection practice, in the public interest.

The following are some behaviours that constitute an **offence**:

- › communicating with a person who, in the course of a prior communication, indicated that they are not the debtor;
- › repeatedly communicating with a debtor at their workplace without formal authorization;
- › threatening a debtor that you will go to their home, garnish their wages, or seize their property;
- › telling a debtor that, failing payment, judicial proceedings will be instituted against them;
- › threatening a debtor that you will have a negative note put on their credit record;
- › claiming from the debtor an amount exceeding their due;
- › failing to place a sum of money received on behalf of a third party in a trust account, rendering account in writing to the creditor of an amount collected, or remitting the collected amount within the prescribed deadline.

Should you use such methods, under the ARCCD, they are by the Director of Criminal and Penal Prosecutions can institute **proceedings** against you and the debt collection agent that on whose behalf you act.

If found guilty of infringing the law, as a **natural person**, you will be liable to a **fine of \$300 to \$6,000**. The agency, a **legal person**, on whose behalf you were acting, will be liable to a **fine of \$1,000 to \$40,000**.

If you **repeat the offence**, you will be liable to a fine in an amount between \$600 and \$12,000 and the agency that you represent will be liable to a fine in an amount ranging between \$2,000 and \$80,000.

The same fines can be imposed if, for example,

- › you carry out an act or omit to take action with a view to helping another person infringe the Act or its implementing regulation;
- › you encourage, entice, or advise a person to infringe the Act or its implementing regulation.



Find out more

If you fail to perform your activities with honesty, the Office can refuse to issue your certificate, or suspend or cancel it if you are the holder of a certificate in effect, as discussed in section 3.2 **Certificate refusal, suspension, and cancellation.**

3.3.8 Recourses available to the debtor

In addition to the applicable sanctions, if you fail to fulfill your obligations under the ARCCD, the debtor can file a complaint against you with the *Office de la protection du consommateur*.

The debtor can also institute **judicial proceedings** against you. Debtors have **three years** from the time the offence was committed to file a lawsuit. They can claim **damages** for the harm caused by the offence, as well as punitive damages. This could be the case for example if their reputation suffered because you disclosed information about their debt to their employer.

Find out more

The topic of complaints filed with the Office is discussed in section **1.1.1 Consumer protection and merchant supervision**.



TEST YOUR KNOWLEDGE

True or false?

- | | | |
|--|-------------|--------------|
| 13. In order to obtain a certificate, you must forward to the president of the Office the name of the agent or agents on whose behalf you practice debt collection. | TRUE | FALSE |
| 14. You can wait until you have to renew your certificate to inform the president of the Office that you have changed employers. | TRUE | FALSE |
| 15. Every two years, in order to renew your certificate, you have to sit the examination relating to the legislative and regulatory provisions applicable in the debt collection sector. | TRUE | FALSE |
| 16. You've stopped doing debt collection for three years. In order to start practicing again, you must apply for a new certificate and therefore sit the examination. | TRUE | FALSE |
| 17. Omitting to provide important information at the time of certificate renewal can result in a refusal of renewal. | TRUE | FALSE |
| 18. The representative of a debt collection agent holding a certificate issued by the president of the Office is required to stop their activities if their certificate is cancelled. | TRUE | FALSE |
| 19. When you are unable to reach the debtor, you can claim reimbursement of their debt from their spouse. | TRUE | FALSE |
| 20. If the debtor doesn't pay their debt, you will have a negative note entered in their credit record. They should be warned. | TRUE | FALSE |

21.	After sending a paper copy of the notice of payment, you have five days to contact the debtor by phone.	TRUE	FALSE
22.	Under the Act, the debt collection agent and their representative are not permitted to contact the debtor at their workplace at any time.	TRUE	FALSE
23.	When you leave a voice message, you can mention the name of the person to contact and telephone number to call so that the debtor can call back. You can only mention the name of the agency on whose behalf you are acting if you do not specify that it is a collection agency.	TRUE	FALSE
24.	The person that you believe is the debtor claims that they are not. And yet, you are certain that they are. In this case, you can call again and try to collect the debt.	TRUE	FALSE
25.	There is a good chance that you will be able to get a hold of the debtor during the Easter holidays. You can call on Easter Monday as long as it is between 8 a.m. and 8 p.m.	TRUE	FALSE
26.	You have 10 days to forward a receipt to a debtor who paid in cash.	TRUE	FALSE
27.	You have a seven-day deadline to deposit in a trust account any sum of money given to you by the debtor toward the payment of their debt.	TRUE	FALSE
28.	If you are found guilty of infringing the law, the agency that you represent may have to pay a fine in addition to the fine that you have to pay yourself.	TRUE	FALSE

The answer key is on page 43.



ANSWERS TEST YOUR KNOWLEDGE: *TRUE OR FALSE?*

1

BECOMING FAMILIAR WITH THE APPLICABLE LAW AND THE AUTHORITIES INVOLVED

1. **False.** The Office uses complaints received from consumers to guide its supervision activities with merchants.
2. **True.** The Office's website includes a section for consumers dedicated to debt collection.
3. **False.** The Act respecting the collection of certain debts lays down the rules of conduct that any person engaging in debt collection must comply with, whether this is a collection agency, an agency representative, the creditor themselves, or any other individual.
4. **True.** Regulations are intended to ensure statute implementation; they complement or clarify statutory provisions.
5. **False.** The Act respecting the collection of certain debts is intended to regulate this sector of activity and to limit the impact that debt collection can have on individuals.
6. **True.** In some cases, the president of the Office can refuse to issue a certificate.

2

OPERATING A DEBT COLLECTION AGENCY

7. **False.** Collection agents cannot authorize an uncertified representative to act on their behalf.
8. **True.** The Regulation respecting the application of the Act respecting the collection of certain debts requires the keeping of a register containing this information.
9. **True.** The security can be used to indemnify any person who has been awarded a final judgment rendered against a collection agent.
10. **False.** The business name under which the agent operates must include the expression "debt collection agency" or "debt collection agent."
11. **True.** Encouraging a debt collection agent to operate without the required permit is a punishable offence. Natural persons (individuals) are liable to a fine of \$300 to \$6,000.
12. **True.** Debt collection agents are no longer allowed to perform debt collection in the event where their permit is cancelled by the president of the Office.

3

REPRESENTING A COLLECTION AGENT

13. **True.** The name, address, and permit number of the debt collection agent that you represent are some of the mandatory information to be provided.

14. **False.** You must inform the president of the Office of any change within 15 days.

15. **False.** If you have entered in a bond with a debt collection agent in the last two years, you don't have to pass the examination again in order to renew your certificate.

16. **True.** After two years without an employment or a service contract with a debt collection agent, the representative's certificate ceases to be in effect.

17. **True.** The president of the Office can refuse to renew a certificate if the holder thereof has concealed an important fact.

18. **True.** Collection agent representatives are not allowed to practice debt collection if their certificate is cancelled by the president of the Office.

19. **False.** It is prohibited to claim a sum of money from a person other than the debtor or the debtor's surety.

20. **False.** You are not allowed to threaten a debtor that you will have a negative note put in their credit record.

21. **True.** This time must be respected before communicating with the debtor, regardless of the method.

22. **False.** The debt collection agent or their representative are authorized to contact a debtor at the debtor's workplace only once, on condition that they don't know the debtor's address or telephone number, or if they have been unable to reach the debtor by telephone at their home.

23. **True.** You can provide a truncated name of the agency. However, inasmuch as a person other than the debtor may take the message, it should not mention that the reason for the call is debt collection or that the person that you are trying to reach has debt.

24. **False.** Under the Act, you are not allowed to communicate with a person who, in the course of a prior communication, indicated that they were not the debtor.

25. **False.** You cannot communicate with debtors on holidays. The times provided for by the Act apply only to business days.

26. **True.** The same deadline applies to payments made by any method other than in cash if the debtor has made a request in writing.

27. **True.** This deadline is designed to ensure that you respect your obligations and to protect the amounts of money that you collect.

28. **True.** If you fail to comply with the law, you will be liable to a fine in an amount ranging between \$300 and \$6,000 as a natural person (individual) and your agency, a legal person, will be liable to a fine in an amount between \$1,000 and \$40,000.



SUPPLEMENTARY READING

You can find the Act respecting the collection of certain debts, the Consumer Protection Act, and their implementing regulations on the *Office de la protection du consommateur*'s website:

www.opc.gouv.qc.ca/en/opc/laws-regulations

Every year, the *Office de la protection du consommateur* publishes a notice in the *Gazette officielle du Québec* indicating the cost of debt collection agent permits and agent collection representative certificates. The *Gazette officielle du Québec* is accessible online at:

www.publicationsduquebec.gouv.qc.ca/gazette-officielle



GLOSSARY

A

Acquittance

A written document in which a creditor acknowledges that a debtor has paid off their debt or fulfilled their obligation.

Act

A rule of law, or a set of rules, passed in the National Assembly.

C

Contempt of court

An offence whereby an individual fails to comply with a court order or injunction, or acts in a way that impedes the administration of justice.

Creditor

Natural or legal person that is owed a sum of money.

D

Damages

Amount of money or financial compensation that can be awarded by a court, as redress for the harm suffered by an individual.

Debtor

A person who is under obligation to pay a sum of money to another person.

Debt collection agent

A person who personally or through a representative and for remuneration collects a debt for another person.

Debt collection agent representative

A natural person acting for a collection agent or regarding whom a collection agent has given reasonable cause to believe that such person is acting for the agent.

I

Implementing regulation

Regulation intended to ensure the implementation of a statute. It is based on a statute, whose provisions it may not contradict.

Injunction

A court order compelling a natural or legal person to refrain from or to stop doing something, or to carry out a certain act, under penalty of sanctions provided for by law.

N

Notice of payment

A written document whereby a debt collection agent informs the debtor that the agent has a mandate to collect a debt on behalf of the creditor.

O

Offence

A violation of a statute or a regulation by action, negligence, or omission, that can result in the imposition of a sanction.

P

Person (legal)

An entity endowed with juridical personality recognized as having rights and obligations, such as a corporation. Term used in contrast to “natural person.”

Person (natural)

An individual having rights and obligations. Terms used in contrast to “legal person.”

Public interest

That which supports the well-being of the general public.

R

Recourse

A means provided by law enabling an individual, a debtor for example, to have their rights recognized and respected, or their interests protected.

S

Sanction

Punishment provided for by law in order to prevent or repress an offence. The sanctions laid down in the Act respecting the collection of certain debts, are monetary in nature (fines).

Security

A sum of money that a merchant must provide to the *Office de la protection du consommateur*, in particular from an insurance company or a financial institution, as a guarantee of the fulfillment of the merchant’s obligations toward consumers. Providing security is a prerequisite to obtaining a debt collection agent’s permit and it is also required in order to maintain the validity thereof.

Surety

Person who agrees to take responsibility for the fulfillment of an undertaking of a debtor if the debtor defaults.

T

Trust account

Account opened with a financial institution, in which a person, such as a debt collection agency, deposits sums of money collected on behalf of another person.

U

Undischarged bankrupt

Person who is bankrupt but who has not been released from the obligation to repay debts by the court.

V

Voluntary undertaking

Under the Consumer Protection Act, a document in which a merchant enters into an agreement with the president of the *Office de la protection du consommateur* and undertakes to apply the corrective measures listed in order to comply with the Act whose implementation is monitored by the Office. Non-compliance with this document constitutes an offence and can lead to prosecution.

**Office
de la protection
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Québec

