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CASE SUMMARY: BCSC CONFIRMS CONSUMER PROTECTION BC'S POSITION THAT COLLECTION COMPANY MUST STOP ATTEMPTING TO CONTACT DEBTORS FOLLOWING REQUEST THAT COMMUNICATION BE IN WRITING ONLY

A collection company's application for judicial review of a varied compliance order was dismissed because the interpretation of the legislation by Consumer Protection BC's inspector was reasonable.

Administrative law; Decisions of administrative tribunals; Government; Consumer protection; Judicial review; Compliance with legislation; Standard of review; Reasonableness

CBV Collection Services Ltd. v. Consumer Protection B.C., [2017] B.C.J. No. 1183, 2017 BCSC 1018, British Columbia Supreme Court, June 20, 2017, L.A. Warren J.

The petitioner, CBV, sought judicial review of a varied compliance order and varied administrative penalty made by Consumer Protection BC, following a complaint by a debtor.

CBV acquired six accounts for the debtor, each pertaining to a separate debt. The debtor sent two valid requests under section 116(4)(a) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.3, for communication in writing only, which reads as follows:

> 116(4) a collector must not continue to communicate with a debtor
>
> (a) except in writing, if the debtor
>
> (i) has notified the collector to communicate in writing only, and
>
> (ii) has provided a mailing address at which the debtor may be contacted…

Notwithstanding her requests, CBV's automated calling system continued to place calls to several phone numbers it associated with the debtor. The debtor sent a complaint to Consumer Protection BC, in which she expressed concerns about CBV's continued telephone calls as well as the frequency of their telephone calls.

Consumer Protection BC's inspector produced a report indicating that 14 telephone calls were placed with respect to one debt after the debtor had requested that communications be in writing only with respect to that particular debt. Of these 14 telephone calls, 12 were unanswered, one resulted in a telephone conversation with the debtor, and another resulted in a voice message. Similarly, three additional calls were placed by CBV to the debtor with respect to a different debt after she had requested that communications be in writing with respect to that debt as well, though all three calls went unanswered. In response, CBV argued that an unanswered call is not a communication and that, therefore, an unanswered call could not constitute contravention of section 116(4)(a).

The inspector held that the CBV had contravened section 116(4)(a) twice because the voice message and the telephone call with the debtor took place after her first request for communication in writing only. The investigator went on to hold that the unanswered calls contravened section 114(1), which provides that a collector must not communicate or attempt to communicate with the debtor, a member of the debtor's family or household, a relative, neighbour, friend or acquaintance of the debtor, or the debtor's employer in a manner or with the frequency as to constitute harassment. An administrative penalty of $5,700 was issued.

CBV sought a review of this decision. On review, a second inspector disagreed with the initial inspector's interpretation of section 116(4)(a), and instead held that the answered and unanswered telephone calls placed by CBV contravened section 116(4)(a). He construed the section as prohibiting a collector from making any phone calls to a debtor after a collector has received a request for communication in writing only, irrespective of whether the calls were answered or a message left. He found that the plain meaning of the prohibition against continuing communications was not conditional on whether the debtor happened to answer the call or whether the collector left a message. The inspector concluded that the compliance order was not ambiguous or overly broad, but he did vary the compliance order to accord with his findings. Finally, he reduced the administrative penalty to $1,500.

On judicial review, Warren J. confirmed that the appropriate standard of review in the circumstances was reasonableness. Warren J. reviewed the wording of the varied compliance order and held that arguments that the compliance order was ambiguous were premature because the judicial review was not a contempt proceeding and no attempts to enforce the order had been made. Second, Warren J. held that no unfairness had arisen from the second inspector's failure to alert CBV to the prospect that he might revisit the first inspector's interpretation of section 116(4)(a), particularly because CBV's counsel acknowledged that it simply would have repeated the submissions it had already made if it had been alerted to this prospect. Finally, with respect to the second inspector's interpretation of communication as including unanswered and answered phone calls, Warren J. held that the inspector's interpretation was entirely reasonable and furthermore was correct. The petition was dismissed.

This case was digested by JoAnne G. Barnum and edited by William W. Clark of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at jbarnum@harpergrey.com or wclark@harpergrey.com or review their biographies at http://www.harpergrey.com.