

OATMEAL SEMINAR: COLLECTIONS 101

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GOOD MORNING

- **Your microphones have been muted**
- **If you feel comfortable we welcome you to turn on your webcam**
- **Breakout rooms will automatically start after the main session**
- **Q&A chat function is available**

WHAT PROACTIVE STEPS CAN MY BUSINESS TAKE TO LIMIT THE POSSIBILITY OF BAD DEBTS BUT ALSO INCREASE THE CHANCES OF COLLECTING ON SUCH DEBTS WHEN THEY ARISE?

- **Set up customer [debtor] paperwork**
- **Ensure that all information about debtor/bank details/customers is properly completed**
- **Conduct due diligence on debtor (i.e. credit application)**
- **Consider any other sales/security documentation**
- **Consider guarantees/correct parties**

QUESTIONS FOR CONSIDERATION PRIOR TO COMMENCING A CLAIM AGAINST A DEBTOR

- **Does debtor have any assets?**
- **Where are the assets located?**
- **Does extent of debt greatly exceed the assets?**
- **Are there other claims against the debtor?**
- **What is the nature of the debtor's business?**
- **Is bankruptcy an option for debtor?**

OBTAINING FURTHER INFORMATION ABOUT THE DEBTOR

- **Credit search**
- **PPSA searches**
- **Bankruptcy search**
- **PIN search**
- **Web searches**
- **Social media searches**
- **Writ searches**
- **Word of mouth**

POSSIBLE RESOLUTION PRIOR TO LITIGATION

- **Consider a demand letter**
- **Possible negotiation**
- **Agreement on installment plan**
- **Debtor consent to a judgment**
- **Cost-benefit analysis regarding fees**
 - Consideration of disbursements, unforeseen expenses and commencing litigation

TIME LIMITS TO COMMENCE A CLAIM

- **Two years from date the debt was first due/incurred**
- **Claim begins from date debt first becomes due**
- **Keep track of your accounts receivable**
- **Consider commencing a claim early**
- **A formal written acknowledgment of indebtedness will restart the limitation period**

JURISDICTION

A claim can be brought in the province if:

- **The debtor is domiciled in the province**
- **The debtor carries on business in the province**
- **A contract connected with the dispute was made in the province**

PROPER FORUMS

- **Small Claims Court - \$35,000 and under**
- **Simplified Procedure - \$200,000 and under**
- **Superior Court of Justice - over \$200,000**

SERVICE OF A CLAIM ON A DEBTOR

- **Locating the debtor**
- **Personal service on the debtor**
- **Alternatives to personal service**
- **Requesting validation of service**

COMMENCING A CLAIM

- **Proper legal name of debtor**
 - Is the debtor an individual?
 - Is the debtor a corporation?
 - Complete corporate profile search or business name search
- **Precise relief requested**
- **Consider contract and other damages**

NEXT STEPS IN LITIGATION – IF DEBTOR RESPONDS

- **Statement of defence – Admit, deny, no knowledge**
- **Other potential pleadings - reply, counterclaim, crossclaim, and third party claim**
- **Litigation continues via Courts**

PREJUDGMENT REMEDIES- IF DEBTOR RESPONDS

- **Caution**
- **Certificate of Pending Litigation**
- **Preservation Orders**
 - Mareva Injunction
 - Anton Piller Order
 - Norwich Pharmacal
- **Appointment of Receiver**
- **Liening the debtor's property**
- **Assignment and Preferences Act**
- **Fraudulent Conveyances Act**

DISCOVERY STAGE- IF DEBTOR RESPONDS

- **Affidavit of Documents/Document Brief**

- Schedule “A”
- Schedule “B”
- Schedule “C”
- Schedule “D”

- **Examinations**

- At an official examiner’s office
- Under oath by opposing counsel

PRE-TRIAL/TRIAL – IF DEBTOR RESPONDS

- **Pre-trial conference hears summary of the evidence**
- **Pre-trial conference entertains brief arguments of the law**
- **Judge usually renders opinion “without prejudice” as to the potential outcome of a trial**
- **Trial**

OFFERS TO SETTLE – IF DEBTOR RESPONDS

- **At any stage, either party can make an offer to settle**
- **Consider costs to date, and chance of recovery**
- **Incentive of parties to settle litigation**

LEGAL COSTS – IF DEBTOR RESPONDS

- **Costs are awarded to meet three fundamental purposes:**
 - To indemnify successful litigant for the costs of litigation
 - To encourage settlement
 - Discourage and sanction inappropriate behaviour by litigants
- **Difficult to predict how much Court will order**
- **Judges have broad discretion**

DEFAULT – IF DEBTOR DOES NOT RESPOND

Without further notice to the debtor:

- **Note debtor in default¹**
- **Obtain a default judgment**
 - Signing default judgment – liquidated damages
 - Motion for judgment – non-liquidated damages

AFTER I OBTAIN JUDGMENT, HOW DO I COLLECT?

- **Writ of seizure and sale**
- **Garnishments**
 - Bank accounts/bank funds
 - Wages, salary or fees
 - Money under contract
- **Judgment debtor examination – cost/benefit analysis**
- **Tracing money – possible claims against third parties, fraudulent conveyances, assignments and preferences**

CONCLUSION

- **Protecting yourself prior to the beginning of a debtor/creditor relationship can assist at the end of the relationship**
- **Understanding the system will help you in your decision about pursuing litigation**
- **Determining the nature of the debt will determine the route a creditor takes**

BREAKOUT ROOMS

- **Small Businesses – Moderated by Amber Bonnell**
- **Mid-Sized Businesses – Moderated by Jacqueline Armstrong Gates**
- **Corporate Collections – Moderated by Sean Sullivan**
- **You will be automatically moved to the breakout session you pre-registered for.**
- **We welcome your questions, comments, and thoughts!**

THANK YOU!



GOWLING WLG