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Bill 59

(Chapter 5 of the Statutes of Ontario, 2017)

An Act to enact a new Act with respect to home inspections and to amend various Acts with respect to financial services and consumer protection

The Hon. T. MacCharles
Minister of Government and Consumer Services

1st Reading	November 3, 2016
2nd Reading	November 30, 2016
3rd Reading	April 10, 2017
Royal Assent	April 13, 2017



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 59 and does not form part of the law.
Bill 59 has been enacted as Chapter 5 of the Statutes of Ontario, 2017.*

The Bill enacts a new Act, the *Home Inspection Act, 2017*, and amends three other Acts administered by the Ministry of Government and Consumer Services. For convenience, the new Act and the amendments are set out in separate Schedules. The commencement provisions for each of the Schedules are set out in the Schedules.

SCHEDULE 1 HOME INSPECTION ACT, 2017

Part I

Part I deals with definitions and interpretation.

Part II

The Lieutenant Governor in Council is allowed to designate a not-for-profit corporation as the administrative authority. If an administrative authority is designated, the administration of specified provisions of the Act and the regulations made under the Act is delegated to the authority and the authority is required to carry out the administration of the delegated provisions.

The Part includes mechanisms for government oversight, including requirements for an administrative agreement between the administrative authority and the Minister, annual and other reports by the authority, competency criteria for board members and oversight by the Auditor General.

The administrative authority is not an agent of the Crown. Employees of the authority are not Crown employees. There is no Crown liability for actions of the authority and the authority is required to indemnify the Crown for damages or costs.

The administrative authority is able to set forms and fees in accordance with processes and criteria approved by the Minister.

If an administrative authority is designated, it is required to appoint a director and registrar. Otherwise the Minister responsible for administering the Act appoints the director and the registrar.

Part III

Only individuals are allowed to perform home inspections, as defined, and the Act requires them to be licensed as home inspectors. The Act requires that persons who arrange or contract for a home inspection to be performed must be licensed as home inspection providers or must be sole proprietors who are licensed as home inspectors and who do not employ or retain any other licensed home inspectors.

Part IV

No licensed home inspector is allowed to perform a home inspection for a client unless there is a written contract for the inspection that a licensed home inspection provider has entered into with the client or that the inspector has entered into with the client, if the inspector is a sole proprietor who does not employ or retain any other licensed home inspectors. The contract must comply with the requirements prescribed by the regulations. The home inspector must perform the home inspection in accordance with the contract and provide a written report to the client on the inspection. If the home inspector has performed the home inspection under a contract that the client has entered into with a home inspection provider, the inspector shall also provide a copy of the report to the provider.

A licensed home inspection provider has to ensure that every home inspector whom the provider employs carries out his or her duties in compliance with the Act and the regulations. Providing false information is also prohibited.

Part V

The Act allows the registrar to deal with complaints made about licensees. In addition, a discipline committee and an appeal committee are established. If a committee finds that a licensee has breached the code of ethics established by a Minister's regulation, the licensee is subject to a fine of up to \$25,000 or a lesser prescribed amount.

The Act allows inspectors appointed by the registrar to conduct regulatory inspections without a warrant and investigators appointed by the director to conduct both an investigation with a warrant and searches in exigent circumstances.

The director may apply to court for a compliance order. The Act also creates offences.

Part VI

The Act contains general provisions dealing with such matters as the preservation of secrecy, service of documents and the setting of fees by the Minister.

The Minister may make regulations establishing a code of ethics, governing the jurisdiction of committees and in areas prescribed by the Lieutenant Governor in Council. The Lieutenant Governor in Council may make regulations dealing with a

broad range of matters to regulate the industry, including requiring the registrar to disclose specified information and records to the public.

Parts VII and VIII

The Act makes complementary amendments to the *Licence Appeal Tribunal Act, 1999* and the *Ontario Labour Mobility Act, 2009* and repeals the *Ontario Association of Home Inspectors Act, 1994*.

SCHEDULE 2 AMENDMENTS TO OTHER ACTS

The Schedule amends the *Collection and Debt Settlement Services Act*, the *Consumer Protection Act, 2002* and the *Payday Loans Act, 2008* and expands the regulation-making powers in each Act. Some significant amendments are the following:

Collection and Debt Settlement Services Act

The Schedule amends the Act to permit administrative penalties to be imposed against a person who has contravened or is contravening a prescribed provision of the Act. The new sections establish rules respecting the making of an order imposing an administrative penalty, the appeal of such orders, the enforcement of such orders and related matters.

Consumer Protection Act, 2002

At present, the length of the cooling-off period in subsection 43 (1) of the Act during which a consumer can cancel a direct agreement for the supply of a water heater or other prescribed goods or services is 20 days after the consumer receives a written copy of the agreement, unless the regulations made under the Act prescribe otherwise. The Schedule amends the length of the cooling-off period for that type of direct agreement to 10 days after the consumer receives a written copy of the agreement, as is the case for all other direct agreements.

The Schedule amends the Act to create restrictions and related regulation-making powers respecting the soliciting or entering into of prescribed direct agreements at a consumer's dwelling or at any other prescribed place.

The Schedule adds a new Part to the Act: Part VII.1 regarding agreements for cashing government cheques. The new Part provides for a limit on the fee that may be imposed for cashing a government cheque. A supplier who cashes a government cheque for a consumer must also provide the consumer with a statement setting out prescribed information with respect to the cashing of the cheque.

Payday Loans Act, 2008

A licensee is prohibited from operating an office to carry on business as a licensee at a location if a local municipality or the City of Toronto has passed a by-law prohibiting the operation of offices within a defined area that includes the location or if a local municipality or the City of Toronto has passed a by-law limiting the number of offices that are allowed to operate in a defined area that includes the location and the limit has been reached.

At present, section 34 of the Act allows a borrower to pay the full outstanding balance under a payday loan agreement at any time without any prepayment charge or penalty. The Schedule extends that right so that the borrower may prepay any part of the outstanding balance.

The Schedule amends the restrictions respecting concurrent or replacement payday loan agreements and respecting the making of more than one payday loan between the same borrower and different lenders. The Schedule also permits the Registrar to conduct inspections if the Registrar has reasonable grounds to believe that a person or an entity is acting as a lender or loan broker while not licensed.

**An Act to enact a new Act with respect to home inspections
and to amend various Acts with respect to financial services and consumer protection**

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

Contents of this Act

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

Commencement

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

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

(3) If a Schedule to this Act or any portion of a Schedule to this Act provides that it is to come into force on a day to be named by proclamation of the Lieutenant Governor, the proclamation may apply to the whole or any portion of the Schedule, and proclamations may be issued at different times as to any portion of the Schedule.

Short title

3 The short title of this Act is the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017*.

**SCHEDULE 1
HOME INSPECTION ACT, 2017**

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**PART I
INTERPRETATION AND APPLICATION**

Interpretation

1 (1) In this Act,

“administrative agreement” means the agreement described in subsection 4 (1); (“accord d’application”)

“administrative authority” means the corporation that the Lieutenant Governor in Council has designated as such under subsection 3 (1); (“organisme d’application”)

“client” means a person who enters into a contract to receive a home inspection; (“client”)

“delegated provisions” means the provisions of this Act and the regulations for which the administration is delegated to the administrative authority under subsection 3 (2); (“dispositions déléguées”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation that carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)

“home inspection” means the service of providing an opinion as to the condition of a dwelling or residential property based on a non-invasive evaluation of any of the features and components of the dwelling or property that are prescribed but does not include an activity excluded by the regulations; (“inspection immobilière”)

“home inspection provider” means a person who offers or holds oneself out as being available to arrange or contract for a home inspection to be performed; (“fournisseur de services d’inspection immobilière”)

“home inspector” means an individual who meets the prescribed requirements to be licensed as a home inspector under this Act; (“inspecteur immobilier”)

“investigator” means an investigator appointed under subsection 61 (1); (“enquêteur”)

“licensee” means a home inspection provider or home inspector who is licensed under this Act; (“titulaire de permis”, see also “agrée”)

“Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“officer” includes,

- (a) the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of a corporation,
- (b) a partner or general manager and assistant general manager of a partnership, and
- (c) any other individual designated as an officer by by-law or resolution of an organization or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means regulations made under this Act; (“règlements”)

“statutory inspector” means a statutory inspector appointed under subsection 59 (2); (“inspecteur”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or any other tribunal that is prescribed. (“Tribunal”)

Associated persons

(2) For purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.
2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

Non-application of Act

2 Subject to the regulations, this Act does not apply to a holder of a licence or certificate of practice under the *Architects Act* or a holder of a licence, limited licence, temporary licence, provisional licence or certificate of authorization under the *Professional Engineers Act*.

PART II ADMINISTRATION

DELEGATION

Designation of administrative authority

3 (1) The Lieutenant Governor in Council may, by regulation, designate a not-for-profit corporation without share capital incorporated under the laws of Ontario as the administrative authority for the purposes of this Act.

Delegation of administration

(2) If the Lieutenant Governor in Council designates a corporation as the administrative authority, the administration of all provisions of this Act and the regulations, except for this Part, sections 75, 76 and 77 and Part VII, is delegated to the authority and the authority shall carry out the administration of the delegated provisions.

Administrative agreement

4 (1) The Lieutenant Governor in Council shall not designate a corporation under subsection 3 (1) as the administrative authority until the Minister and the corporation have entered into an agreement to be known as the administrative agreement.

Contents

(2) The administrative agreement shall include, at a minimum, terms related to the following matters with respect to the administrative authority:

1. The governance of the authority.
2. All matters that the Minister considers necessary for the authority to carry out the administration of the delegated provisions.
3. The maintenance by the authority of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.
4. The financial terms of the delegation of the administration of the delegated provisions, including payments to the Crown, licence fees, royalties and reimbursements for transfer of assets.

Compliance with operating principle

(3) The administrative agreement shall require the administrative authority to comply with the principle of promoting the protection of the public interest.

Amendment by Minister

(4) Subject to section 10, the Minister may unilaterally amend the administrative agreement, after giving the administrative authority the notice that the Minister considers reasonable in the circumstances.

Policy directions

5 (1) Subject to section 10, the Minister may issue policy directions to the administrative authority related to its powers and duties under this Act or the regulations, after giving the authority the notice that the Minister considers reasonable in the circumstances.

Part of the administrative agreement

(2) The policy directions are deemed to form part of the administrative agreement.

Compliance

(3) The administrative authority shall comply with the policy directions and shall implement measures to do so.

Compliance by administrative authority

6 In carrying out its powers and duties under this Act or the regulations, the administrative authority shall comply with the administrative agreement, this Act, the regulations and other applicable law.

Review

7 (1) The Minister may,

- (a) require that policy, legislative or regulatory reviews related to the powers and duties of the administrative authority under this Act, the regulations or the administrative agreement be carried out,
 - (i) by or on behalf of the authority, or
 - (ii) by a person or entity specified by the Minister; or
- (b) require that reviews of the administrative authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,

- (i) by or on behalf of the authority, or
- (ii) by a person or entity specified by the Minister.

Access to records

(2) If a review is carried out by a person or entity specified by the Minister, the administrative authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

Conflict

8 In the event of conflict, this Act and the regulations prevail over,

- (a) the administrative agreement;
- (b) the *Corporations Act*, the *Corporations Information Act* or a regulation made under either of those Acts; and
- (c) the administrative authority's constating documents, by-laws and resolutions.

Revocation of designation

9 (1) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

Revocation for non-compliance

(2) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if,

- (a) the authority has failed to comply with this Act, the regulations, other applicable law or the administrative agreement;
- (b) the Minister has allowed the authority the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and
- (c) the authority has not remedied its default to the Minister's satisfaction within the specified time period mentioned in clause (b) and the Minister has so advised the Lieutenant Governor in Council.

Same, no restriction on subs. (1)

(3) Nothing in subsection (2) restricts the ability of the Lieutenant Governor in Council to act under subsection (1).

Revocation on request

(4) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the authority requests the revocation.

Transition

(5) If the Lieutenant Governor in Council revokes the designation of the administrative authority under this section, the Lieutenant Governor in Council may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation.

Condition precedent for exercise of certain powers

10 The Minister may exercise a power under subsection 4 (4), 5 (1), 25 (1) or 28 (1) only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public and clients.
2. An event of force majeure has occurred.
3. The administrative authority is facing a risk of insolvency.
4. The number of members of the board of the administrative authority is insufficient for a quorum.

ADMINISTRATIVE AUTHORITY

Criteria and directives re board members

11 (1) The Minister may, by order,

- (a) establish competency criteria for members of the board of the administrative authority; and
- (b) make rules about the nomination of members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected.

Competency criteria

(2) A person is qualified to be appointed or elected to the board only if the person meets any competency criteria established under clause (1) (a).

Conflict

(3) In the event of conflict, an order made under subsection (1) prevails over a by-law or resolution of the administrative authority.

Board appointments

12 (1) The Minister may appoint one or more members to the board of the administrative authority for a term specified in the appointment.

Majority

(2) The number of members appointed by the Minister shall not form a majority of the board.

Composition

(3) The members appointed by the Minister may include,

- (a) representatives of the public, consumer groups, businesses or government organizations; and
- (b) representatives of other interests as the Minister determines.

Change in number of directors

13 The Minister may, by order, increase or decrease the number of members of the board of the administrative authority.

Appointment of chair

14 The Minister may appoint a chair from among the members of the board of the administrative authority.

Public access to corporate information

15 (1) The administrative authority shall make available to the public, by electronic or other means, the following information within the prescribed time:

1. Prescribed information relating to the compensation of board members, officers and employees and relating to any other payments that the administrative authority makes or is required to make to them.
2. Corporate by-laws of the administrative authority.
3. Any other information that is prescribed.

Compensation information

(2) A regulation made under paragraph 1 of subsection (1) may require that the administrative authority make available to the public under that subsection information relating to the compensation of a board member or officer who is in office on the day this section comes into force or an individual who is an employee on that day, where the information is for a period that begins before that day.

Effect of compliance

(3) If the administrative authority makes available to the public information relating to compensation in accordance with subsection (1), or in the reasonable belief that action is required by that subsection, the authority shall not be deemed by any court or person,

- (a) to contravene any Act or regulation enacted or made before or after the coming into force of this section; or
- (b) to be in breach of or contrary to any agreement that purports to restrict or prohibit that action regardless of whether the agreement is made before or after the coming into force of this section.

Processes and procedures

(4) The administrative authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

Employees

16 (1) Subject to the administrative agreement, the administrative authority may employ or retain the services of any qualified person to carry out any of its powers and duties under this Act or the regulations.

Not Crown employees

(2) The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).
2. Members, officers and agents of the administrative authority.

3. Members of the board of the administrative authority, including those appointed by the Minister.

Not Crown agency

17 (1) Despite the *Crown Agency Act*, the administrative authority is not an agent of the Crown for any purpose and shall not hold itself out as such.

Same

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by the administrative authority.
2. Members, officers and agents of the administrative authority.
3. Members of the board of the administrative authority, including those appointed by the Minister.

No personal liability, Crown employee

18 (1) No action or other proceeding shall be instituted against an employee of the Crown for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of the duty.

Tort by Crown employee

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

No Crown liability

19 (1) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a result of any act or omission of a person who is not a minister of the Crown, a Crown employee or a Crown agent, if the act or omission is related, directly or indirectly, to the activities or affairs of the administrative authority or to the administration of this Act.

No proceeding

(2) No proceeding for damages, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in subsection (1).

Indemnification of the Crown

20 The administrative authority shall indemnify the Crown, in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations or the administrative agreement.

No personal liability, board members and others

21 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2), for an act done in good faith in the execution or intended execution of any of the person's powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty.

Same

(2) Subsection (1) applies to,

- (a) members of the board of the administrative authority;
- (b) persons who perform functions under this Act or the regulations as employees, agents or officers of the administrative authority or as persons whose services it retains;
- (c) members of committees of the administrative authority who perform functions under this Act or the regulations; and
- (d) individuals who perform functions under this Act or the regulations.

Liability of administrative authority

(3) Subsection (1) does not relieve the administrative authority of liability to which it would otherwise be subject.

Not public money

22 (1) The money that the administrative authority collects in carrying out its powers and duties under this Act or the regulations is not public money within the meaning of the *Financial Administration Act*.

Same

(2) The administrative authority may use the money described in subsection (1) to carry out activities in accordance with its objects, subject to subsection 28 (2) and any restrictions in this Part.

Audit

23 (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the administrative authority, other than an audit required under the *Corporations Act*.

Access to records and information

(2) If the Auditor General conducts an audit under subsection (1), the administrative authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

Reports

24 (1) The board of the administrative authority shall report to the Minister on its activities and financial affairs as they relate to this Act and the administrative agreement.

Form and contents

(2) The report shall be in a form acceptable to the Minister and shall provide the information that the Minister requires.

Time for reports

(3) The board of the administrative authority shall prepare the report for each year and at the other times that the Minister specifies.

Disclosure by board

(4) The board of the administrative authority shall publish the report on the authority's website and by any other method within the period and in the manner that the Minister requires.

Administrator

25 (1) Subject to section 10, the Minister may, by order, appoint an individual as an administrator of the administrative authority for the purposes of assuming control of it and responsibility for its activities.

Notice of appointment

(2) The Minister shall give the board of the administrative authority the notice that the Minister considers reasonable in the circumstances before appointing the administrator.

Immediate appointment

(3) Subsection (2) does not apply if there are not enough members on the board to form a quorum.

Term of appointment

(4) The appointment of the administrator is valid until the Minister makes an order terminating it.

Powers and duties of administrator

(5) Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the administrative authority.

Same, limitations

(6) In the order appointing the administrator, the Minister may specify the administrator's powers and duties and the conditions governing them.

Right of access

(7) The administrator has the same rights as the board in respect of the documents, records and information of the administrative authority.

Report to Minister

(8) The administrator shall report to the Minister as the Minister requires.

Minister's directions

(9) The Minister may issue directions to the administrator with regard to any matter within the administrator's jurisdiction, and the administrator shall carry them out.

No personal liability

(10) No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, the delegated provisions, a Minister's order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

Crown liability

(11) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (10) does not relieve the Crown of liability to which it would otherwise be subject.

Liability of administrative authority

(12) Subsection (10) does not relieve the administrative authority of liability to which it would otherwise be subject.

Status of board during administrator's tenure

26 (1) On the appointment of an administrator under section 25, the members of the board of the administrative authority cease to hold office, unless the order provides otherwise.

Same

(2) During the term of the administrator's appointment, the powers of any member of the board who continues to hold office are suspended, unless the order provides otherwise.

No personal liability

(3) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the administrative authority after the member's removal under subsection (1) or while the member's powers are suspended under subsection (2).

Crown liability

(4) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (3) does not relieve the Crown of liability to which it would otherwise be subject.

Liability of administrative authority

(5) Subsection (3) does not relieve the administrative authority of liability to which it would otherwise be subject.

POWERS AND DUTIES OF ADMINISTRATIVE AUTHORITY

Additional powers

27 (1) The administrative authority may carry out other activities in accordance with its objects or purposes, subject to subsection (2).

Commercial activities

(2) The administrative authority shall not engage in commercial activity through a person or entity that is related to the authority.

Change to objects or purposes

28 (1) Subject to section 10, the Minister may require that the administrative authority make a specified change to its objects or purposes.

Minister's approval required

(2) The administrative authority shall not make any changes to its objects or purposes unless the Minister's written approval is obtained in advance.

Right to use French

29 (1) A person has the right to communicate in French with, and to receive available services in French from, the administrative authority.

Definition

(2) In subsection (1),

“service” means any service or procedure that is provided to the public by the administrative authority in carrying out its powers and duties under this Act or the regulations and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

Board's duty

(3) The board of the administrative authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

Limitation

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Advisory councils, advisory process

30 The Minister may require the administrative authority to,

- (a) establish one or more advisory councils;

- (b) include, as members of an advisory council, representatives of the public, consumer groups, businesses or government organizations and other persons as the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

Duty to inform Minister

31 The administrative authority shall promptly inform and advise the Minister with respect to,

- (a) any material fact that could affect the authority's ability to perform its duties under this Act or the regulations; or
- (b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

Advice of administrative authority

32 (1) The administrative authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

Same

- (2) The administrative authority may suggest to the Minister amendments to Ontario legislation that it considers would,
 - (a) further the purpose of this Act; or
 - (b) assist the authority in carrying out its powers and duties under this Act or the regulations.

Forms and fees

33 (1) The administrative authority may,

- (a) establish forms related to the administration of the delegated provisions;
- (b) in accordance with processes and criteria established by the administrative authority and approved by the Minister, set and collect fees, costs or other charges related to the administration of the delegated provisions; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

Setting fees

(2) In setting the fees, costs and charges described in clause (1) (b), the administrative authority may specify their amounts or the method for determining the amounts.

Same

(3) The amounts may be determined on the basis of each home inspection that a licensed home inspector performs or for which a licensed home inspection provider arranges or contracts to be performed.

Publication of fee schedule

- (4) The administrative authority,
 - (a) shall publish the fees, costs and charges, the processes and criteria and the rules on its website and in any other way described in the administrative agreement; and
 - (b) may publish them in any other format that the administrative authority considers advisable.

MISCELLANEOUS

Director

34 (1) Subject to subsection (2), the following person or body shall appoint a director for the purposes of this Act and may appoint a maximum of two deputy directors:

1. The board of the administrative authority.
2. The Minister, if there is no administrative authority.

Director cannot be registrar

(2) A person appointed as the registrar or a deputy registrar under subsection 35 (1) shall not be appointed as the director or a deputy director under subsection (1).

Deputy director, duties

(3) A deputy director shall perform the duties that the director assigns and shall act as director in the director's absence.

If more than one deputy director

(4) If more than one deputy director is appointed, only one deputy director may act as the director under subsection (3) at any one time.

Registrar

35 (1) Subject to subsection (2), the following person or body shall appoint a registrar for the purposes of this Act and may appoint a maximum of two deputy registrars:

1. The board of the administrative authority.
2. The Minister, if there is no administrative authority.

Registrar cannot be director

(2) A person appointed as the director or a deputy director under subsection 34 (1) shall not be appointed as the registrar or a deputy registrar under subsection (1).

Powers and duties of registrar

(3) The registrar shall exercise the powers and perform the duties imposed on him or her under this Act.

Same, deputy registrar

(4) A deputy registrar shall perform the duties that the registrar assigns and shall act as the registrar in the registrar's absence.

If more than one deputy registrar

(5) If more than one deputy registrar is appointed, only one deputy registrar may act as the registrar under subsection (4) at any one time.

Offences, administrative authority

36 (1) If the administrative authority knowingly contravenes this Act or the regulations, the authority is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

Individuals

(2) A director, officer, employee or agent of the administrative authority who knowingly contravenes this Act or the regulations is guilty of an offence.

Directors and officers

(3) A director or officer of the administrative authority is guilty of an offence if the person,

- (a) knowingly causes, authorizes, permits or participates in the commission by the authority of an offence mentioned in subsection (1); or
- (b) fails to take reasonable care to prevent the authority from committing an offence mentioned in subsection (1).

Penalty

(4) A person who is convicted of an offence under subsection (2) or (3) is liable to a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues.

**PART III
LICENSING**

Prohibition, home inspections

37 (1) No person shall perform a home inspection unless the person is licensed as a home inspector.

Same, acting as a home inspection provider

(2) No person shall act as a home inspection provider unless,

- (a) the person is licensed as a home inspection provider; or
- (b) the person is a sole proprietor who is licensed as a home inspector and who does not employ or retain any other licensed home inspectors.

Unlicensed persons

(3) A person who is not licensed as a home inspector or a home inspection provider shall not,

- (a) directly or indirectly hold oneself out as being a home inspector or home inspection provider, respectively; or
- (b) perform any of the functions of a home inspector or a home inspection provider, respectively.

Licence a requirement to bring action

(4) Except as otherwise prescribed, no action, application, arbitration or other legal proceeding shall be commenced for remuneration for performing any of the functions of a home inspector or a home inspection provider unless, at the time of performing those functions, the person bringing the proceeding was licensed or exempt from licensing under this Act and the proceeding may be stayed upon motion.

Exception

(5) Subsection (4) does not affect,

- (a) any right of an employee, within the meaning of the *Employment Standards Act, 2000* or a successor Act to it, to commence an action, application, arbitration or other legal proceeding for the recovery of wages or the enforcement of other rights provided under an employment contract, the common law or other legislation; or
- (b) any right to commence an action, application, arbitration or other legal proceeding for the recovery of wages or the enforcement of other rights provided under a collective agreement.

Change in partnership

(6) A change in the membership of a licensed partnership shall be deemed to create a new partnership for the purpose of the licence.

Exemptions

38 Despite section 37, a licence shall not be required in respect of performing the functions of a home inspector or a home inspection provider by the persons or in the circumstances that are prescribed.

Notification of licence required

39 Subject to section 45, no home inspector or home inspection provider shall perform the functions of a home inspector or a home inspection provider respectively until notified in writing by the registrar that the home inspector or the home inspection provider, as the case may be, is licensed.

Application for licence

40 (1) An applicant that meets the prescribed requirements is entitled to a licence or a renewal of a licence by the registrar unless,

- (a) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
 - (ii) the past or present conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not perform the activities of a licensee in accordance with law and with integrity and honesty, or
 - (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence;
- (b) the applicant is a corporation and,
 - (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
 - (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
 - (iii) the past or present conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that it will not perform the activities of a licensee in accordance with the law and with integrity and honesty, or
 - (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence;
- (c) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations, other than the code of ethics established under section 75;
- (d) the applicant is in breach of a condition of the licence; or
- (e) the applicant fails to comply with a request made by the registrar under subsection (3).

Interested person

(2) For the purposes of this section, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person's activities;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or
- (c) the person has provided or may have provided financing either directly or indirectly to the other person's activities.

Request for information

(3) The registrar may request an applicant for a licence or a renewal of a licence to provide to the registrar, in the form and within the time period specified by the registrar,

- (a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the licence or renewal; and
- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

Conditions of licence

41 (1) A licence is subject to the conditions to which the applicant or licensee consents, that the registrar applies under section 43, that the Tribunal orders or that are prescribed.

Licence not transferable

(2) A licence is not transferable.

Refusal without a hearing

42 (1) If an applicant for a licence or a renewal of a licence does not meet the prescribed requirements, the registrar shall refuse to grant or renew the licence.

No hearing

(2) Section 44 does not apply to a refusal under subsection (1) to grant or renew a licence.

Notice of refusal

(3) The registrar shall give the applicant written notice of a refusal under subsection (1), setting out the reasons for the refusal, and subsection 71 (3) does not apply to the notice.

Refusal with a hearing

43 (1) Subject to section 44, the registrar may refuse to license an applicant or may suspend or revoke a licence or refuse to renew a licence if, in his or her opinion, the applicant or licensee is not entitled to a licence under section 40.

Conditions

(2) Subject to section 44, the registrar may,

- (a) approve the licence or the renewal of a licence on the conditions that the registrar considers appropriate; and
- (b) at any time, apply to a licence the conditions that the registrar considers appropriate.

Notice re: refusal, suspension, etc.

44 (1) The registrar shall notify an applicant or licensee in writing if the registrar proposes to,

- (a) refuse under subsection 43 (1) to grant or renew a licence;
- (b) suspend or revoke a licence; or
- (c) apply conditions to a licence or renewal to which the applicant or licensee has not consented.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

Service of notice

(3) The notice of proposal shall be served on the applicant or licensee in accordance with section 71.

Service of hearing request

(4) A request for a hearing under subsection (2) is sufficiently served if delivered personally or sent by registered mail to the registrar and to the Tribunal.

Same

(5) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing.

Other methods

(6) Despite subsection (4), the Tribunal may order any other method of service.

If no request for hearing

(7) If the applicant or licensee does not request a hearing in accordance with subsection (2), the registrar may carry out the proposal.

Hearing

(8) If the applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall hold the hearing and may, by order, direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a licence.

Parties

(9) The registrar, the applicant or licensee and the other persons that the Tribunal specifies are parties to the proceedings under this section.

Immediate effect

(10) Even if a licensee appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

Voluntary cancellation

(11) The registrar may cancel a licence upon the request in writing of the licensee and this section does not apply to the cancellation.

Continuation pending renewal

45 If, within the time prescribed or, if no time is prescribed, before the expiry of the licensee's licence, the licensee has applied for a renewal of a licence and paid the required fee, the licence shall be deemed to continue until,

- (a) the renewal is granted;
- (b) the registrar gives the licensee written notice of the registrar's refusal under section 42 to grant the renewal;
- (c) the time for requesting a hearing under section 44 has expired if the licensee receives a notice of a proposal under that section and does not request such a hearing; or
- (d) the Tribunal makes its order if the licensee receives a notice of a proposal under section 44 and does request such a hearing.

Immediate suspension

46 (1) If the registrar proposes to suspend or revoke a licence under section 43 and if the registrar considers it in the public interest to do so, the registrar may by order temporarily suspend the licence.

Immediate effect

(2) An order under subsection (1) takes effect immediately.

Expiry of order

(3) If the licensee requests a hearing under section 44, the order expires 15 days after the Tribunal receives the written request for a hearing, but the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period.

Same

(4) Despite subsection (3), if the Tribunal is satisfied that the conduct of the licensee has delayed the commencement of the hearing, it may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded.

Further application

47 Once a decision of the registrar to refuse a person a licence or a renewal of a licence or to revoke a licence of a person has become final, the person may reapply for a licence only if,

- (a) the time prescribed to reapply has passed since the refusal or revocation; and

- (b) the person satisfies the registrar that new or other evidence is available or that material circumstances have changed.

**PART IV
REGULATION OF LICENSEES**

Notice of changes to registrar

48 (1) Every licensed home inspection provider shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service; and
- (b) the date of commencement or termination of the employment of every home inspector that the provider employs and, in the case of the termination of employment of a home inspector, the reason for the termination.

Same, home inspector

(2) Every licensed home inspector shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service;
- (b) if applicable, the commencement or termination of his or her employment by a home inspection provider and the date of the commencement or termination, as the case may be; and
- (c) if applicable and if the inspector performs a home inspection on behalf of a home inspection provider, but not as an employee of the provider, the commencement or termination of so acting and the date of the commencement or termination, as the case may be.

Change in officers or directors

(3) A licensed home inspection provider that is a corporation or a partnership shall not change its officers or directors except with the prior consent of the registrar and shall, after receiving that consent, notify the registrar in writing of the change within five days after making it.

Timing

(4) The registrar shall be deemed to have received a notice under this section on the day on which he or she actually received it or, if the notice is sent by mail, on the day of mailing.

Notice to registrar re corporations

49 (1) When a home inspection provider that is a corporation is licensed and on each renewal of its licence, the provider shall disclose to the registrar the identity of,

- (a) each person that beneficially owns or controls 10 per cent or more of the equity shares issued and outstanding at the time of the licence or the renewal of the licence, as the case may be; and
- (b) persons that are associated with each other and that together beneficially own or control 10 per cent or more of the equity shares issued and outstanding at the time of the licence or the renewal of the licence, as the case may be.

Calculating number of shares

(2) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total number of all shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes carried.

Notice of issue or transfer of shares

50 (1) In addition to the disclosure required under section 49, every licensed home inspection provider that is a corporation shall notify the registrar in writing within 30 days after the issue or transfer of any equity shares of the corporation, if the issue or transfer results in,

- (a) any person, or any persons that are associated with each other, acquiring or accumulating beneficial ownership or control of 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation; or
- (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person, or any persons who are associated with each other, where the person or the associated persons already beneficially owned or controlled 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation before the issue or transfer.

Same

(2) Despite subsection (1), if a licensee that is a corporation becomes aware of a transfer that otherwise falls into that subsection after the transfer has taken place, it shall notify the registrar in writing within 30 days after knowledge of the transfer comes to the attention of its officers or directors.

Calculating number of shares

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes it carries.

Contract required for home inspection

51 (1) No licensed home inspection provider shall arrange or contract for a licensed home inspector to perform a home inspection for a client unless the provider has entered into a written contract with the client that requires the inspector to perform the inspection.

Same, home inspector

(2) No licensed home inspector shall perform a home inspection for a client unless,

- (a) a licensed home inspection provider has entered into a written contract with the client that requires the inspector to perform the inspection; or
- (b) the inspector, acting under clause 37 (2) (b), has entered into a written contract with the client to perform the inspection.

Contract contents

(3) No home inspection provider and no home inspector shall enter into the contract required by subsection (1) or (2) unless the contract complies with subsections (4) and (5) and the prescribed requirements.

Prohibited terms and conditions

(4) The contract shall not contain any term or condition that the regulations specify as a prohibited term or condition.

Disclosure

(5) The contract shall disclose the type and amount of any prescribed insurance that the home inspection provider and the home inspector under the contract have, if any, and any other prescribed information in a clear, comprehensible and prominent manner.

Performance of home inspection

(6) A home inspector shall not perform a home inspection except in accordance with the contract.

Home inspection report

52 (1) Every licensed home inspector that performs a home inspection for a client shall provide a report to the client on the inspection that,

- (a) discloses the information that the Minister prescribes and that relates to the features and components of the dwelling or residential property that the inspector has inspected;
- (b) discloses the other information, if any, that the Minister prescribes; and
- (c) is in writing and is prepared in the form and manner that the Minister prescribes.

Copy to home inspection provider

(2) If the home inspector has performed the home inspection under a contract that the client has entered into with a home inspection provider, the inspector shall provide a copy of the report to the provider.

Restrictions on employees

53 (1) No licensee shall employ an unlicensed person to perform a function for which licensing is required.

Duty of licensee

(2) A licensee shall ensure that every home inspector that the licensee employs carries out his or her duties in compliance with this Act and the regulations.

Disclosure of interest

54 A licensee who, directly or indirectly, has an interest in a contract or transaction to which the client is a party or a proposed contract or transaction to which the client will be a party, shall disclose in writing to the client the nature and extent of the interest, in accordance with the prescribed requirements and in the form determined by the registrar.

False information

55 (1) No licensee shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document related to the licensee's performing a home inspection or arranging or contracting for a home inspection.

Furnishing information

(2) No licensee shall furnish, or induce or counsel another person to furnish, any information or documents related to the licensee's performing a home inspection or arranging or contracting for a home inspection if the information or documents are false or deceptive.

Same, assisting

(3) No licensee shall assist in furnishing, or induce or counsel another person to assist in furnishing, any information or documents related to the licensee's performing a home inspection or arranging or contracting for a home inspection if the licensee knows that the information or documents are false or deceptive.

No counselling contraventions

56 No licensee shall counsel, advise or knowingly assist a person to contravene this Act or any other prescribed Act.

**PART V
COMPLAINTS, DISCIPLINE, INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT**

COMPLAINTS AND DISCIPLINE

Complaints

57 (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.

Request for information

(2) A request for information under subsection (1) shall indicate the nature of the complaint.

Duty to comply with request

(3) A licensee who receives a written request for information shall provide the information as soon as is reasonably possible.

Procedures

(4) In handling complaints, the registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
3. Require the licensee to take further educational courses.
4. Refer the matter, in whole or in part, to the discipline committee.
5. Take an action under section 43, subject to section 44.
6. Take further action as is appropriate in accordance with this Act.

Discipline proceedings

58 (1) A discipline committee is established to hear and determine, in accordance with the prescribed procedures, if a licensee has failed to comply with the code of ethics established under section 75.

Appeals committee

(2) An appeals committee is established to consider, in accordance with the prescribed procedures, appeals from the discipline committee.

Appointment of members

(3) The board of the administrative authority or, if there is no administrative authority, the Minister shall appoint the members of the discipline committee and the members of the appeals committee and, in making the appointments, shall ensure that the prescribed requirements for the composition of each committee are met.

Result of a determination

(4) If the discipline committee makes a determination under subsection (1) that a licensee has failed to comply with the code of ethics, it may order any of the following as appropriate:

1. Require the licensee to take further educational courses.
2. If the licensee is a home inspection provider, require the licensee, in accordance with the terms, if any, that the committee specifies, to fund educational courses for home inspectors employed by the licensee or to arrange and fund the courses.

3. If the licensee is a home inspector, require the home inspection provider that employs the licensee, in accordance with the terms, if any, that the committee specifies, to fund educational courses for home inspectors that the provider employs or to arrange and fund the courses.
4. Impose the fine that the committee considers appropriate, to a maximum of \$25,000, or such lesser amount as is prescribed, to be paid by the licensee to the administrative authority or to the Minister of Finance if there is no administrative authority.
5. Suspend or postpone the taking of further educational courses, the funding or the funding and arranging of educational courses or the imposition of the fine for the period and upon the terms that the committee designates.
6. Fix and impose costs that the licensee is required to pay to the administrative authority or to the Minister of Finance if there is no administrative authority.

Appeal

(5) A party to the discipline proceeding may appeal the final order of the discipline committee to the appeals committee.

Power of the appeals committee

(6) The appeals committee may, by order, overturn, affirm or modify the order of the discipline committee and may make an order under subsection (4).

Taking of educational course

(7) A licensee that is required under subsection (4) to take an educational course shall do so,

- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
- (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
- (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

Arranging and funding educational courses

(8) A home inspection provider that is required under subsection (4) to fund educational courses for home inspectors that it employs or to arrange and fund such courses shall do so,

- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
- (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
- (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

Payment of fine

(9) The licensee shall pay any fine imposed under subsection (4) on or before,

- (a) the day specified in the order of the discipline committee, if the fine is not the subject of an appeal;
- (b) the day specified in the order of the appeals committee, if the fine is the subject of an appeal; or
- (c) the 60th day after the date of the last order made in respect of the fine, if no day is specified in that order.

Public access

(10) The discipline committee and the appeals committee shall make their decisions available to the public in the manner and at the frequency, if any, that are prescribed.

INSPECTIONS AND INVESTIGATIONS

Statutory inspectors

59 (1) The registrar is, by virtue of his or her office, a statutory inspector.

Appointment

(2) The registrar may appoint persons to be statutory inspectors for the purposes of conducting inspections.

Certificate of appointment

(3) The registrar shall issue to every statutory inspector a certificate of appointment bearing the registrar's signature or a facsimile of it.

Proof of appointment

(4) Every statutory inspector who is conducting an inspection under this Act shall, upon request, produce the certificate of appointment as a statutory inspector.

Inspections without warrant

60 (1) A statutory inspector may, without a warrant or court order, conduct an inspection in accordance with this section for the purpose of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 57; or
- (c) ensuring the licensee remains entitled to a licence.

Power to enter premises

(2) As part of an inspection, a statutory inspector may, without a warrant or court order, enter and inspect, at any reasonable time, the business premises of a licensee.

Powers on inspection

(3) While carrying out an inspection, a statutory inspector,

- (a) is entitled to free access to all money, valuables, documents and records of the person being inspected that are relevant to the inspection;
- (b) may make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the inspection;
- (c) may require a person to produce any document or record relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the document or record;
- (d) may use any data storage, processing or retrieval device or system used to engage in activities of a licensee in order to produce information that is relevant to the inspection and that is in any form; and
- (e) may, upon giving a receipt for them, remove for examination and copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return to the person being inspected the thing that was removed.

No use of force

(4) A statutory inspector shall not use force to enter and inspect premises under this section.

No obstruction

(5) No person shall obstruct a statutory inspector conducting an inspection or withhold from the statutory inspector or conceal, alter or destroy any money, documents or records that are relevant to the inspection.

Compliance

(6) If a statutory inspector under clause (3) (c) requires a person to produce a document or record and to provide assistance, the person shall produce the document or record or provide the assistance, as the case may be.

Admissibility of copies

(7) A copy of a document or record certified by a statutory inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Appointment of investigators

61 (1) The director may appoint persons to be investigators for the purposes of conducting investigations.

Certificate of appointment

(2) The director shall issue to every investigator a certificate of appointment bearing the director's signature or a facsimile of it.

Proof of appointment

(3) Every investigator who is conducting an investigation under this Act shall, upon request, produce the certificate of appointment as an investigator.

Investigations with warrant

62 (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness for a licence; and
- (b) there is,
 - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the person's fitness for a licence, or
 - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness for a licence that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

Powers under warrant

- (2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,
 - (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
 - (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
 - (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
 - (d) to use any data storage, processing or retrieval device or system used to engage in the activities of a licensee in order to produce information or evidence described in the warrant, in any form; and
 - (e) to use any investigative technique or procedure or do anything described in the warrant.

Entry of dwelling

- (3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,
 - (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
 - (b) the justice of the peace authorizes the entry into the dwelling.

Conditions on warrant

- (4) A warrant obtained under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

Expiry of warrant

- (5) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

Time of execution

- (6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

Use of force

- (7) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

No obstruction

- (8) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

Expert help

- (9) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

Compliance

- (10) If an investigator under clause (2) (c) requires a person to produce evidence or information or to provide assistance, the person shall produce the evidence or information or provide the assistance, as the case may be.

Return of seized items

- (11) An investigator who seizes anything under this section or section 63 may make a copy of it and shall return it within a reasonable time.

Admissibility of copies

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Seizure of things not specified

63 An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

Searches in exigent circumstances

64 (1) An investigator may exercise any of the powers described in subsection 62 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be reasonably possible to obtain the warrant.

Dwellings

(2) Subsection (1) does not apply to a building or a part of a building that is being used as a dwelling.

Use of force

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

Applicability of s. 62

(4) Subsections 62 (8) to (12) apply, with necessary modifications, to a search under this section.

ENFORCEMENT

Compliance orders

65 (1) If it appears to the director that a person is not complying with this Act or the regulations or an order made under this Act, the director may apply to the Superior Court of Justice for an order directing that person to comply, and, upon the application, the court may make the order that the court thinks fit.

Same

(2) Subsection (1) applies in addition to any other procedures that may be available to the director, whether or not the director has exercised his or her rights under the procedures.

Appeal

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

Offences

- 66** (1) A person or entity, other than the administrative authority, is guilty of an offence if the person or entity,
- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
 - (b) fails to comply with any order, direction or other requirement under this Act, other than an order made under section 58; or
 - (c) contravenes or fails to comply with any section of this Act or the regulations made under the Act, other than a code of ethics established under section 75.

Home inspection providers

(2) An officer or director of a home inspection provider who fails to take reasonable care to prevent the provider from committing an offence mentioned in subsection (1) is guilty of an offence.

Penalties

- (3) A person or entity that is convicted of an offence under this Act is liable to,
- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day or both, in the case of an individual; or
 - (b) a fine of not more than \$250,000, if the person or entity is not an individual.

Limitation

(4) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the director.

Orders for compensation, restitution

67 (1) If a person or entity is convicted of an offence under section 66, the court making the conviction may, in addition to any other penalty, order the person or entity convicted to pay compensation or make restitution.

If insurance has paid

(2) If an order is made in the favour of a person or entity under subsection (1) and that person or entity has already received compensation or restitution from an insurer, the person or entity ordered to pay the compensation or make restitution shall deliver the amount to the insurer.

Default in payment of fines

68 (1) If a fine payable as a result of a conviction for an offence under section 66 is in default for at least 60 days, the director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

If payment made

(2) Within 10 days after the director has received notice that the fine has been paid in full, the director shall inform the consumer reporting agency of the payment.

Liens and charges

69 (1) If a fine payable as a result of a conviction for an offence under section 66 is in default for at least 60 days, the director may by order create a lien against the property of the person or entity that is liable to pay the fine.

Liens on personal property

- (2) If the lien created by the director under subsection (1) relates to personal property,
- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
 - (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
 - (c) the director may perfect the security interest mentioned in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

Liens and charges on real property

(3) If the lien created by the director under subsection (1) relates to real property, the director may register the lien against the property of the person or entity liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

Initiation of sale proceedings prohibited

(4) The director shall not initiate sale proceedings in respect of any real property against which the director has registered a lien under subsection (3).

Proceeds of sale

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the director shall ensure that the funds he or she receives as a result of the sale are used to pay the fine.

Discharge of lien

- (6) Within 10 days after the director has knowledge of the payment in full of the fine, the director shall,
- (a) discharge the registration of any financing statement registered under clause (2) (c); and
 - (b) register a discharge of a charge created on registration of a lien under subsection (3).

**PART VI
GENERAL**

Confidentiality

70 (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as is required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;

- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;
- (f) to the counsel of the person communicating the information; or
- (g) with the consent of the person to whom the information relates.

Testimony

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

Service

71 (1) Any notice, order or request is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the sender can prove receipt of the notice, order or request.

Deemed service

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

Exception

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances.

Fees

72 (1) The Minister may, by order, establish fees that are payable under this Act in respect of a licence, a renewal of a licence, late filings and other administrative matters.

Exception

(2) Subsection (1) does not apply if there is an administrative authority.

Legislation Act, 2006, Part III

(3) An order made under this section is not a regulation for the purposes of Part III (Regulations) of the *Legislation Act, 2006*.

Certificate as evidence

73 (1) For all purposes in any proceeding, a statement purporting to be certified by the director is, without proof of the office or signature of the director, admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the registrar;
- (c) the time when the facts upon which the proceedings are based first came to the knowledge of the director; or
- (d) any other matter pertaining to licensing or non-licensing of persons or to filing or non-filing of information.

Proof of document

(2) Any document made under this Act that purports to be signed by the director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the director without proof of the office or signature of the director.

Information concerning licensees

74 (1) As required by regulation, the registrar shall make available to the public the names of licensees and other information, as prescribed, in respect of licensees.

Same

(2) The names of licensees shall be made available in the prescribed form and manner and with the information that is prescribed.

Minister's regulations, codes, etc.

75 (1) The Minister may make regulations,

- (a) governing requirements of education, experience and examinations for applicants for a licence, applicants for a renewal of licence and licensees, including,
 - (i) requiring applicants for a licence, applicants for a renewal of licence and licensees to meet educational requirements that the board of the administrative authority, the Minister, the director or the registrar has specified or to complete a program of studies or one or more courses that the board of the administrative authority, the Minister, the director or the registrar has designated,
 - (ii) authorizing the board of the administrative authority, the Minister, the director or the registrar to designate organizations that are authorized to provide the programs and courses designated under subclause (i), and
 - (iii) requiring that all educational requirements specified under subclause (i) and the list of all programs and courses designated under that subclause be made available to the public;
- (b) governing the requirements that a home inspector must comply with in performing a home inspection, including,
 - (i) prescribing the features and components that are to be inspected in the dwelling or residential property being inspected and the manner in which they are to be inspected,
 - (ii) specifying work that licensed home inspectors are required to do as part of performing a home inspection, and
 - (iii) adopting by reference, in whole or in part, with such changes as the Minister considers necessary or advisable, any code or standard that governs any matter related to the inspection and requiring compliance with any code or standard that is so adopted;
- (c) governing the insurance that licensees must have, including,
 - (i) prescribing the types of insurance they must have,
 - (ii) prescribing the minimum amounts for which they must be insured under each type of insurance, and
 - (iii) governing group insurance for licensees, including,
 - (A) authorizing the board of the administrative authority or, if there is no designated administrative authority, the Minister to arrange for and administer group insurance on behalf of licensees and to act as a named insured, and
 - (B) requiring licensees to participate in group insurance;
- (d) establishing a code of ethics for the purposes of section 58;
- (e) governing the jurisdiction and procedures of any committee established under this Act;
- (f) respecting any matter for which the power to make regulations is delegated by the Lieutenant Governor in Council to the Minister under clause 76 (1) (w).

Code of ethics

- (2) A regulation under clause (1) (f) may be made as part of a code of ethics established under clause (1) (d).

Conflict

- (3) If there is a conflict between a regulation made under this section and a regulation made by the Lieutenant Governor in Council under section 76, the latter prevails.

Lieutenant Governor in Council regulations

76 (1) The Lieutenant Governor in Council may make regulations,

- (a) defining, for the purposes of this Act and the regulations, any word or expression that is used in this Act but not defined in this Act;
- (b) specifying any matter or thing that this Act describes as being prescribed or done in accordance with the regulations, other than a matter or thing that this Act describes as being prescribed by the Minister;
- (c) exempting any person or class of persons or class of activities from any provision of this Act or the regulations and attaching conditions to an exemption;
- (d) specifying requirements that a person described in section 2 must meet in order to be exempt from the application of this Act;
- (e) specifying provisions of this Act and the regulations to which a person described in section 2 is subject in the circumstances specified in the regulations;
- (f) respecting applications for a licence or a renewal of licence;

- (g) requiring an applicant for a licence or a renewal of a licence to provide information to the registrar concerning persons other than the applicant in order to assist the registrar in determining whether the persons are or may be interested persons;
- (h) specifying information that licensees must provide to the registrar and requiring that specified information be verified by affidavit;
- (i) requiring the registrar to make available to the public the names of licensees and prescribing the form and manner in which the registrar must make the names available and specifying other information in respect of licensees that the registrar must make available to the public;
- (j) subject to clause 75 (1) (b), specifying the responsibilities of home inspection providers or home inspectors;
- (k) prescribing matters that home inspectors must disclose to the home inspection providers that employ them and to home inspection providers that are prospective employers, and the circumstances under which such disclosures are required;
- (l) subject to clause 75 (1) (b), governing the activities of licensees, including,
 - (i) specifying terms that licensed home inspection providers and licensed home inspectors acting under clause 37 (2) (b) are required to include in contracts for a home inspection that they enter into with clients,
 - (ii) specifying matters that they must disclose and when they must disclose them in the course of performing a home inspection or a contract for a home inspection, including the conditions under which disclosure is required and matters related to any holdings in,
 - (A) home inspection providers, other than the home inspection provider by which they are employed, in the case of home inspectors, or
 - (B) other home inspection providers, in the case of home inspection providers, and
 - (iii) specifying statements that licensees must provide in respect of performing a home inspection or a contract for a home inspection, the content of the statements, the manner of providing them, the circumstances under which a statement is not required and the consequences of failing to provide statements;
- (m) requiring licensees to provide, on request and in the prescribed circumstances, proof of licence and specifying the nature of the proof and the manner in which they must provide it;
- (n) requiring licensees to maintain business premises that comply with the prescribed rules;
- (o) respecting financial security requirements for licensees, including requiring them to be bonded or insured or have collateral security, and prescribing the forfeiture of bonds, the disposition of proceeds and other terms related to the financial security requirements;
- (p) governing the documents and records that licensees must keep, including the manner and location in which licensees must keep them and the time periods for which they must keep them and authorizing the registrar to specify the location at which licensees must keep them;
- (q) specifying procedures and other matters related to complaints under section 57;
- (r) governing the composition of the discipline committee and the appeals committee and, subject to subsection 58 (3), governing matters relating to the appointment of the members of those committees;
- (s) respecting inspections and investigations under this Act;
- (t) requiring that any information required under this Act be in a form approved by the director, the registrar or the Minister, as specified in the regulation;
- (u) specifying rules relating to addresses for service under this Act;
- (v) authorizing the director or the board of the administrative authority to conduct quality assurance programs in relation to the administration of this Act or the regulations and to use information collected under this Act for the purposes of those programs;
- (w) delegating to the Minister any power to make a regulation under this section;
- (x) providing for any transitional matter necessary for the effective implementation of this Act or the regulations, including,
 - (i) authorizing persons who are not licensees but who enter into a contract for a home inspection with a client before section 37 comes into force to continue to perform the contract, subject to the requirements set out in the regulations, and
 - (ii) governing the application of prescribed provisions of this Act and the regulations to licensees and other prescribed persons.

Residual authority to act

(2) Despite any delegation to the Minister under clause (1) (w) and without having to revoke the delegation, the Lieutenant Governor in Council continues to have authority to make regulations in respect of the power that is the subject of the delegation.

Making regulation not revocation

(3) If the Lieutenant Governor in Council makes a regulation to which subsection (2) applies, the regulation does not have the effect of revoking a delegation under this section unless the regulation so specifies.

Minister's regulations preserved

(4) The Lieutenant Governor in Council may, by regulation, revoke a delegation to the Minister under clause (1) (w), but the revocation of a delegation does not result in the revocation of any regulation the Minister made under the delegated power before the revocation of the delegation.

Ontario Association of Home Inspectors continued

77 (1) The Ontario Association of Home Inspectors constituted as a corporation without share capital by the *Ontario Association of Home Inspectors Act, 1994*, being chapter Pr65, as it read immediately before its repeal, is continued as a corporation to which Part III of the *Corporations Act* applies.

Objects continued

(2) The objects of the corporation are the objects set out in section 3 of the *Ontario Association of Home Inspectors Act, 1994*, being chapter Pr65, as that Act read immediately before its repeal.

**PART VII
AMENDMENTS TO THIS ACT**

Amendments to this Act

78 (1) Clause 8 (b) is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.

(2) Subsection 23 (1) is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.

**PART VIII
COMPLEMENTARY AMENDMENTS AND REPEALS**

Licence Appeal Tribunal Act, 1999

79 Subsection 11 (1) of the *Licence Appeal Tribunal Act, 1999* is amended by adding the following:

Home Inspection Act, 2017

Ontario Association of Home Inspectors Act, 1994

80 The *Ontario Association of Home Inspectors Act, 1994*, chapter Pr65, is repealed.

Ontario Labour Mobility Act, 2009

81 (1) Table 1 to the *Ontario Labour Mobility Act, 2009* is amended by striking out item 17.

(2) Table 1 to the Act is amended by adding the following item:

51.1	<i>Home Inspection Act, 2017</i>	The administrative authority designated under subsection 3 (1) of the <i>Home Inspection Act, 2017</i> or, if there is no designated administrative authority, the Minister responsible for the administration of the authorizing statute
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**PART IX
COMMENCEMENT AND SHORT TITLE**

Commencement

82 (1) Subject to subsections (2), (3) and (4), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Section 77 and subsection 81 (1) come into force on the day that section 80 comes into force.

(3) Subsection 78 (1) comes into force on the later of the day subsection 211 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 8 of this Act comes into force.

(4) Subsection 78 (2) comes into force on the later of the day subsection 211 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 23 of this Act comes into force.

Short title

83 The short title of the Act set out in this Schedule is the *Home Inspection Act, 2017*.

**SCHEDULE 2
AMENDMENTS TO OTHER ACTS**

COLLECTION AND DEBT SETTLEMENT SERVICES ACT

1 (1) Subsection 1 (1) of the *Collection and Debt Settlement Services Act* is amended by adding the following definitions:

“administrative penalty” means an administrative penalty imposed under section 29.0.1; (“pénalité administrative”)

“arrears” means a debt that is past due and that meets the criteria, if any, that are prescribed; (“en souffrance”)

“assessor” means a person designated in writing by the Registrar as authorized to make an order under section 29.0.1 imposing an administrative penalty; (“évaluateur”)

(2) The definition of “collection agency” in subsection 1 (1) of the Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:

(d) a person who purchases debts that are in arrears and collects them;

(3) The definitions of “Minister” and “Ministry” in subsection 1 (1) of the Act are repealed and the following substituted:

“Minister” means the Minister of Government and Consumer Services or whatever other member of the Executive Council to whom administration for this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

(4) The definition of “registrant” in subsection 1 (1) of the Act is repealed and the following substituted:

“registrant” means a collection agency that is registered; (“personne inscrite”)

2 (1) Clause 2 (1) (a) of the Act is amended by adding “subject to the regulations” at the beginning.

(2) Clause 2 (1) (e) of the Act is amended by striking out “a bank listed in Schedule I or II to the *Bank Act* (Canada)” and substituting “a bank or authorized foreign bank as defined in section 2 of the *Bank Act* (Canada)”.

(3) Subsection 2 (1) of the Act is amended by striking out “or” at the end of clause (f) and by adding the following clauses:

(h) subject to the regulations, to a person who purchases debts through acquiring or merging with a business in a transaction that includes the transfer of accounts receivable;

(i) subject to the regulations, to a person who acquires debts through the seizure of accounts receivable under a security agreement;

(j) subject to the regulations, to a person who acquires a debt by taking an assignment of the contract that gave rise to the debt for the purposes of financing a transaction;

(k) subject to the regulations, to a person who purchases a financing agreement or group of financing agreements or the payments due under a finance agreement or group of financing agreements;

(l) subject to the regulations, to a person who purchases a debt that permits the person to collect the debt under the name of the original creditor; or

(m) subject to the regulations, to a person who enters into an agreement to finance the purchase of goods or services and who assigns the rights to payments under the agreement to a third party, even if the person continues to collect those payments on behalf of the third party.

3 Section 3 of the Act is amended by adding the following subsections:

Policies

(3) The Registrar may establish written policies regarding the interpretation, administration and enforcement of this Act.

Public record

(4) If the Registrar establishes written policies under subsection (3), the Registrar shall maintain a public record of them in accordance with the prescribed requirements.

4 (1) Subsection 4 (1) of the Act is amended by striking out “or act as a collector”.

(2) Section 4 of the Act is amended by adding the following subsection:

Responsibility for collectors

(3) A collection agency that employs, appoints or authorizes an individual to act as a collector for or on behalf of the agency shall exercise due diligence to ensure that the individual complies with this Act and the regulations when acting as a collector.

5 (1) Clause 20 (1) (c) of the Act is repealed and the following substituted:

(c) any commencement or termination of the employment, appointment or authorization of a collector.

(2) Subsection 20 (2) of the Act is repealed.

(3) Subsection 20 (3) of the Act is amended by striking out “subsections (1) and (2)” and substituting “subsection (1)”.

6 Clause 22 (a) of the Act is repealed and the following substituted:

(a) collect or attempt to collect, on its own behalf or for a person for whom it acts, any money in addition to the amount owing by the debtor;

7 Subsection 24 (2) of the Act is repealed.**8 Section 26 of the Act is amended by adding the following subsection:****Collector’s address**

(1.1) The address of a collector shall be deemed to be the address of the collection agency that employs, appoints or authorizes the collector to act as a collector.

9 The Act is amended by adding the following sections:

ADMINISTRATIVE PENALTIES

Order

29.0.1 (1) An assessor who is satisfied that a person has contravened or is contravening a prescribed provision of this Act or the regulations may, by order, impose an administrative penalty against the person in accordance with this section and the regulations made by the Minister.

Purpose

(2) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations.

Amount

(3) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be the amount prescribed by the Minister, which amount shall not exceed \$10,000.

Form of order

(4) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the Registrar determines.

Service of order

(5) The order shall be served on the person against whom the administrative penalty is imposed in the manner that the Registrar determines.

Absolute liability

(6) An order made under subsection (1) imposing an administrative penalty against a person applies even if,

- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

No effect on offences

(7) For greater certainty, nothing in subsection (6) affects the prosecution of an offence.

Other measures

(8) Subject to section 29.0.3, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Act or the regulations, including the application of conditions to a registration by the Registrar, the suspension or revocation of a registration or the refusal to renew a registration.

Limitation

(9) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the person's contravention on which the order is based.

No hearing required

(10) Subject to the regulations made by the Minister, an assessor is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person.

Non-application of other Act

(11) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

Appeal

29.0.2 (1) The person against whom an order made under subsection 29.0.1 (1) imposes an administrative penalty may appeal the order to the person prescribed by the Minister by delivering a written notice of appeal to the latter person within 15 days after receiving the order.

Extension of time for appeal

(2) The prescribed person mentioned in subsection (1) may extend the time period for appealing and may determine the circumstances in which extensions are given.

Form of notice

(3) The notice of appeal shall be in the form that the prescribed person mentioned in subsection (1) determines.

Filing of notice

(4) The person against whom the order imposing the administrative penalty is made shall file the notice of appeal in the manner that the prescribed person mentioned in subsection (1) determines.

Stay

(5) An appeal commenced in accordance with subsection (1) operates as a stay of the order until disposition of the appeal.

Opportunity for submissions

(6) Before disposing of an appeal, the prescribed person mentioned in subsection (1) shall give the person against whom the order imposing the administrative penalty is made a reasonable opportunity to make written submissions.

Powers on appeal

(7) On an appeal, the prescribed person mentioned in subsection (1) may confirm, revoke or vary the order within the limits, if any, established by the regulations made by the Minister.

Non-application of other Act

(8) The *Statutory Powers Procedure Act* does not apply to an appeal made under this section.

Effect of paying penalty

29.0.3 If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based.

Enforcement

29.0.4 (1) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

Date of order

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

Debt due to Crown

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing it or, if the order is varied on appeal, in accordance with the terms of the varied order is a debt due to the Crown and is enforceable as such.

10 (1) The Act is amended by adding the following heading immediately before section 29.1:

FEE ORDERS, REGULATIONS AND TRANSITION

(2) Paragraph 2 of section 29.1 of the Act is repealed and the following substituted:

2. For processing a notice given under subsection 20 (1) with respect to a commencement or termination of the employment, appointment or authorization of a collector.

11 (1) The Act is amended by adding the following section:

Minister's regulations

29.2 The Minister may make regulations,

- (a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) governing information that a collection agency or collector is required to provide in any notice that the agency or the collector is required to send to a debtor when attempting to collect payment of a debt from the debtor, where the information is in addition to the information that a regulation made under clause 30 (1) (l) requires to be included in the notice;
- (c) specifying a different administrative penalty for a contravention of different prescribed provisions of this Act or the regulations, different portions of those prescribed provisions or different prescribed requirements in those prescribed provisions;
- (d) providing that the prescribed amount of an administrative penalty mentioned in subsection 29.0.1 (3) shall be calculated on the basis specified in the regulation, including an amount reflecting the number of transactions involved in the contravention on which an order for the administrative penalty is based;
- (e) governing the procedure for making an order under section 29.0.1 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the registrant against whom the order is made;
- (f) governing the procedure for appealing an order made by an assessor under section 29.0.1 and the rights of the parties affected by the appeal, including the time at which the notice of appeal is deemed to be received.

(2) On the later of the day this subsection comes into force and the day section 1 of Schedule 5 to the *Budget Measures Act, 2009* comes into force, section 29.2 of the Act, as set out in subsection (1), is repealed.

(3) On the later of the day this subsection comes into force and the day section 1 of Schedule 5 to the *Budget Measures Act, 2009* comes into force, section 29.2 of the Act is amended by adding the following clause:

- (0.a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;

(4) On the later of the day this subsection comes into force and the day section 1 of Schedule 5 to the *Budget Measures Act, 2009* comes into force, clause 29.2 (a) of the Act is repealed and the following substituted:

- (a) requiring, as a term and condition of registration, that a collection agency provide financial security in respect of acts or omissions of the collection agency;

(5) On the later of the day this subsection comes into force and the day section 1 of Schedule 5 to the *Budget Measures Act, 2009* comes into force, section 29.2 of the Act is amended by adding the following clauses:

- (h) governing information that a collection agency or collector is required to provide in any notice that the agency or the collector is required to send to a debtor when attempting to collect payment of a debt from the debtor, where the information is in addition to the information that a regulation made under clause 30 (1) (l) requires to be included in the notice;
- (i) specifying a different administrative penalty for a contravention of different prescribed provisions of this Act or the regulations, different portions of those prescribed provisions or different prescribed requirements in those prescribed provisions;
- (j) providing that the prescribed amount of an administrative penalty mentioned in subsection 29.0.1 (3) shall be calculated on the basis specified in the regulation, including an amount reflecting the number of transactions involved in the contravention on which an order for the administrative penalty is based;
- (k) governing the procedure for making an order under section 29.0.1 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the registrant against whom the order is made;
- (l) governing the procedure for appealing an order made by an assessor under section 29.0.1 and the rights of the parties affected by the appeal, including the time at which the notice of appeal is deemed to be received.

12 (1) Subsection 30 (1) of the Act is amended by adding the following clauses:

- (b.1) specifying requirements that a person must meet, in addition to those set out in any of clauses 2 (1) (a) and (h) to (m), in order to be exempt from the application of this Act under those clauses;

(b.2) specifying provisions of this Act and the regulations, except for subsection 4 (1) of this Act, to which a person described in any of clauses 2 (1) (a) and (h) to (m) is subject in the circumstances specified in the regulations;

(2) Clause 30 (1) (c) of the Act is repealed and the following substituted:

(c) specifying anything that is described as prescribed, other than a matter or thing that this Act describes as being prescribed by the Minister;

(3) Subsection 30 (2) of the Act is repealed.

CONSUMER PROTECTION ACT, 2002

13 The French version of the definition of “supplier” in section 1 of the *Consumer Protection Act, 2002* is amended by striking out “en les offrant” and substituting “en les vendant”.

14 Section 2 of the Act is amended by adding the following subsection:

Agreement for supply of appliances

(6) For greater certainty, despite clause (2) (f), this Act applies to a consumer agreement under which a supplier supplies goods to a consumer that are not part of real property at the time the parties enter into the agreement but that subsequently become so under the agreement.

15 Subsection 43 (1) of the Act is repealed and the following substituted:

Cancellation: cooling-off period

(1) A consumer may, without any reason, cancel a direct agreement at any time from the date of entering into the agreement until 10 days after the consumer has received the written copy of the agreement.

Transition

(1.1) Despite subsection (1), that subsection, as it read immediately before the day section 15 of Schedule 2 to the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017* comes into force, continues to apply to a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed if the parties entered into the agreement before that day.

16 Section 43.1 of the Act is repealed and the following substituted:

Restriction on entering into certain direct agreements

43.1 (1) No supplier shall, while at a consumer’s dwelling or at any other prescribed place, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services or enter into such an agreement unless the consumer has initiated contact with the supplier and has specifically requested that the supplier attend at the consumer’s dwelling or the other prescribed place for the purpose of entering into such an agreement.

Same

(2) The following activities do not constitute solicitation for the purpose of subsection (1):

1. Leaving marketing materials at a consumer’s dwelling or any other place prescribed for the purpose of that subsection without attempting to contact the consumer with respect to any prescribed direct agreement.
2. Such other activities that are prescribed.

Agreement void

(3) A direct agreement that the parties enter into in contravention of subsection (1) is void.

Related agreements void

(4) Any agreement, including the following, that is related to the consumer’s obligations under the direct agreement is void:

1. A guarantee or security given by a guarantor for the purpose of securing the performance of those obligations.
2. An agreement under which the consumer gives security for the purpose of securing the performance of those obligations.
3. A credit agreement within the meaning of Part VII that the consumer enters into as a borrower in respect of money that the consumer is required to pay under the direct agreement and any other payment instrument that the consumer enters into in that respect.

Unsolicited goods or services

(5) If a supplier supplies goods or services to a consumer under a direct agreement that is void, the goods or services are deemed to be unsolicited and subsections 13 (1), (2), (3), (6), (7) and (8) apply to them.

Third party charges

(6) If a supplier supplies goods or services to a consumer under a direct agreement that is void and the consumer incurs charges from a third party that are related to the agreement, including, but not limited to, charges in respect of the removal or return of any goods that the consumer is liable to return to the third party, the supplier is liable to reimburse the consumer for the amount of all those charges.

Recovery of amount

(7) The consumer may commence an action, in accordance with section 100, to recover the amount described in subsection (6) and may set off the amount against any amount owing to the supplier under any consumer agreement between the consumer and the supplier, other than the direct agreement described in subsection (1).

17 The Act is amended by adding the following Part:

**PART VII.1
AGREEMENTS FOR CASHING GOVERNMENT CHEQUES**

Definitions

85.1 In this Part,

“bank” means a bank, authorized foreign bank or federal credit union as defined in section 2 of the *Bank Act* (Canada); (“banque”)

“credit union” has the same meaning as in the *Credit Unions and Caisses Populaires Act, 1994*; (“caisse”, “caisse populaire”)

“federal government” means the Government of Canada and any department, agency, board, commission, official or other body of the Government of Canada; (“gouvernement fédéral”)

“government agency” means the Crown in right of Ontario, an agency of the Crown in right of Ontario, a municipal government, a prescribed municipal agency or any other prescribed entity; (“organisme gouvernemental”)

“government cheque” means a cheque issued to a consumer by the Government of Ontario, a government agency or the federal government. (“chèque du gouvernement”)

Application

85.2 (1) This Part applies to a consumer agreement under which a supplier, other than a credit union, cashes a government cheque for a consumer.

Non-application to banks

(2) For greater certainty, this Part does not apply to a consumer agreement under which a bank cashes a government cheque for a consumer.

Disclosure of information

85.3 A supplier under a consumer agreement to which this Part applies shall display the prescribed information in the prescribed manner and in accordance with the prescribed requirements.

Limit on fee for cashing government cheques

85.4 (1) A supplier under a consumer agreement to which this Part applies shall not charge the consumer a fee for cashing a government cheque if the fee exceeds the prescribed amount.

Amount of fee

(2) For the purposes of subsection (1), the prescribed amount of the fee for cashing a government cheque may be,

- (a) a fixed amount;
- (b) a percentage of the face value of the cheque or any other amount calculated on the basis of the face value of the cheque;
- (c) an amount that results from the application of any combination of clauses (a) and (b); or
- (d) any amount determined by any other prescribed means.

Statement when cashing cheques

85.5 A supplier under a consumer agreement to which this Part applies who cashes a government cheque for the consumer shall provide the consumer, in accordance with the prescribed requirements, with a statement setting out the prescribed information with respect to the cashing of the cheque.

18 Section 87 of the Act is amended by striking out “and” at the end of clause (b), by adding “and” at the end of clause (c) and by adding the following clause:

(d) such other leases that are prescribed.

19 (1) Subclause 116 (1) (b) (iii) of the Act is amended by striking out “and 36 (1)” at the end and substituting “36 (1), 43.1 (1) and 47.1 (1), (5) and (6)”.

(2) Subclause 116 (1) (b) (iii) of the Act, as amended by subsection (1), is amended by striking out “(5) and (6)” at the end.

(3) Clause 116 (1) (b) of the Act is amended by adding the following subclause:

(vi.1) in respect of Part VII.1, Agreements for Cashing Government Cheques, section 85.3, subsection 85.4 (1) and section 85.5,

20 (1) Subsection 123 (5) of the Act is amended by adding the following clause:

(j) prohibiting suppliers from entering into any class of consumer agreement to which Part IV applies and that is specified in the regulations if it creates a lien or other security interest in any real or personal property owned by the consumer or in the goods or services under the agreement and governing the rights and obligations of the parties under such an agreement.

(2) Clause 123 (7.1) (a) of the Act, as enacted by section 8 of Schedule 1 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*, is repealed and the following substituted:

(a) respecting any matters that are described in Part VI.1 as being prescribed or provided for in the regulations;

(3) Subsection 123 (8) of the Act is amended by adding the following clauses:

(0.a.1) governing the factors that a lender is required to take into account with respect to a borrower before entering into a credit agreement with the borrower;

(0.a.2) prohibiting lenders from entering into a credit agreement with a borrower if the amount of the credit to be extended or money to be lent under the agreement exceeds the prescribed amounts or the amounts calculated according to the prescribed manner;

(0.a.3) requiring a lender under a credit agreement to provide to the borrower in writing, before entering into the agreement, a copy of the lender’s assessment of the factors prescribed under clause (0.a.1) with respect to the borrower, and requiring that such information be given in accordance with the prescribed requirements;

(0.a.4) specifying that if a lender under a credit agreement does not comply with a regulation made under clause (0.a.3), the borrower is not liable to pay the lender the cost of borrowing under the agreement;

(0.a.5) prohibiting a lender from initiating contact with a borrower for the purpose of offering to refinance a credit agreement;

.

(c.1) prescribing maximum amounts for charges that are not included in the cost of borrowing under a credit agreement, or a method of setting maximum amounts;

(4) Subsection 123 (9) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Lieutenant Governor in Council regulations: Part VIII

(9) The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

.

(5) Subsection 123 (9) of the Act is amended by adding the following clauses:

(a.2) governing and requiring the use of tags or other markers attached to or displayed around a good that is to be leased and the use of statements included in a display relating to a good that is to be leased, and governing the content of such tags, markers, statements or displays and the manner and form in which they are used;

.

(b.3) governing penalties to which a lessee is subject for making late payments under a lease, including,

(i) prescribing a grace period during which a lessor is prohibited from exercising the rights and remedies that are specified in the regulation with respect to late payments under a lease despite anything that is specified in the lease,

(ii) restricting the rights of a lessor despite anything specified in a lease if a lessee makes a late payment under a lease, including prohibiting a lessor from seizing the leased goods or terminating the lease,

(iii) prescribing the maximum amounts of penalties that a lessor can require a lessee to pay to the lessor for making a late payment under a lease or a method of setting those amounts and prescribing the circumstances in which a

lessor can require a lessee to pay those amounts and the circumstances in which a lessor is not entitled to require a lessee to pay those amounts, and

- (iv) specifying whether or not a lessor may apply the amounts described in subclause (iii) to any security deposit that a lessee has paid to a lessor under a lease;
- (e) governing the right of a lessor under a lease to terminate the lease, including,
 - (i) prescribing the circumstances in which a lessor is entitled to exercise the right of termination or is not entitled to exercise that right, and
 - (ii) prescribing the requirements that a lessor must fulfil to exercise the right of termination, including requiring a lessor to give notice to the lessee and governing the notice;
- (f) governing obligations of lessors and lessees arising as the result of the termination of a lease;
- (g) permitting a lessee under a lease that the lessor has terminated for default in payments required under the lease to re-instate the lease, subject to any regulation made under clause (i), provided that the specified conditions, if any, are met;
- (h) permitting a lessee under a lease who has terminated the lease for any reason to re-instate the lease, subject to any regulation made under clause (i), provided that the specified conditions, if any, are met;
- (i) governing obligations of lessors and lessees arising as the result of the re-instatement of a lease as described in clause (g) or (h).

PAYDAY LOANS ACT, 2008

21 (1) Subsection 24 (1) of the *Payday Loans Act, 2008* is amended by adding “and subject to subsection (3)” after “otherwise”.

(2) Section 24 of the Act is amended by adding the following subsection:

Location of offices

(3) In acting as a licensee, a licensee shall not operate an office at a location if a by-law passed under section 154.1 of the *Municipal Act, 2001* or section 92.1 of the *City of Toronto Act, 2006* prohibits the operation of the office at the location.

22 Section 34 of the Act is amended by adding “or any part of that outstanding balance” after “agreement”.

23 (1) Subsection 35 (1) of the Act is repealed and the following substituted:

No concurrent or replacement payday loan agreements

(1) The lender under a payday loan agreement shall not enter into a new payday loan agreement with the borrower before the prescribed number of days have passed since the borrower has paid the full outstanding balance under the first agreement.

(2) Subsection 35 (3) of the Act is repealed and the following substituted:

Same borrower, different lenders

(3) No loan broker shall facilitate the making of more than one payday loan agreement between the same borrower and different lenders unless the prescribed number of days have passed since the borrower has paid the full outstanding balance under the first agreement.

24 The Act is amended by adding the following section:

Inspection of non-licensees

47.1 (1) If the Registrar has reasonable grounds to believe that an activity for which a licence is required is occurring, the Registrar or a person designated in writing by the Registrar may conduct an inspection and may, as part of the inspection, enter and inspect at any reasonable time the business premises of a person or entity, other than any part of the premises used as a dwelling, for the purpose of determining whether the person or entity is carrying on the activity.

Application of section 47

(2) Subsections 47 (2) to (7) apply to the inspection described in subsection (1), reading references to a licensee as references to the person or entity whose business premises are subject to the inspection.

25 (1) Section 77 of the Act is amended by adding the following paragraph:

- 16.1 governing advertising or signage in any medium with respect to a payday loan or a payday loan agreement, including,
 - i. governing the content and the location of the advertising or signage,
 - ii. governing the maximum size of advertising or signage,
 - iii. prohibiting licensees from making advertising or signage that is described in the regulation;

(2) Paragraph 17 of section 77 of the Act is repealed and the following substituted:

- 17. governing the requirements that parties are required to satisfy in order to enter into a payday loan agreement, including,
 - i. requiring a lender to take into account the prescribed factors with respect to a borrower before entering into the agreement, and
 - ii. requiring a lender to ask the borrower about the financial matters related to the agreement that are specified in the regulations before entering into the agreement;
- 17.1 prohibiting a lender from entering into more than the prescribed number of payday loan agreements with the same borrower in a one-year period;
- 17.2 prohibiting a loan broker from facilitating the making of more than the prescribed number of payday loan agreements between the same borrower and different lenders in a one-year period;

(3) Section 77 of the Act is amended by adding the following paragraph:

- 22.1 exempting any class of payday loan agreement from section 31 and governing that class of agreement, including,
 - i. specifying the means of determining the number of instalments in which the advance is to be repaid and in which the cost of borrowing is to be paid, and the times at which they are to be repaid or paid,
 - ii. specifying the means of determining the amount required for each instalment mentioned in subparagraph i,
 - iii. governing the proportion of each instalment mentioned in subparagraph i that will constitute repayment of the advance rather than payment of the cost of borrowing, and
 - iv. specifying the terms that the parties are required to include in that class of agreement;

(4) Paragraph 24 of section 77 of the Act is repealed.**(5) Paragraph 27 of section 77 of the Act is repealed and the following substituted:**

- 27. governing information and statements that a licensee is required to provide to a borrower, including information and statements with respect to,
 - i. a payday loan or a payday loan agreement, or
 - ii. payday loan agreements that a borrower has entered into with a lender in the period of time specified in the regulation;
- 27.1 governing requests that a licensee is required to make to a borrower, including requests in respect of,
 - i. studies about the needs of borrowers with respect to payday loans or payday loan agreements, or
 - ii. financial planning for borrowers;
- 27.2 governing the form that the licensee is required to use for the information, statements and requests mentioned in paragraphs 27 and 27.1;
- 27.3 governing the manner in which the information and statements mentioned in paragraph 27 are provided to a borrower, and in which requests mentioned in paragraph 27.1 are made to a borrower, including the order in which they are provided or made and the timing of their provision;

(6) Section 77 of the Act is amended by adding the following paragraph:

- 33.1 prohibiting licensees from offering or providing prescribed goods or services, other than payday loans, to anyone;

(7) Section 77 of the Act is amended by adding the following paragraph:

- 33.2 requiring licensees to refer prescribed classes of borrowers to credit counselling or other prescribed services, in the prescribed manner;

CONSEQUENTIAL AMENDMENTS***City of Toronto Act, 2006*****26 The *City of Toronto Act, 2006* is amended by adding the following section:****Restrictions re payday loan establishments**

- 92.1** (1) Despite section 90 and without limiting sections 7 and 8, the City, in a by-law under those sections with respect to payday loan establishments, may define the area of the City in which a payday loan establishment may or may not operate and limit the number of payday loan establishments in any defined area in which they are permitted.

Exception

(2) Despite subsection (1), a by-law described in that subsection shall not prohibit the operation of all payday loan establishments in the City.

Definition

(3) In this section,

“payday loan establishment” means any premises or any part of them in respect of which a licensee within the meaning of the *Payday Loans Act, 2008* may operate a business pursuant to a licence issued under that Act.

Municipal Act, 2001

27 The *Municipal Act, 2001* is amended by adding the following section:

Restrictions re payday loan establishments

154.1 (1) Despite section 153 and without limiting sections 9, 10 and 11, a local municipality, in a by-law under section 151 with respect to payday loan establishments, may define the area of the municipality in which a payday loan establishment may or may not operate and limit the number of payday loan establishments in any defined area in which they are permitted.

Exception

(2) Despite subsection (1), a by-law described in that subsection shall not prohibit the operation of all payday loan establishments in the municipality.

Definition

(3) In this section,

“payday loan establishment” means any premises or any part of them in respect of which a licensee within the meaning of the *Payday Loans Act, 2008* may operate a business pursuant to a licence issued under that Act.

COMMENCEMENT**Commencement**

28 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017* receives Royal Assent.

(2) Subsections 1 (1), (2) and (4), sections 2 to 12, 14 to 19, subsections 20 (1), (3), (4) and (5), sections 21 and 23, subsections 25 (1), (2), (3), (5) and (6) and sections 26 and 27 come into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Subsection 20 (2) comes into force on the day section 8 of Schedule 1 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014* comes into force.