MCMA – POA Collections Committee Best Practices – Examinations - SCC

BACKGROUND:

Pursuant to section 68 of the Provincial Offences Act (POA) a Clerk of the Court may complete a Certificate of Default and upon filing with a court of competent jurisdiction shall be deemed to be an *order* or *judgment* of that court for the purposes of civil enforcement.

Upon filing of the C of D by a court of competent jurisdiction, you may then proceed with the issuing and filing of legal remedy documents within the civil court. Remedies include (but not limited to):

1. Examination
2. Notice of Garnishment
3. Writ of Seizure & Sale

After receiving the signed and dated Certificate of Default (C of D) back from the courts, the POA Collections Section is legally entitled to examine the debtor under Oath. The Creditor may examine the debtor or a person who has knowledge of any assets of the debtor, to recover the defaulted fine amount due, plus interest and costs.

The effect of a Notice of Examination will require a Debtor to attend at the court and answer questions relating to their financial status or assets.

DEFINITIONS & ACRONYMS:

Provincial Offences Act - POA
Certificate of Default - C of D
Civil Enforcement - CE
Creditors Relief Act - CRA
Carries on Business - COB

PROCEDURE:

The enforcement of Examination is through the Superior Court of Justice or the Small Claims Court, depending on the claimed value amount. Therefore, the only jurisdictional question is, geographical in nature; which Court in Ontario should the Notice of Examination documents be issued and filed?

Local Garnishments - Small Claims Court:

The creditor shall draft, issue and file the following documents:

1. Notice of Examination
2. Affidavit of Enforcement
3. Affidavit of Service

A Notice of Examination may be issued locally if:

1. C of D has been issued in the creditor's home court.
2. The Debtor resides or carries on business (COB) in the same jurisdiction.

If the debtor lives or carries on business within the same geographic area as the court jurisdiction, the Creditor may apply to the court to issue a Notice of Examination. The Notice of Examination shall identify the Creditor the Debtor including addresses.

Included with the Notice of Examination shall be an Affidavit for Enforcement. This Affidavit is similar to the Affidavit attached to a Writ of Seizure of Sale. (See Writs).

The Debtor shall receive a copy of the issued Notice of Examination.

Once the Notice of Examination has been issued and appropriate document served on the Debtor or a person who is eligible to be examined, it is important to draft and execute an Affidavit of Service and file the original Affidavit with the court.

Service of the documents can be affected pursuant to Rule 8.01(8) of the Small Claims Court. Personal, mail, courier or alternative to personal service as provided in Rule 8.03.

If possible, it is best to serve the Notice of Examination personally. Personal service on the Debtor may save you additional administrative steps in the future should the Debtor not attend the scheduled Examination Hearing.

Examination of the Debtor shall be in private under Oath and recorded. At the end of the examination hearing a Judge of the small claims court may Order a payment schedule by the debtor. If the judge orders such a payment schedule, the creditor may not enforce any other remedy to recover the money owed, except for the filing of a Writ of Seizure and Sale.

Should the debtor default on the payment plan ordered by the Small Claims Court Judge, the Creditor may at that time proceed with any enforcement steps they feel fit.

Contempt Hearing:

If a person to whom a Notice of Examination has been served under Rule 20.01:

1. Attends but fails to answer questions or to produce records or documents or,
2. Fails to attend the examination.

The Court may order the person to attend before it for a contempt hearing.

If the Court orders a Contempt Hearing, the Clerk shall provide the Creditor with a Notice of Contempt Hearing, setting out a date, place and time of the Hearing. The Creditor shall serve the Notice of Contempt Hearing on the Debtor, or other person, in accordance to Rule 8.01 (13), and file an Affidavit of Service with the Court at least 7 days before the Contempt Hearing.

<u>Setting aside Order for Contempt Hearing:</u>

A person, who has been ordered to attend a contempt hearing under section 30(1) of the Courts of Justice Act, may make motion to set aside the Order before the date of the Contempt Hearing. The Court may set aside the Contempt Order and order the debtor to attend another examination under Rule 20.10.

<u>Finding of Contempt:</u>

At a Contempt Hearing a judge may find the person in contempt if they fail to show cause why the person should NOT be held in contempt for refusing to answer questions or providing document, or for failing to attend at the original Examination hearing date.
Should there be a finding of Contempt and the debtor or other person not purge the Contempt, there may be an Order by the Judge for incarceration not to exceed 5 days.

<u>NON - Local Examinations:</u>

<u>Debtor in a Different Court Jurisdiction:</u>

For the most part the process is the same as indicated supra. However, there are a few differences in the process.

Once you have identified that the debtor is outside of your court jurisdiction you will be required to add the following steps to your process <u>after</u> the C of D has been issued.

1. Request a Certificate of Judgment from the originating Small Claims court and file it at the court in the jurisdiction where the debtor resides or COB.
2. All documents, including payment of process, will then be forward to the ‘New’ Court to issue and file, (Not the originating Court where the C of D was issued.)
3. Any process indicated previous, filing of Notice, affidavits etc., will be completed through the ‘New’ Court.

Small Claims Court fees for each, see link below:
https://www.ontario.ca/laws/regulation/920293

1. Certificate of Judgment
2. Issue Notice of Examination

ASSOCIATED DOCUMENTS / FILES:

Document/File Name	Location	Description
Notice of Examination	Notice of Examination.pdf	
Affidavit for Enforcement	Aff for Enforcement-Examir	
Affidavit of Service - Debtor	Aff of Service-Examination	
Financial Information Form	Financial Info Form-Examination.p	

DISCLAIMER:

"The information provided is the interpretation of the members of the POA Collections Committee and do not necessarily reflect the opinions of MCMA. Any person relying on the information contained herein is doing so at his/her own risk and is advised to seek direction from his/her Municipality.

The MCMA does not endorse the use of any product or service. The information contained in the Best Practices procedures is provided as a reference tool to aid in the development of procedures in compliance with all applicable legislation. While every reasonable effort is made to ensure the information provided herein is accurate, there are no representations made with respect to the currency, accuracy or legality of the information. Due diligence should be performed when developing procedures."

Log of Changes

Date	Specific Change	Editor	Reason
May 10, 2019		Linda Beaver	Add to MCMA Template
Aug 1, 2019	Added Sample Attachments	Linda Beaver	