September 14, 2016

Hon Marie-France Lalonde
Minister of Government and Consumer Services
6th Floor, Mowat Block
900 Bay Street
Toronto, Ontario M7A 1L2

Dear Minister Lalonde,

Re: The Application of Debt Settlement Services Legislation to Mortgage Brokers/Agents in Ontario

Please know that I write on behalf of the Canadian Mortgage Brokers Association, which is an association representing mortgage brokers and agents (collectively “mortgage brokers”) and their lender and service partners throughout Canada.

Our association has become aware of amendments made in 2015 to the *Collection and Debt Settlement Services Act*, R.S.O. 1990, c. C.14 (“CDSSA”), which creates a newly defined activity of “debt settlement services”. Under the CDSSA, only registered collection agencies and collectors are permitted to engage in debt settlement services. Upon reviewing those amendments, we have found that the authorized activities categorized as debt settlement services overlap with debt consolidation services performed by licensed mortgage brokers in the course of arranging mortgages, mortgage lending and administration. Mortgage brokers are permitted to engage in these activities as licensees under the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29 (“MBLAA”). We would like to draw your attention to some legislative conflicts which the enactment of the CDSSA amendments appear to have created and ask that steps be taken to address the conflict.

Role of Mortgage Brokers in Performing Debt Consolidations

Mortgage brokers in Ontario have been regulated under the MBLAA since 2008 (for 35 years prior to that under the *Mortgage Brokers Act*). The scope of permitted activities under the MBA is captured under the following sections:

- 2(1) dealing;
- 3(1) trading;
- 4(1) lending; and
- 5(1) administering.

Dealing is defined further to include:

1. Soliciting another person or entity to borrow or lend money on the security of real property.

2. Providing information about a prospective borrower to a prospective mortgage lender, whether or not this Act governs the lender.

3. Assessing a prospective borrower on behalf of a prospective mortgage lender, whether or not this Act governs the lender.

4. Negotiating or arranging a mortgage on behalf of another person or entity, or attempting to do so.

Mortgage brokers, in the course of delivering the above described services to borrowers, often investigate the balance of a borrower's third party debts and make arrangements for those debts to be paid out of the mortgage proceeds received from the lender. In some instances, a mortgage broker will negotiate a reduction of the debt on the borrower's behalf prior to payout. These debt payouts form part of the mortgage commitment and become conditions of mortgage funding. Arranging for the debt repayment on behalf of a mortgage borrower is therefore an integral part of the mortgage dealing and lending process.

Typically, brokers will make arrangements to pay out a borrower's debts when arranging consolidation mortgages, which are mortgages specifically intended to be used to payout a collection of a mortgage borrower's debts. In addition, at the time of mortgage renewal, mortgage brokers will often increase the principal amount of the mortgage to accommodate the payout of any accumulated debt unwanted by the borrower. A typical mortgage broker may payout debt belonging to the borrower on approximately 25% of the transactions which they arrange. Other brokers and lenders may specialize in debt consolidations and perform a higher percentage of debt payouts on transactions which they arrange.

Mortgage brokers receive compensation for debt consolidations as part of their mortgage arranging services. There is generally only a single broker fee for arranging the mortgage, and satisfying all of the conditions of the mortgage commitment, which will include the payout of any unwanted debt. In the majority of instances, mortgage brokers will be compensated for the transaction by the mortgage lender and not the borrower. However, in cases where borrowers must obtain a mortgage from an alternative lender, they will generally pay a combined fee to the mortgage broker and lender ranging from 1 to 5 per cent of the mortgage principal.

<u>New Regulated Activity of Debt Settlement Services</u>

The CDSSA has been amended to expand the meaning of "collection agency" and "collector". Under section 1(1)(c) collection agency now includes "a person, other than a collector, who provides debt settlement services". Collector now includes "an individual employed, appointed or authorized by a collection agency to … to provide debt settlement services to debtors on behalf of the agency".

A new broadly worded definition of "debt settlement services" has been created in section 1. "Debt settlement services" means offering or undertaking to act for a debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor."

Section 4(1) of the CDSSA then prohibits any person from carrying on the business of a collection agency or acting as a collector unless the person is registered under the CDSSA."

The effect of the CDSSA amendments appears to be that a person arranging or negotiating for the payout of another person's debts requires registration as a collection agent or collector, even if the payout is part of a mortgage arrangement performed by a licensed mortgage broker.

Exemptions from CDSSA Registration Requirements

Section 2(1) of the CDSSA recognizes that other kinds of professionals in the financial services industry may engage in the debt settlement services captured by section 1(1), and exceptions from the application of section 4 have accordingly been carved out. Specifically, 2(1) provides an extensive list of persons who are exempt from collection agent and collector registration requirements; which list includes lawyers, banks, credit unions, real estate brokerages, insurance agents, and others. However, there is no exemption for mortgage brokers in this list.

A review of the legislative discussions around the CDSSA amendments from the "Committee Transcripts: Standing Committee on the Legislative Assembly - 2013-Oct-23 - Bill 55, Stronger Protection for Ontario Consumers Act, 2013", shows that there was no discussion around curtailing the role of mortgage brokers arranging debt consolidation mortgages. Therefore, any potential statutory conflict between the MBLAA and the CDSSA dealing with the mortgage broker industry and consolidation mortgages appears to be accidental.

Debt Settlement Service Providers Soliciting Mortgage Brokers

Since the enactment of the CDSSA amendments in 2015, numerous collection entities have emerged; most look like unregistered entities relying on the exemption afforded to lawyers under section 2(1).

For instance, one such entity represents itself as a debt settlement service provider, but explains in a four-page pamphlet directed to mortgage brokers that their lawyers "can charge the client between 17.5% and 50% of the amount saved". Note that these fees are in considerable excess of the 10% fee cap imposed by the new CDSSA requirements which registered collection agencies are bound by.

The pamphlet further explains that mortgage brokers are not permitted to do debt consolidations. Specifically, it states:

> "WHY NOT NEGOTIATE YOURSELF, OR HAVE THE CLIENT DO IT? Whether charging a fee or not, if you are not a lawyer, a trustee, or have a debt settlement license it is illegal to arrange any form of settlement payout, the fine is $250,000 and the loss of your FSCO license."

It then explains the process of how mortgage brokers can work with the unregistered entity to perform debt consolidations and it provides examples of referral fees which are paid to the broker. As an example, the collection agency promises to pay a mortgage broker $7,700 as a referral fee when negotiating a debt consolidation for $80,000 worth of debt with a new second mortgage of $60,000. The mortgage broker's referral fee is in addition to the collection agency fee of $22,000.

Using the example contained in the pamphlet, we can compare the fees charged to the client when using a collection agency to consolidate debt using a second mortgage with the fees charged when no collection agency is involved in the process.

Client with $80,000 in debt consolidated with a $60,000 second mortgage **Assisted by:**	**Fee paid by client to collection agency for debt settlement work**	**Fee paid to mortgage broker for arranging a debt consolidation mortgage**	**Total cost to client**
Registered collection agency	Up to 10% of debt = $8,000	Typical fee on 2nd mortgage = $2,500	$10,500
Unregistered collection agency relying on the lawyers' exemption as per example	$29,700	Typical fee on 2nd mortgage = $2,500	$32,200
No collection agency	Nil	Typical fee on 2nd mortgage = $2,500	$2,500

The above chart illustrates the value to the consumer of using mortgage brokers for debt consolidations without any assistance from a collection agency, whether they be registered or unregistered entities relying on a lawyer's exemption.

Need for Mortgage Broker Exemption in CDSSA

The concern is that mortgage brokers appear to be prohibited by the CDSSA from representing mortgage borrowers who are also debtors and arranging to have debt paid out. In such cases, mortgage brokers would be offering or undertaking to act for a debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor.

Mortgage brokers provide a valuable service to the public by arranging debt consolidation mortgages or by arranging for the payout of debt upon mortgage renewal. These services enable borrowers to better manage debt, stave off debt collection or foreclosure proceedings, and repair or improve their credit score.

The Ontario legislature, by expanding the scope of collection agencies and collectors in the CDSSA, has ironically, enabled collection agencies to now carry out multiple functions for clients with opposing interests. Collection agencies operate as agents for creditors and generally have ongoing agency relationships with corporate creditors. However, it is those same corporate creditors that the collection agency will now be negotiating with on behalf of a debtor under the new debt settlement service sections of the CDSSA. However, unlike the MBLAA, the CDSSA does not have any conflict of interest guidelines which addresses this problem.

Mortgage brokers are already licensed under the MBLAA and are subject to licensing and qualification hurdles, product suitability standards, conflict of interest rules and other compliance requirements. Regulating mortgage brokers under other legislation with weaker consumer protections serves no valuable public protection purpose. It will inevitably complicate matters for some borrowers who may then need to engage both a mortgage broker and a debt repayment agent to consolidate debt at an exponentially higher cost than simply engaging a mortgage broker. This needless additional expense would likely be something a person seeking to consolidate their debts could ill afford.

Even if mortgage brokers wishing to provide debt consolidation services complied with the new CDSSA registration requirements by obtaining registration as a collection agency or collector, they would be thwarted by the lending restrictions contained in section 15 of the regulations to the CDSSA (General, RRO 1990, Reg 74). Section 15 provides that "No person who is registered as a collector or as a collection agency shall engage directly or indirectly in the business of lending money whether as principal or as agent." It effectively prohibits persons from both arranging mortgage financing and paying out debt in a single transaction.

The new legislative amendments to the CDSSA appear to have created unintended and cost prohibitive restrictions for mortgage borrowers wishing to use a mortgage broker to consolidate debt. It is therefore appropriate and in the public interest to include mortgage brokers in the list of persons excepted from the CDSSA licensing requirements in section 2(1).

We ask that you consider such an amendment to the CDSSA. We would be pleased to provide any clarification or elaboration you wish.

Thank you in advance for your attention to this matter.

Sincerely,

Samantha Gale
Executive Director, the Canadian Mortgage Brokers Association

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