



PROVINCIAL COURT OF SASKATCHEWAN - CIVIL DIVISION

PLAINTIFF INFORMATION -SHOULD I SUE?

Note: This material is for informational purposes only. It is not to be construed as legal advice. It is intended to give a general overview of matters involving civil claims in the Provincial Court (Civil Division).

Should you require advice specific to your situation, please consult a lawyer.

Pursuing a court action requires time and effort on your part as well as some expense. There is also no guarantee of collecting the money from any judgment you might obtain. If the defendant (the person you are suing) has no assets, no job and no prospects of either, you should think seriously about whether to sue or not. Here are a few questions you should ask yourself.

1. Is obtaining the judgment necessarily the end of the process?

The simple answer is no. If you win, the court provides you with a judgment. Sometimes, getting a judgment is just the beginning of a long process because if the defendant does not voluntarily pay, you must then take steps to enforce the judgment.

You should realize that enforcing your judgment is not the responsibility of the courts. There are some court procedures you can use to collect the money - like tools to do a job - but it is up to you to use them. Once a judgment is obtained, any enforcement steps must be taken through the Court of Queen's Bench - which is not the court which issued your claim. The Provincial Court where you obtained the judgment has nothing further to do with your case.

Enforcement remedies are at your expense. Although some of the costs are added to the amount the defendant owes you, you have to pay those costs to begin with. Some examples of Court of Queen's Bench enforcement remedies are dealt with below.

2. What do I have to do to collect?

a) Does the defendant have a job?

One of the procedures you can utilize for collecting your money is to garnishee wages. If the defendant does not have a job, then no wages can be garnisheed but some other remedies may be available. You cannot garnishee social assistance payments.

Even if the defendant has a job, a certain amount of income is protected. Right now, our law

allows a person to keep \$500.00 a month and \$100.00 per month for each of his or her dependants.

For example: The defendant earns \$900.00 per month. His wife stays at home with their two small children. If his wages are garnisheed, \$800.00 is protected and only \$100.00 per month can be paid into court. You have had to pay court fees to issue the garnishee summons so this potentially increases your out-of-pocket expenses.

b) Does the defendant own any land?

A judgment can be placed against title to any land registered in the defendant's name, whether the land is held solely or jointly with another. Whenever the defendant wants to sell or mortgage the property, the defendant will not be able to provide clear title without settling the judgment. The judgment is valid for ten years and can be renewed for further periods.

A person living on an Indian reserve does not have title to the house in which he or she resides. Title is in the name of the Indian Band for the benefit of the whole band. Accordingly, you cannot register a judgment against land on an Indian Reserve.

c) Does the defendant own anything else?

Assets such as cars, trucks, recreational vehicles, and even bank accounts can all potentially be seized following judgment. The seizure is done by the Sheriff (a court official located at the Queen's Bench courthouse). Other sources of income, such as commissions, accounts receivable or contract payments, may also be garnisheed or seized.

However, you must be aware that our law protects certain property from seizure, as shown in some examples below. As well, assets may already be subject to a security interest held by another creditor, such as a bank. In both cases, your ability to seize and sell assets of the debtor will be limited or even prohibited.

Some examples of protected assets are:

- furniture and appliances to a value of \$4,500.00;
- one motor vehicle, if it is used to earn the defendant's income;
- the tools used by the defendant to earn an income;
- employment pension plans, most insurance benefits, and many RRSPs cannot be seized.

If the defendant is a farmer, some additional protections are in place:

- furniture and appliances to a value of \$10,000.00
- all the livestock, farm machinery and equipment, including one automobile or farm truck, that the defendant needs to run the farm for the next year;
- tools used by the defendant to earn an income;

- seed grain;
- as much of the crop as is needed by the defendant to pay the costs of the year's harvest; to provide a reasonable living allowance for the defendant and family the next year, and to pay the cost of running the farm for the next year.

Also, property registered in joint names, such as joint bank accounts, cannot be seized or garnisheed.

If the defendant is a status Indian, no eligible (i.e. non-protected) property of the defendant located on an Indian Reserve can be seized by the Sheriff unless the debt is owed to another status Indian. Eligible property of a status Indian located off a Reserve may be seized by the Sheriff.

Leased property, such as a leased motor vehicle, is registered in the name of the lease company and cannot be seized.

3. Does the defendant owe money to anyone else?

You should also be aware that if the defendant has other outstanding judgments against him or her, you may have to share in any proceeds from assets that are seized and sold.

In addition, other claims that will be paid before an ordinary judgment are:

- child support
- unpaid wages
- other taxes such as E & H tax, GST, Worker's Compensation Premiums, Income Tax source deductions;
- Judgments owed to certain Crown agencies.

4. Are the defendant's prospects going to improve?

As stated earlier, a judgment is valid for 10 years and, if registered in the Court of Queen's Bench, can be renewed for further periods of 10 years. If the defendant gets a job, has a better year in business, inherits money or acquires assets, you can take enforcement action based on your judgment at that time.

5. Limitation Periods

You cannot wait indefinitely to start a court action. Saskatchewan has enacted *The Limitations Act*, a copy of which is available on the Queen's Printer website, at www.qp.gov.sk.ca. If a claim has gone beyond the limitations period, you may be unable to proceed. For most actions, the period is 2 years but you should refer to the Act to be sure.