

Consumer Reporting Act



By Brian Madigan LL.B.

The Consumer Reporting Act is designed to afford a certain level of protection to consumers. So, the Act defines consumers and does not apply to businesses.

There are requirements with respect to disclosure to consumers relating to credit information and personal information.

There are essentially three circumstances in which a consumer must be notified:

- 1) an extension of credit,
- 2) personal information, or
- 3) information used to the detriment of the consumer.

In other circumstances, disclosure is not required.

What is meant by personal information? First, credit information itself is simply factual information concerning an individual's payment history. Under the Act, there are different and more lenient rules than the ones that apply to personal information. Here, we mean opinion, references, information about character, reputation, health, mode of living and any other information about the consumer.

Specifically, it does not include credit information, and under the Act, that is a defined term that includes:

“name, age, occupation, place of residence, previous places of residence, marital status, spouse's name and age, number of dependants, particulars of education or professional qualifications, places of employment, previous places of employment, estimated income, paying habits, outstanding debt obligations, cost of living obligations and assets”.

You might think that all of that information is quite personal. You are probably right, but, it's only information beyond that which is truly considered to be personal information under the Act.

You might wonder about a rental application, does the Act apply? Yes, in most applications both credit and personal information are requested.

Essentially, the Act is designed to require a consumer reporting agency to advise a consumer if information is used to their detriment, such that they can take steps to rectify and correct the information.

When we are talking about consumers we should look at the Act which contains the following definition:

“**consumer** means a natural person but does not include a person engaging in a transaction, other than relating to employment, in the course of carrying on a business, trade or profession”.

You have to admit that’s a rather confusing definition, but here’s what it means. It applies only to a natural person. That means an individual, no corporations, partnerships, trusts or other legal entities. Further, the transaction cannot relate to a business. So, this is strictly a consumer matter. There is however one exception when it comes to business and that is the application for employment. That activity is still covered under the Act.

There is another small issue and that involves the definition of person:

“**person** means a natural person, an association of natural persons, a partnership or a corporation”. Again, somewhat difficult, but here’s the explanation. The information as such may arise in connection with a person and therefore be restricted under the Act, but it’s only natural persons, or “real people” who can be consumers and therefore have certain rights under the legislation.

It is important to note that the provisions and the application of the Consumer Reporting Act cannot be waived by the consumer.

There is **certain information that cannot be included** in a report by a credit reporting agency which is set out as follows:

9(3) A consumer reporting agency shall not include in a consumer report,

(a) any credit information based on evidence that is not the *best evidence* reasonably available;

(b) any unfavourable personal information unless it has made reasonable efforts to *corroborate* the evidence on which the personal information is based, and the lack of corroboration is noted with and accompanies the information;

(c) information as to *judgments after seven years* after the judgment was given, unless the creditor or the creditor’s agent confirms that it remains unpaid in whole or in part, and such confirmation appears in the file;

(d) information as to any judgment against the consumer unless mention is made

of the *name* and, where available, the address of the judgment *creditor* or the creditor's agent as given at the date of entry of the judgment and the *amount*;

(e) information as to the *bankruptcy* of the consumer after seven years from the date of the discharge except where the consumer has been bankrupt more than once;

(f) information regarding any collection or *debt* after *seven* years following the commencement of the debt obligation, unless the creditor or the creditor's agent confirms that the debt obligation is not barred under the Limitations Act, 2002 and the confirmation appears in the file;

(g) information as to the payment or non-payment of *taxes* or lawfully imposed fines after seven years;

(h) information as to *convictions* for crimes, after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of release or parole, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction an absolute discharge or a full pardon has been granted;

(i) information regarding writs or *actions* that are more than seven years old or writs that were issued or actions commenced against the consumer more than twelve months prior to the making of the report unless the consumer reporting agency has ascertained the current status of the writ or action and has a record of this on file;

(j) information regarding any criminal charges against the consumer where the charges have been dismissed, set aside or withdrawn;

(k) any other *adverse item* of information where more than seven years have expired since the information was acquired or last reaffirmed;

(l) information as to *race, creed, colour, sex, ancestry, ethnic origin, or political affiliation*; or

(m) any information given orally in the consumer report unless the content of the *oral report* is recorded in the file.

Under the Act, a consumer is provided with the right of disclosure. Here is the relevant section:

Right of consumer to disclosure

12. (1) Every consumer reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge,

- (a) the nature and substance of all information in its files pertaining to the consumer at the time of the request;
- (b) the sources of credit information;
- (c) the name and, at the option of the consumer reporting agency, either the address or telephone number of every person on whose behalf the file has been accessed within the three-year period preceding the request;
- (d) the names of the recipients of any consumer report pertaining to the consumer that it has furnished,
 - (i) containing personal information, within the one year period preceding the request, and
 - (ii) containing credit information, within the six month period preceding the request;
- (e) copies of any written consumer report pertaining to the consumer made to any other person or, where the report was oral, particulars of the content of such oral report, furnished,
 - (i) where the report contains personal information, within the one year period preceding the request, and
 - (ii) where the report contains credit information, within the six month period preceding the request,

and shall inform the consumer of his or her right to protest any information contained in the file under sections 13 and 14 and the manner in which a protest may be made.

So, the consumer will have the right to correct any misinformation. The consumer reporting agency is required to provide the information to the consumer within 60 days, however, there is no time limit placed upon the consumer with respect to rectification of the information afterwards.

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