



# Debtor/Creditor & Small Claims Court **Debt Collection & Options for Debtors**

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

## Rules Governing Debt Collectors

Licensed collection agencies (pursuant to the *Collection Agencies Act*), and ordinary businesses seeking to collect debts (pursuant to the *Consumer Creditors Conduct Act*) are restricted from engaging in certain activities when attempting to collect debts owing.

Some of the restrictions include:

- Harassing debtors;
- Calling on Sunday or outside the hours of 8am – 9pm on any other day;
- Failing to satisfy themselves that the debtor actually owes the debt in question;
- Making collect calls to debtors;
- Lying, either directly or indirectly, to members of a debtor's family;
- Contacting or threatening to contact the employer of the debtor, their spouse or any family member and give information that could adversely affect any of those people's employment or employment opportunities;
- Contacting a debtor who has indicated they are represented by a lawyer; **and**
- In the case of a licensed Collection Agency phoning a debtor without first contacting them in writing.

### Debtors Represented by Lawyers

Of the restrictions listed the most useful one is often the restriction regarding contacting debtors who are represented by a lawyer.

Oftentimes debtors are not disputing their debt owing, but are unable to pay it and are merely interested in obtaining relief from the constant phone calls from debt collectors.

There is a form that can be completed by your client indicating that they are represented by a lawyer, and requesting that the creditor have no further contact with them.

Should a client advise you of a breach of the restrictions listed in the legislation by either a licensed collection agency, or a business attempting to collect their own debt owing they should contact Service Nova Scotia at **1-800-670-4357** to file a complaint.

## Options for Debtors

Some clients you assist with debt issues will be what is known as 'judgment proof'. These are clients whose only income is exempt from seizure, and do not possess any assets which could be seized pursuant to a Court Order to satisfy a debt owing.

Clients concerned about having income or assets seized to satisfy their debt owing have several options:

- i. Contact Access Nova Scotia's Debtor Assistance Program;
- ii. Declare bankruptcy;
- iii. Defend or prosecute the matter in Small Claims Court.

### Debtor Assistance Program

Access Nova Scotia offers meetings with Debt Assistance Officers at no charge.

Debt Assistance Officers can provide debtors with advice on all of the options available to them for managing their debts. This may include reworking budgets, negotiating payment plans with creditors, paying off debts with a consolidation loan, etc...

Further information on the Debtor Assistance Program can be found here:

<http://www.gov.ns.ca/snsmr/access/individuals/debtor-assistance.asp>

### Consumer Proposals

One option available through the Debtor Assistance Program is a consumer proposal.

Debtors who owe less than \$250,000.00 (excluding a mortgage) may enter into a consumer proposal.

Pursuant to the *BIA* debtors can make proposals to their creditors to pay off a percentage of their debts owing, increase the amount of time to pay debts owing or a combination of both.

If a sufficient number of creditors agree, or are deemed to agree by failing to respond to the proposal in the allotted time, it becomes binding.

There is a fee payable to Access Nova Scotia for consumer proposals that is determined by taking into account the financial circumstances of the debtor.

### Bankruptcy

The last resort available to debtors is to declare bankruptcy pursuant to the *BIA*.

In order to declare bankruptcy a debtor must use a trustee in bankruptcy.

The Office of the Superintendent of Bankruptcy maintains a list of licensed trustees:

<http://www.ic.gc.ca/app/osb/tds/search.html>

There is a fee payable to the trustee in bankruptcy.

Bankruptcy is a very complicated area of law, and questions should be left up to a Trustee in Bankruptcy to answer.

One very important question that you should ensure your client asks their trustee is whether the debt in question will be released via bankruptcy. Certain debts (i.e. those arising out of fraud) will not be released via bankruptcy.

### Bankruptcy Assistance Program

The Office of the Superintendent of Bankruptcy offers the Bankruptcy Assistance Program to help debtors wishing to declare bankruptcy, but who have insufficient funds to retain the services of a Trustee in Bankruptcy.

To be eligible for the Bankruptcy Assistance Program a debtor must:

- i. Have contacted and been unable to retain the services of at least two Trustees (or one if there is only one Trustee in the area);
- ii. Not be incarcerated;
- iii. Not be engaged in commercial activities; **and**
- iv. Not have surplus income (as calculated in accordance with the *BIA*).

For further information on eligibility and how to participate in the Bankruptcy Assistance Program a debtor should call **1-877-376-9902**.

## Acknowledgement

Dalhousie Legal Aid Service would like to gratefully acknowledge and thank the [Law Foundation of Ontario](#) for its financial support of LEAP.

## Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

Laws change frequently. We will try our best to make sure the information contained in all of our documents, as well as any other information you receive from Dalhousie Legal Aid Service, is reliable. However, **we cannot guarantee that the information in this document is completely accurate and up-to-date.** By accessing information from Dalhousie Legal Aid Service you assume any risks that arise from doing so.