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November 2, 2008

**SENT BY COURIER:**

Hon. Dalton McGuinty  
Premier of Ontario  
Rm. 281  
Main Legislative Building  
Queen's Park  
Toronto, ON M7A 1A4

**RE: Ontario Government's failure to enforce existing laws regulating cell phone use in Ontario**

Dear Mr. Premier;

Recently I was surprised to learn that the Ontario Government was introducing legislation regulating cell phone use in automobiles. I found this legislative initiative surprising because of the Ontario Government's failure to enforce existing laws in Ontario regulating cell phone use.

Specifically, the Ontario Government is not enforcing subsection 22(b) of the Ontario *Collection Agencies Act*, R.S.O. 1990, c. C.14, which prohibits collection agencies from making collection calls to consumers on a consumer's cell phone.

Subsection 22(b) of the Ontario *Collection Agencies Act* reads as follows:

- s. 22 No collection agency or collector shall,
  - (b) communicate or attempt to communicate with a person for the purpose of collecting, negotiating or demanding payment of a debt by a means that enables the charges or costs of the communication to be payable by that person;

In Canada, cell phone users typically pay for incoming telephone calls. Therefore, except in a few instances, collection agencies calling Ontario residents on a consumer's cell phone to demand payment of a debt are violating subsection 22(b) of the Ontario *Collection Agencies Act*. This is black letter law and the section is unambiguous.

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I know for a fact that collection agencies operating in Ontario routinely call Ontario residents on their cell phones to demand payment of debts. I am a former collection industry insider, having represented some of Canada's largest collection agencies over a 12-year period. Recently, I wrote a book titled *A How-to Guide for Dealing with Collection Agencies in Canada*. I discuss this practice of collection agencies calling consumers on consumers' cell phones to demand payment of debts at pages 31 and 32 of my book. I also deal with this cell phone issue on my law firm's website, [www.helpwithcollectioncalls.ca](http://www.helpwithcollectioncalls.ca).

This practice of making collection calls to individuals on consumers' cell phones is becoming more prevalent with the exponential increase in cell phone use and the growing trend towards consumers discontinuing landline telephone service and becoming cell phone-only customers.

I also know for a fact that senior civil servants in the office of the Ontario Registrar of Collection Agencies are aware of subsection 22(b) of the Ontario *Collection Agencies Act* and the fact that collection agencies routinely telephone Ontario residents on their cell phones demanding payment of debts. To the best of my knowledge, no collection agency has ever been prosecuted for a violation of subsection 22(b) of the Ontario *Collection Agencies Act*, with respect to a call to a cell phone user, despite the collection industry's wholesale contravention of the law prohibiting collection calls to cell phone users.

I recently raised this cell phone issue with senior civil servants in the office of the Ontario Registrar of Collection Agencies. I was given their interpretation of subsection 22(b) of the Ontario *Collection Agencies Act*. I was advised that it is their interpretation that subsection 22(b) is not contravened where a collection agency telephones a consumer on the consumer's cell phone for the purpose of demanding payment of a debt. Furthermore, I was advised that it is the position of the office of the Ontario Registrar of Collection Agencies that if a consumer advises the collector the consumer objects to being called on his cell phone the collector is supposed to ask the consumer to provide an alternative telephone number where the consumer can be reached at.

Frankly, I believe this interpretation of subsection 22(b) of the Ontario *Collection Agencies Act* is indefensible. Subsection 22(b) contains an express prohibition against telephone calls to debtors in circumstances where the debtor incurs an expense. The office of the Ontario Registrar of Collection Agencies' interpretation of subsection 22(b) effectively emasculates this statutory prohibition. Furthermore, nowhere in the Ontario *Collection Agencies Act* is there a duty imposed on consumers to provide their phone number to collection agencies. However, one could argue that the aforementioned interpretation of subsection 22(b) by the office of the Ontario Registrar of Collection Agencies imposes a duty on a cell phone user to provide an alternative contact phone number to a collection agency.

In the past few days your Government has introduced legislation that would regulate cell phone use in automobiles. Given your Government's recent legislative initiative involving regulation of cell phone use in Ontario, how does your Government respond to the assertion that it is not enforcing existing laws regulating cell phone use in the province?

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Silverthorn', with a long horizontal flourish extending to the right.

Mark Silverthorn, LL.B.  
Barrister & Solicitor and Attorney-at-Law