

**ALBERTA CONSUMER SERVICES APPEAL BOARD**

**IN THE MATTER OF AN APPEAL BY  
FINANCIAL DEBT RECOVERY LIMITED  
PURSUANT TO SECTION 179(1)(e) OF THE *CONSUMER PROTECTION ACT*, RSA 2000, c.26.3  
("the CPA")**

and

**IN THE MATTER OF AN ADMINISTRATIVE PENALTY ISSUED BY  
THE ALBERTA DIRECTOR OF FAIR TRADING  
PURSUANT TO SECTION 158.1(1) OF THE CPA**

**APPEAL BOARD DECISION**

**DECISION ISSUED**

07 October 2024

**APPEAL BOARD**

Lorenz Berner (Appeal Board Chair)

Dellia Tardif (Appeal Board Member)

Caren Mueller (Appeal Board Member)

**PARTIES' REPRESENTATIVES**

**Appellant (Financial Debt Recovery Limited)** (Michael Famutimi, Counsel)

**Respondent (Director of Fair Trading)** (Joseph O'Kurley, Statute Administrator and Director of Fair Trading, as delegated)

**SUMMARY**

1. The Appellant, Financial Debt Recovery Limited (**FDR**), is an Ontario-based company licenced to carry on business as a collection agency in Alberta. On October 31, 2022, a complaint was initiated against FDR in connection with its efforts to collect against the complainant, a debtor.

2. Following an investigation and after an opportunity to respond, the Director of Fair Trading (**Director**) imposed a \$1,000 administrative penalty on FDR for contravening applicable regulations.
3. In particular, the Director found that FDR employees acted unlawfully by contacting the complainant's employer for a purpose "... other than to confirm the debtor's employment status, business title and the address of the business, in preparation for legal proceedings".
4. FDR appealed the Director's decision, and this Appeal Board was appointed to hear and determine the appeal.
5. For the reasons set out below, the Appeal Board affirms the decision of the Director and the \$1,000 Administrative Penalty.

#### **JURISDICTION, PROCEDURAL MATTERS, AND STANDARD OF REVIEW**

6. The Director of Fair Trading issued a Notice of Administrative Penalty against FDR on January 2, 2024. The Administrative Penalty was issued pursuant to s.158.1(a) of the *Consumer Protection Act (CPA)*<sup>1</sup>.
7. On January 29, 2024, FDR appealed the Administrative Penalty to the Minister of Service Alberta and Red Tape Reduction, pursuant to section 179(1)(e) of the CPA.
8. The Appeal Board was appointed on February 22, 2024, following the ministry's usual process of confirming that the Appeal Board members had no conflicts of interest.
9. Through correspondence between the Appeal Board Chair and the parties, the following process and timing for the appeal was settled:
  - a. The appeal was scheduled to be heard on August 23, 2024.
  - b. The appeal would proceed by way of a "remote" or digital hearing, by videoconference.
  - c. Disclosure of relevant records by the Director would occur on or about August 2, 2024.

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<sup>1</sup> RSA 2000, c.C-26.3

- d. The appeal hearing would be a “new trial” relating to the decisions under appeal, as prescribed by s.179(8) of the CPA. As such, either party could present evidence to the Appeal Board, whether such evidence had been considered by the Director of Fair Trading or not.
10. A Notice of Appeal Hearing was issued to the parties and the videoconference appeal hearing was held on August 23, 2024.
11. During the Appeal Hearing, an Investigator from the Consumer Investigations Unit of Service Alberta and Red Tape Reduction testified and referred to the original complaint received as well as a number of emails, audio recordings of telephone calls, and other records – all of which were entered as exhibits and considered by the Appeal Board.<sup>2</sup> Counsel for the Appellant cross-examined the Investigator, but did not present any evidence in support of the Appellant’s position.
12. Pursuant to s.179(6) of the Consumer Protection Act, the Appeal Board has the authority to confirm, vary or quash the administrative penalty that is under appeal.

#### RELEVANT LEGISLATION

13. Section 111 of the CPA requires collection agencies to be licenced in order to carry on collection agency activities in Alberta. Section 118 authorizes the Minister of Service Alberta and Red Tape Reduction to make regulations respecting various aspects of collections activity, including, in subsection (g), “prohibiting a collection agency or collector from doing specified things”.
14. In accordance with this legislative structure, regulation of collection agencies and collectors in Alberta is largely set out in the *Collection and Debt Repayment Practices Regulation (the Regulation)*.<sup>3</sup>
15. Section 12(1)(m) of the Regulation reads as follows:
- 12(1) No collection agency or collector may
- ...
- (m) contact the debtor’s employer for any purpose other than to confirm the debtor’s employment status, business title and the address of the business, in preparation for legal proceedings.

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<sup>2</sup> A list of the exhibits entered during the Appeal Hearing is set out in Appendix A.

<sup>3</sup> Alta Reg 194/1999.

16. Although other sections of the Regulation were addressed during the investigation and by the Director, only section 12(1)(m) is now in consideration in the context of this appeal.

#### **FACTS THAT ARE NOT IN DISPUTE**

17. Although there is not a formal agreed statement of facts in this appeal, there is much that is not in dispute:

- a. At all material times, FDR held a valid Service Alberta collection agency licence.
- b. Since February of 2021, FDR had been pursuing a debt owed by the complainant, HB, to CIBC. This debt was incurred after HB was struck while riding his bicycle, requiring multiple surgeries. The total amount of the debt including interest was approximately \$45,000.00 by mid-2022.
- c. Extensive communication had taken place between FDR representatives – “collectors” licenced in accordance with the Regulation – and the Complainant. Telephone communications were recorded by FDR and copies of relevant recordings were provided to the CIU Investigator in the course of her investigation.
- d. The communications between the FDR collectors and HB included discussions about settling the debt owed to CIBC for a lower lump-sum amount. HB appeared interested in such resolution, but indicated he was having difficulty and would need more time to garner sufficient funds to pay the lower lump-sum amount. Meanwhile, HB attempted to make monthly payments in the range of \$400-\$500 dollars, and at times promised to make a payment but did not do so.
- e. On June 27, 2022, FDR collectors contacted HB by telephone. The conversation included discussion about settlement of the debt, consumer proposals, and HB’s credit score.
- f. Also on June 27, 2022, FDR collectors placed telephone calls to a number identified by them as being associated with HB’s “alleged place of employment”. The recordings of these calls are included as Exhibits 3 and 4 in this appeal.
- g. FDR did not reach a settlement with HB or recover a substantial proportion of his debt. In November of 2022, HB’s file was re-assigned by CIBC to another collection agency.

## **FOCUS OF THE APPEAL HEARING**

18. While the occurrence and content of the phone calls made by FDR collectors on June 27, 2022 are not in dispute, the context and purpose for which they were made is at the heart of this appeal.
19. In essence, the Director takes the position that the calls on this date made to a person *other* than HB were *not* made "... to confirm the debtor's employment status ... in preparation for legal proceedings", and as such violate section 12(1)(m) of the Regulation. The Appellant FDR submits that the calls were made for this defined, permitted purpose – and as such there is no breach of the Regulation.

## **ORAL EVIDENCE IN THE APPEAL HEARING**

20. The Director called one witness – "NG" – to testify at the appeal hearing. NG solemnly affirmed to testify truthfully, was examined by Mr. O'Kurley on behalf of the Director, and was then cross-examined by Mr. Famutimi on behalf of FDR.
21. NG testified that she is an Investigator with the Consumer Investigations Unit (CIU) of Service Alberta. After outlining her experience and qualifications, she described what steps she took in this matter and what she determined. This included the following evidence:
  - a. She received a complaint form, a lengthy written statement, and additional emails from the Complainant HB between October 2022 and March of 2023. She reviewed this material and then contacted FDR requesting a response.
  - b. She did not conduct interviews of FDR collectors or other representatives, but did receive responses to her inquiries via email in May of 2023.
  - c. FDR also provided her with copies of 41 telephone recordings relating to FDR's efforts to collect on HB's debt, along with a static version of a "Notelines" log (Exhibit 6), which set out collector actions and notes regarding FDR steps taken in respect of a collection file.
  - d. She reviewed the telephone recordings and summarized the contents in a log (Exhibit 5). She also reviewed the "Notelines" log provided by FDR.
  - e. The recordings of three telephone calls made by FDR on June 27, 2023 were the focus of her analysis.

- f. There were dates, but no timestamps allocated to the telephone call recordings, and as such she could not confirm the timing or sequence in which the calls were made.
  - g. One of the June 27 phone calls was from FDR collector “AS” to HB at the usual number on which he was contacted – as shown on line #301 of the FDR Notelines log.
  - h. The other two calls on this date were from FDR collectors AS and JC to a phone number not previously used to contact HB. In one of these calls, the collector AS asked at the outset of the call to speak with “AB” – a person with the same surname as HB but a different first name. In the other call, the collector JC asked whether the number was the “Century 21 location for [pause] ...” – and then whether HB was “still connected to the company”. The person answering the call identified himself as AB (the same name as collector AS asked to speak with in the other June 27 phone call).
  - i. The Notelines log provided by FDR included an entry made earlier in the day on June 27 (line #299), setting out the name, address, phone number and other information about a Century 21 Realty office. NG stated that it appeared as if this information had been cut-and-pasted from a Google internet search. The entry included a phone number immediately beside the name of the Century 21 office, and farther down, also included the phone number that was used by FDR collectors to call AB (with no name beside this number).
  - j. In prior communications between FDR collectors and HB, HB indicated that he was working as a real estate agent.
  - k. She reviewed a historical Service Alberta database of matters involving FDR, noting that some 98 complaints had been made against FDR since 2006, with various outcomes. She summarized this history within the Recommendation Memo she prepared for the Director.
  - l. She provided her Recommendation Memo to the Director on June 6, 2023.
22. In cross-examination, NG acknowledged that she was not able to identify the timing or sequence of the June 27, 2023 phone calls by FDR. She did not, however, concede that this was significant in this case. Rather, employment was never discussed in the call by collector AS, and indeed the purpose of the call by collector AS to AB was never made clear at all (so could not be to verify employment). Further, in NG’s view, AS’s statements were misleading

because there was no evidence that HB had provided AB's phone number as a "primary contact".

23. In response to further cross-examination, it was NG's view that even if FDR had obtained AB's phone number from CIBC, AS provided misleading information in stating that HB had provided the number – and she could find no evidence to indicate this was true.
24. In response to a question from the Appeal Board, NG testified that she does not recall seeing any evidence of FDR taking legal proceedings against HB.
25. FDR did not call any witnesses and did not tender any records in the Appeal Hearing, but rather relied on the evidence presented on behalf of the Director.

## **ISSUES FOR DECISION**

26. In this appeal, the formal issue for determination can be divided into two questions:
  - a. did FDR breach s.12(1)(m) of the Regulation through one or both of its collectors' telephone calls to AB on June 27, 2022?
  - b. if a breach is established, should the \$1,000 administrative penalty assessed by the Director be confirmed, varied, or quashed?

## **SUBMISSIONS**

### **Submissions on behalf of the Director**

27. The Director argued that both the finding that FDR breached s.12(1)(m) of the Regulation and the amount of the Administrative Penalty were reasonable and justified by the evidence.
28. Most obviously, nothing about the June 27, 2022 phone call placed by AS to AB indicated that it was for the purpose of confirming employment. AS did not mention employment, and if anything the call appeared to be an effort to impose pressure on the debtor HB through contacting an employer or family member.
29. The June 27, 2022 phone call placed by JC to AB also violated s.12(1)(m) of the Regulation, because, even if that call was made "to confirm the debtor's employment status", it was *not* made "in preparation of legal proceedings" as required by the section.

30. Finally, the Director submitted that the \$1,000 administrative penalty is fair in all the circumstances and asked the Appeal Board to uphold the Director's decision in all respects.

### **Submissions on behalf of FDR**

31. By way of overview, counsel for FDR submitted that the company has been licenced in Canada since 1978 and has over 250 employees in Canada and the USA, a robust employee training and ongoing educational program, and an active compliance team that emphasizes compliance with all applicable legislation and regulation.<sup>4</sup>
32. With respect to the two telephone calls placed by FDR collectors on June 27, 2022, counsel argued that Investigator NG misinterpreted the collectors' efforts, and that the Appeal Board should not impose a standard of perfection. The sequence of the calls was important to consider, and the collectors' use of "due diligence" in seeking to abide by the regulations while performing their duties should be considered.
33. The Appeal Board was urged to interpret the call by AS to AB as a follow-up call to the one by JC to AB (in which there was clearly an effort to confirm employment or employment location). Collector JC was not able to complete her confirmation of employment, because the call was dropped. A follow-up call (by AS) to the same number was not unreasonable, given the importance of verifying the place of employment.
34. Moreover, since the debtor HB had acknowledged his indebtedness and had been making payments, the debt was "sue-able" so far as FDR was concerned. Litigation was consistently one of FDR's options for enforcement purposes, and as such the collectors' steps to confirm HB's employment or place of employment through the two June 27, 2022 telephone calls was permitted under the Regulation.
35. Counsel also argued that the Director's position amounted to saying that if collectors had been using particular telephone numbers to communicate with a debtor, they could *only* use those numbers (and not other, new ones). He urged the Appeal Board not to accept such a view.
36. Ultimately, counsel for FDR requested that the Director's decision and the administrative penalty be set aside in its entirety.

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<sup>4</sup> We note that no evidence was tendered in relation to these points, but (a) we accept counsel's representations in this respect, and (b) nothing in our decision turns on them.



## ANALYSIS AND REASONS

37. We agree with a number of the points made by counsel for the Appellant FDR. We agree that a standard of perfection should not be applied; that due diligence and “reasonableness” on the part of collection agencies and their collectors should be acknowledged; that the sequence or timing of phone calls is important and that related phone calls may need to be considered together; even that a follow-up phone call to the same perceived employer telephone number can be appropriate if an initial call is dropped before confirmation is made.
38. The challenge is that the evidence here simply does not support the conclusions that FDR’s counsel would like us to draw.
39. Assuming the call by collector JC to AB took place first, and that the dropped call meant a follow-up call was appropriate in order to confirm employment, the contents of the second call (by AS to AB) make no sense. AS never asks about or mentions employment. He is surprised that AS is a male voice, expecting a female. He then indicates he wishes to speak with the debtor, HB, and that the debtor provided the telephone number as a primary contact. None of this can reasonably be interpreted as being “to confirm a debtor’s employment status”.
40. Conversely, assuming the call by collector AS to AB took place before the call by JC to AB, it is even more farfetched to interpret this as a call to confirm HB’s employment status.
41. The evidence available before the Appeal Board relating to the source of AB’s telephone number is limited. As noted in the evidence of CIU Investigator NG, the very first entry for June 27, 2022 on the FDR “Notelines” log (line 299) includes contact information for a Century 21 Realty branch office – ostensibly taken from a Google search. Two phone numbers are included in this log entry. There is no log entry, nor any other evidence, to suggest that FDR collectors attempted to call what appears to be “main” phone number for this Century 21 office – that is, the number appearing immediately beside the business name.
42. Rather, the Notelines log shows that the FDR collectors next ascertained or confirmed that the second phone number in the Century 21 note was associated with an individual, namely AB. Line #300 of the Notelines log shows this phone number, AB’s name, and a residential address. The next substantive entry (line 302) indicates that telephone contact was made with the Century 21 office and “... brother [A] just to confirm if still connected to the company put me on hold ...”

43. The next entry is not made until the next day – June 28, 2022 – the day *after* both calls were made to AB. The entry provides the phone number, then simply “POe / Brother [A]”. No explanation was provided as to why this entry was not made on the day the phone call occurred.
44. FDR is the only party that could have provided additional evidence to clarify where or how the telephone number for AB was obtained and, more importantly, to explain the sequence of calls and their purpose. FDR could have called collectors JC or AS, or both, as witnesses, to testify. FDR could have entered additional documentary evidence, if available, about the source of AB’s telephone number, FDR’s approach or methodology for confirming employment status, and/or the purpose of having two different collectors call that number on the same day. Instead, as noted above, FDR elected not to call any evidence.
45. In the absence of such clarifying evidence – the Appeal Board can only base its decision on the evidence that *has* been tendered. This evidence suggests that the call by JC to AB *may* have been for the purpose of confirming HB’s employment status, but the call by AS to AB was *not* for such purpose. Employment, or anything relating to employment, was never mentioned.
46. At a minimum, therefore, the June 27, 2022 call by AS to AB violated s.12(1)(m) of the Regulation as a call made to an employer that was not for the permitted purpose of verifying employment status.
47. The Appeal Board also finds that there is a second basis for rejecting FDR’s position. The section in question expressly includes the words “... in preparation for legal proceedings” at the end of the exemptive clause. These words are not mere window dressing. In order for collection agencies or collectors to be permitted to contact a debtor’s employer in accordance with s.12(1)(m) of the Regulation, they must be able to demonstrate “preparation for legal proceedings”.
48. Here, there is no evidence before the Appeal Board that FDR took *any* steps relating to the HB debt “in preparation for legal proceedings”. Even though FDR continued to pursue this collection file for CIBC until November of 2022 (nearly five months after the phone calls in issue), there is nothing in the Notelines log, the telephone recordings entered as evidence, or any other material that points to existing or contemplated legal proceedings against HB.
49. Indeed, at all times in this matter (that is, including in its response to the CIU Investigator NG, in submissions to the Director of Fair Trading, and before the Appeal Board) FDR appeared to advocate that simply having legal proceedings as an *available enforcement option* qualified as being “in preparation for legal proceedings”. We do not accept this

interpretation. FDR could only contact an employer of a debtor if legal proceedings were actually being “prepared for” or demonstrably considered.

50. With respect to the amount of the Administrative Penalty assessed by the Director, we have considered the representations made by counsel for FDR regarding the company’s employee training and ongoing compliance efforts.
51. We also are mindful of the factors set out in section 2(2) of the *Administrative Penalties (Consumer Protection Act) Regulation*.<sup>5</sup> Of note is section 2(2)(d), which invites the Director (and as such, an Appeal Board) to consider “whether or not the person who receives the notice of administrative penalty has a history of non-compliance”. In this regard, we considered NG’s evidence about FDR’s compliance history in Alberta. While the Appeal Board did not hear evidence of how FDR’s regulatory record compares with that of other collection agencies, in our view the number of warning letters, undertakings, administrative penalties, charges, and other forms of regulatory disciplinary action taken against FDR makes clear that the breach in this matter is hardly an isolated incident.
52. Administrative penalties must be proportionate and reasonable, but also must not be set so low that they amount to simply “the cost of doing business” for a regulated entity. FDR was pursuing a debt of over \$45,000, and its collectors clearly stepped outside of permitted collection practices in that pursuit.
53. The Director, in his decision, considered FDR’s policy of considering any debt that is within the statutory limitation period as being “in preparation for litigation” as an aggravating factor. We agree, emphasising again that these words in section 12(1)(m) must be given substantive meaning.
54. We do not agree with the Director that maintaining appropriate records and cooperating with the investigation amounts to “mitigation”. This is expected compliance in a regulated industry.
55. Ultimately, in our view the Administrative Penalty assessed by the Director was at the low end of the appropriate scale. Had a higher figure been requested on appeal, we would have been inclined to set the Administrative Penalty higher.

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<sup>5</sup> Alta Reg 135/2013.

## CONCLUSIONS

56. We find that, based on the evidence presented to us on this appeal, on June 27, 2022 FDR collector AS contacted AB as the debtor HB's employer, for a purpose prohibited by s.12(1)(m) of the Regulation. We affirm the Director's decision in this regard.
57. We also affirm the amount of the administrative penalty assessed by the Director, being \$1,000.00.
58. Section 6(1) of the *Administrative Penalties (Consumer Protection Act) Regulation* permits an Appeal Board to award costs to an appellant for a successful appeal. We do not appear to have jurisdiction to award costs in favour of the Director. We make no order as to costs for this appeal.

Issued in Alberta this 7th day of October,  
2024

*Lorenz Berner*

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Lorenz Berner

*D. Tardif*

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Dellia Tardif

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Caren Mueller

**CONCLUSIONS**

56. We find that, based on the evidence presented to us on this appeal, on June 27, 2022 FDR collector AS contacted AB as the debtor HB's employer, for a purpose prohibited by s.12(1)(m) of the Regulation. We affirm the Director's decision in this regard.

57. We also affirm the amount of the administrative penalty assessed by the Director, being \$1,000.00.

58. Section 6(1) of the *Administrative Penalties (Consumer Protection Act) Regulation* permits an Appeal Board to award costs to an appellant for a successful appeal. We do not appear to have jurisdiction to award costs in favour of the Director. We make no order as to costs for this appeal.

Issued in Alberta this 7th day of October,  
2024

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Lorenz Berner

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Dellia Tardif



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Caren Mueller

**APPENDIX A – LIST OF APPEAL HEARING EXHIBITS**

- Exhibit 1 – Investigator NG Recommendation Memo dated June 6, 2023 – 5 pages
- Exhibit 2 – MP3 Audio – June 27, 2022, Collector AS phone call to HB
- Exhibit 3 - MP3 Audio – June 27, 2022, Collector AS phone call to AB
- Exhibit 4 – MP3 Audio – June 27, 2022, Collector JC phone call to AB
- Exhibit 5 – Investigator NG Call Analysis Notes and Logs – 6 pages
- Exhibit 6 – FDR “NoteLines” Log (PDF), Lines numbered 97-391 – 12 pages
- Exhibit 7 – FDR Statement dated April 28, 2023 (from ET, FDR’s Client Services Manager to Investigator NG) – 2 pages
- Exhibit 8 – Complaint form and statement from Complainant HB – 45 pages
- Exhibit 9 – Screenshot of “CATS” system search for FDR licencing
- Exhibit 10 – Investigator NG “Activity Notes” 8 column Excel spread sheet
- Exhibit 11 – Investigator NG April 4, 2023 contact letter to FDR (2 pages MS Word document)