



Debtor/Creditor & Small Claims Court

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

Acknowledgement

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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](#).

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Contents

Legislative Framework.....	1
Provincial Legislation.....	1
Federal Legislation.....	1
Exemptions from Seizure	2
Exempt Assets	2
Exempt Sources of Income.....	2
Further Income Exemptions	2
Practical Considerations	3
Debt Collection	4
& Options for Debtors.....	4
Rules Governing Debt Collectors.....	4
Debtors Represented by Lawyers.....	4
Options for Debtors	4
Debtor Assistance Program	5
Consumer Proposals.....	5
Bankruptcy	5
Bankruptcy Assistance Program	6
Small Claims Court.....	7
Intro to Small Claims Court	7
Beginning a Proceeding in Small Claims Court.....	7
Notice of Claim	7
Service	7
Actions by Creditor	7
Appeals.....	8
Enforcing Small Claims Court Orders.....	8
Payday Lenders	10
Regulation of Payday Lenders.....	10
Helpful Tips	
Collections	11
Small Claims Court	11
First Meeting.....	12
Additional Resources	13
Government	13
Small Claims Court	13

Payday Lenders.....	13
Case Law.....	13
Nova Scotia Legal Aid.....	13

Legislative Framework

Provincial Legislation

There are multiple Provincial statutes which govern various aspects of debtor/creditor law:

- i. *Consumer Protection Act and Payday Lenders Regulations:*
<http://nslegislature.ca/legc/statutes/consumer%20protection.pdf> &
<http://www.gov.ns.ca/just/regulations/regs/cppayday.htm>
- ii. *Collection Agencies Act:* <http://nslegislature.ca/legc/statutes/collecta.htm>
- iii. *Consumer Creditors' Conduct Act:* <http://nslegislature.ca/legc/statutes/consumcr.htm>
- iv. *Personal Property Security Act:*
<http://nslegislature.ca/legc/statutes/personal%20property%20security.pdf>
- v. *Judicature Act:* <http://nslegislature.ca/legc/statutes/judicatr.htm>
- vi. *Small Claims Court Act & Regulations:*
<http://nslegislature.ca/legc/statutes/smallclm.htm> &
<https://www.novascotia.ca/just/regulations/regs/sccfrmpr.htm>

Federal Legislation

The major piece of Federal Legislation to be aware of is the *Bankruptcy and Insolvency Act*:
<http://laws-lois.justice.gc.ca/eng/acts/B-3/index.html>

This is a very lengthy and complex piece of legislation – don't worry! There are experts in the field who can assist your clients with issues related to bankruptcy.

Exemptions from Seizure

Exempt Assets

One of the most pressing issues many clients present with are concerns that creditors will attempt to seize their limited assets or income in order to satisfy debts owing.

The Nova Scotia *Judicature Act* and *Personal Property Security Act* list certain items that are exempt from seizure under an Execution Order:

- Clothing, household furnishings and furniture of the debtor and their family;
- The family's fuel and food;
- All grains, seeds and livestock reasonably necessary for the domestic use of the debtor and their family;
- A car valued no more than \$6,500.00 if used for work and there is no public transit, or up to \$3,000.00 if not used for work unless the debt in question was for money used to purchase the car. If that is the case the car can be seized regardless of its value;
- All medical and health aids reasonably necessary for the debtor and their family; and
- Farm equipment, fishing nets, tools and other items used in the debtor's chief occupation not exceeding \$1,000.00.

Exempt Sources of Income

Many sources of income are also exempt from seizure or garnishment by private creditors.

The following benefits cannot be seized or garnished by private creditors:

- i. Income Assistance;
- ii. CPP payments;
- iii. OAS & GIS; and
- iv. EI

It is important to remember that debts owing to the programs listed above **can** be deducted from benefits payable by those programs.

Further Income Exemptions

The Nova Scotia *Civil Procedure Rules* also contain restrictions on whether someone's income can be seized pursuant to an Execution Order. The *Civil Procedure Rules* can be found here: http://www.courts.ns.ca/Rules/consolidated/cpr_consolidated_rules_13-08-01.pdf

Civil Procedure Rule 79.08 states that 15% of a judgment debtor's gross wages can be seized to pay a debt owing.

Civil Procedure Rule 79.08 also states that a judgment debtor's income **cannot** be seized if:

- i. Seizure would result in the debtor having less than \$330.00 net per week after all compulsory deductions have been deducted; **or**
- ii. Seizure would result in a debtor supporting a dependent (as defined in the *Income Tax Act*) having less than \$450.00 net per week after all compulsory deductions have been deducted.

The *Civil Procedure Rule 79.08* also reiterates that banks are **not** to pay the Sherriff any income from exempt sources – such as income assistance or Canada Pension Plan payments.

Practical Considerations

Despite *Civil Procedure Rule 79.08* banks are sometimes unwilling to determine the source of income in a debtor's bank account, and when presented with an Execution Order by the Sherriff will simply hand over the money in a debtor's account.

If you anticipate that a creditor intends to obtain an Execution Order in order to seize money from a debtor's bank account you should contact their bank and advise them of the exemptions from seizure pursuant to rule 79.08.

Another tactic to be aware of when it comes to banks and credit card companies is that they will sometimes resort to 'self-help remedies'. In particular banks will freeze a debtor's account if they have a debt owing. Unfortunately there is little recourse for a debtor in this situation other than to negotiate repayment of the debt owing.

Debt Collection & Options for Debtors

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**.

Small Claims Court

Intro to Small Claims Court

Small Claims Court is presided over by lawyers who are trained as Small Claims Court Adjudicators.

The majority of people appearing in Small Claims Court are not represented by a lawyer.

Parties appearing in Small Claims Court will have the opportunity to present evidence, call witnesses, cross examine the opposing party and their witnesses and present the court with a summary of their evidence and any law applicable to their case.

The formal rules of evidence are not as strictly enforced in Small Claims Court. Generally evidence that is 'relevant' to the issue before the Court will be considered.

Beginning a Proceeding in Small Claims Court

Notice of Claim

In order to commence a Small Claims Court matter a claimant must file a Notice of Claim. The Notice of Claim can be completed online: <https://www.interactivecourtforms.ns.ca>

The Notice of Claim **must** be filed in person at your local Small Claims Court. It **cannot** be filed online. A list of Small Claims Court locations can be found here: http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Claim. If a claimant's income is sufficiently low the fee can be waived by completing a waiver of fees form: http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

Service

After filing a claim a claimant must personally serve the defendant with the Notice of Claim. The Small Claims Court will provide a deadline for service.

After serving the Notice of Claim an affidavit of service **must** be sworn and filed with the court. Small Claims clerks can swear the affidavit. The affidavit of service can be printed along with the Notice of Claim form, or obtained from the court when filing the Notice of Claim.

Actions by Creditor

If a debtor is served with a Notice of Claim by a creditor the debtor can either:

- i. Settle the matter out of court - The parties can come to an agreement to settle the matter forming the basis of the claim. Any agreement reached by the parties should be put in writing;
or
- ii. File a Notice of Defence or Counterclaim – If a debtor wishes to defend themselves against a claim, or file their own claim against the claimant, they **must** file and serve a Notice of Defence or Counterclaim **within 20 days** of being served with the Notice of Claim. If a Notice of Defence or Counterclaim is not filed and served within the limitation period a claimant can seek a quick judgment against the defendant.

Following the hearing the adjudicator will issue their decision in writing **within 60 days**.

Appeals

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

- i. Jurisdictional error;
- ii. Error of law; or
- iii. Failure to follow the requirements of natural justice (i.e. the right to a fair hearing).

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

Enforcing Small Claims Court Orders

There are basically three options for enforcing a Small Claims Court Order. Prior to being able to pursue any of those options the successful party must ask the court which heard the case for an Execution Order, Certificate of Judgment and/or Recovery Order. This is done by simply contacting the court and explaining what it is you are seeking. In response the court will provide the necessary forms to complete in order to obtain the document requested.

The three options are:

- i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc... This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here:
<http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp>
- ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor's ability to mortgage or sell property they currently own, or may own in the

future, without first satisfying the Court Order. It creates what is known as a 'lien' against the debtor's real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor's property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: <http://www.novascotia.ca/snsmr/offices.asp>

- iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

All of the preceding options are available to either debtors or creditors who obtain a Small Claims Court Order.

Payday Lenders

Regulation of Payday Lenders

Payday lenders are regulated by the *Consumer Protection Act* and *Payday Lenders Regulations*. In addition, the NS Utility and Review Board has the jurisdiction to set the maximum cost of borrowing from payday lenders.

Payday lenders are permitted to offer their services over the internet in Nova Scotia.

Following the NSUARB's most recent payday lender decision the maximum cost of taking out a payday loan is \$25.00 for every \$100.00 borrowed. There is also a \$40.00 penalty for missed payments.

Payday lenders are required by law to display a sign at their business, or on their website, which shows the total cost of borrowing \$300.00 for 14 days.

Payday loans can be cancelled **without penalty** by the end of the business day following the day in which the loan was taken out, **or** within 48 hours if the loan was advanced from an Internet payday lender. Payday lenders are required to provide borrowers with a cancellation form at the time they take out their loan.

In order to operate in Nova Scotia payday lenders **must** be licensed pursuant to the *Consumer Protection Act*. A list of licensed payday lenders can be found here:

<http://www.gov.ns.ca/snsmr/access/individuals/consumer-awareness/consumer-loans-credit/licensed-payday-lenders-in-nova-scotia.asp>

Helpful Tips

Collections

Debt collectors often take very hard lines with respect to debts owing, and threaten to garnish wages, seize assets, etc... Do not be intimidated! Remember that if your client is judgment proof there is nothing that the creditor can do, and accordingly your client should not offer to pay any amount owing. Furthermore creditors **cannot** garnish wages or seize money or assets without a court order. The only exception being banks exercising 'self-help' remedies for debts owed to them, i.e. freezing a debtor's bank account

If you have a client who has some ability to pay you should encourage them to take advantage of the Debtor Assistance Program as opposed to them attempting to negotiate with a creditor directly.

By far the best way to stop a debt collector from contacting your client is to find a lawyer willing to represent them. Your local legal aid office should provide this service. Ensure that your client takes the Collection Agency form with them to their meeting with a lawyer.

Small Claims Court

Many cases in Small Claims Court are decided based on the facts. Accordingly it is extremely important that your client is able to present the necessary evidence to confirm their version of the events in question. In debtor/creditor matters relevant evidence may include: receipts, invoices, contracts, etc... Be sure to make three copies of any documentary evidence you wish to rely on at the hearing – one copy for you, one for the opposing party and one for the Adjudicator.

The only restriction on introducing evidence in Small Claims Court is that it must be relevant to the matter at issue. However, significantly more weight will be given to evidence presented by a live witness who can be cross examined by the opposing party as opposed to a written statement from a witness.

Witnesses can be subpoenaed to attend a Small Claims Court hearing. A subpoena is a court document that requires a person to give evidence at a court hearing. A subpoena may require a witness to provide oral testimony, bring certain documents to court or both. A subpoena may be necessary if a witness is unwilling to attend a court hearing. Subpoena forms can be obtained from the Small Claims Court. In your binder you will find a detailed guide on how to use subpoenas in Small Claims Court.

In addition to evidence it may be helpful to rely on similar cases that have been decided on the legal issues in your client's case. If you find a case that you think is helpful you may provide it the Court. Be sure to bring three copies of any cases you wish to submit to the Court – one for you, one for the opposing party and one for the Adjudicator.

Don't worry if you don't have any case law to support your case. As mentioned on the previous slide the most important aspect of the case to focus on is the facts.

First Meeting

Ensure that a potential debtor/creditor client brings the following information with them to the first meeting:

- i. A copy of any correspondence received from creditors;
- ii. Copies of any bills, receipts, invoices, etc... pertaining to the debt owing;
- iii. Proof of income from all sources; and
- iv. Copies of any Small Claims Court documents if applicable.

Additional Resources

Government

Small Claims Court

A Small Claims information guide can be found here:

http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_info_brochure_10.pdf

An excellent resource explaining how to enforce Small Claims Court Orders can be found here:

http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_guide_for_creditors_10.pdf

A guide on how to use subpoenas in Small Claims Court can be found here:

http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_using_subpoena_06.pdf

Payday Lenders

Access Nova Scotia maintains a website with information about payday lenders here:

<http://www.gov.ns.ca/snsmr/access/individuals/consumer-awareness/consumer-loans-credit/payday-loans.asp>

Case Law

Potentially helpful Small Claims and Supreme Court decisions from Nova Scotia can be found here:

<http://www.canlii.org/en/ns/>

Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding Debtor/Creditor matters. Their contact information can be found here:

<http://www.nslegalaid.ca/contact.php>