

**Ontario Municipal Tax
and Revenue Association**
Ontario's Municipal Revenue Specialists

Collections

Writs & Garnishments

Remedies of the Small Claims Court

Presented By:

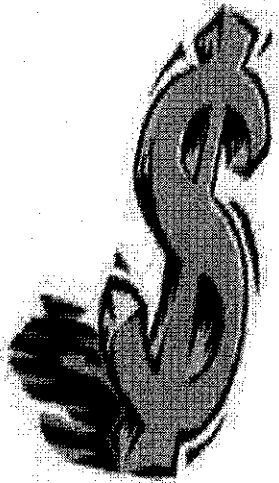
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“Collections”

It's not a four letter word.





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Welcome

- Receivables Overview
- Tools
- Civil Court Processes
- Remedies: Writs & Garnishments
- Others
- Conclusion
- Q&A's

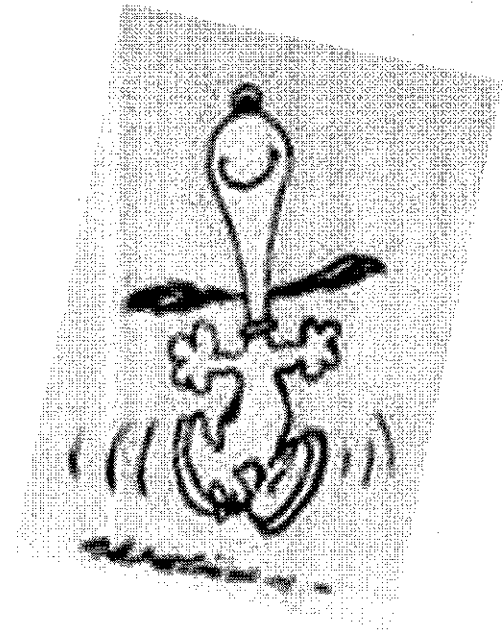


CIVIL ENFORCEMENT

- It's all about the "**Money**".
- Small Claims Court Monetary Jurisdiction up to \$25K.
- Superior Court of Justice, Monetary Jurisdiction over \$25K.
- SCC does not hear cases regarding, real property, Labour issues or Divorce.

Process

- **Small Claims Court:**
- Statement of Claim – filing fee \$95.
- Statement of Defence – filing fee \$50
- Settlement Conference
- Trial
- Decision
- Half way Home.....
- **Remedies**



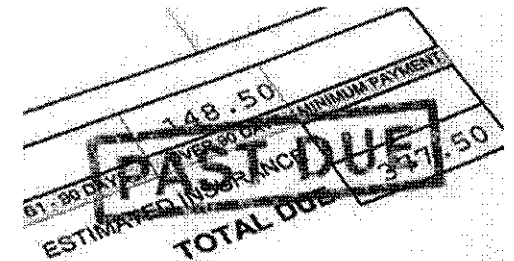
Process

- **Small Claims Court:**
- **Judgment:** A decision rendered by a Judge of the Small Claims Court or any court of competent jurisdiction at end of a Trial.
- **POA:** Certificate of Default, Registers as a POA conviction with the Small Claims or Superior Court.
- SCC filing fee \$40, Superior no charge.

Civil Court Remedies

Options

1. **Writ of Seizure & Sale**, (Name, whether they owns property, assets or not.)
2. **Writ of Delivery**, (Personal property*).
3. **Garnishment**: (Wages, Bank Account & contracts owed).
4. **Judgment Debtor Exam**: (Question debtor in-front of judge to gather information)



Writs of Seizure & Sale

Tools:

- ICON
- Teranet
- Geowarehouse
- Tax System
- Municipal Connect
- Aris

Writs of Seizure & Sale

- Encumbrance against the **name** of the defendant,
- Includes things like real property, other assets. Including vehicles, boats, art, insurance policies
- It may encumber JOINT ownership property or assets.

Writs of Seizure & Sale

Documents:

- Writ of Seizure & Sale of Land – Personal Prop
- Affidavit for Writ of S&S
- Filing fee - \$55
- Sherriff's fees - \$100
- Do not have to be filed by legal - Check?

Writs of Seizure & Sale

- Long Term remedy. No immediate revenue. *
- Never lifted unless paid in full. Partial payments can be made.
- Writ expire after 6 years of filing.
- Renewable before expiry,
- No property or known asset - certain criteria make it worth while to file Writ. (Other assets, age, stage of life, etc.)

Writs of Seizure & Sale

- * You can force the sale of a property.
- Time consuming and expensive,
- Appraisals, Deposits
- Politics could be an issue,
- Public outcry.

Writs of Seizure & Sale

- Writ's are not perfect.
- All Writs fall into "Unsecured" category, below Secured and Preferred creditors.
- **If** surplus proceeds - payout based on Creditors Relief Act, on a pro rata basis between all unsecured creditors.

Garnishments

- Garnishment can be against,
- Wages,
- Bank account or
- Contracts.

Garnishments

Documents required

- Notice of Garnishment,
- Enforcement Affidavit,
- Garnishee Statement,
- Affidavit of Service,
- Letters to Debtor *, Garnishee,
- Affidavit of Service filed with court
- Court Fee required of \$125.

Garnishments

Tools:

- Equifax,
- Social Media
- Linkedin
- Google.

Garnishments

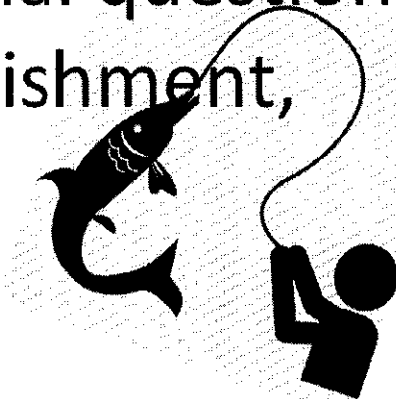
- Filed with Court in Jurisdiction where Debtor resides or carries on business.
- Wages are preferred over Bank Accounts.
- Deduction of wages are, up to 50% of NET Earnings.
- Deductions for bank accounts or contract are to the full value of the Garnishment issued,
- Contracts can be messy.
- Bank accounts get their attention, but only once!

Garnishments

- Best Practice: Never “lifted” once process started, (unless PIF).
- Payout based on Creditors Relief Act, on a pro rata basis between all unsecured creditors.

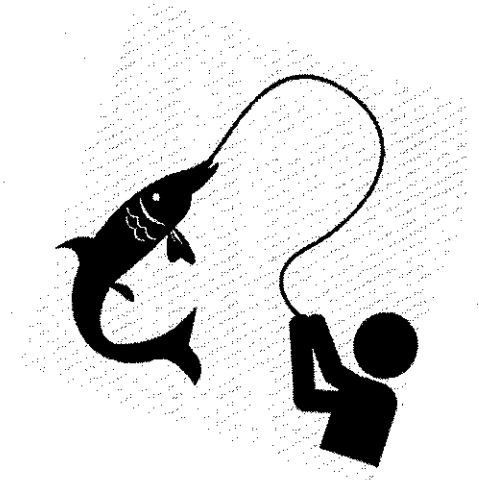
Judgement Debtor Exam

- Fishing Expedition.
- Have a “hunch” client not telling you everything.
- If we can’t locate information on our own or through internal resources,
- Debtor to answer personal financial questions under oath. Proceed lead to Garnishment, Writ or Payment Plan.



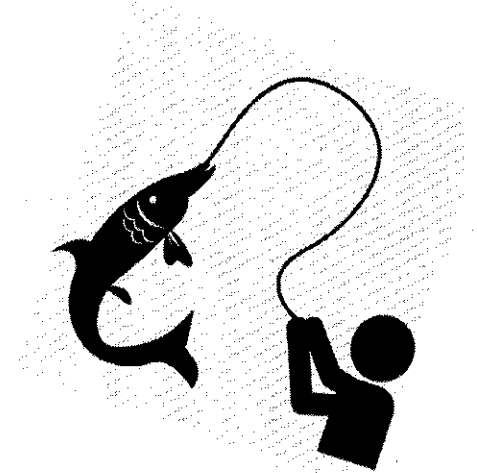
Judgement Debtor Exam

- Creditor must prepare and pay fee to schedule Examination.
- Clerk to issue date and serve Examination Notice
- Fee \$ 55. Plus service.
- All Examinations are done in private,
- Judge may impose payment plan.



Judgement Debtor Exam

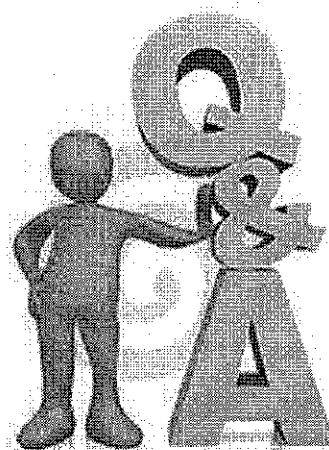
- Additional Remedy options limited while court payment plan in place.
- “No show” could result in Contempt of Court, (jail up to 5 days).
- Unlikely



Conclusion

- Lots of really good things happening!
 - OMTRA's on going Discussions;
 - Prov. and Feds re: Tax Returns.
 - No Cherry picking.
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- **OMTRA** – Not just taxes anymore!

Questions & Answers



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Internet addresses and samples

1. <http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/>
2. <http://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>
3. OMTRA web site : <http://www.omtra.ca/resource-category/best-practices>
4. Best Practice - Certificate of Default
5. Best Practice - Examination of individual debtor
6. Best Practice - Garnishments
7. Best Practice - Writ of Seizure & Sale
8. Sample demand letter
9. Sample SCC claim
10. Debtor Credit Information
11. List of Superior Court offices



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