



Creditors' Relief Act Can Speed Up Recovery of Bad Debt

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Legal action to collect an overdue debt is unfortunate but sometimes necessary in business and in life.

Creditors who have run out of options in their efforts to collect what they are owed may hesitate to sue because of the time, effort and expense that they fear will be involved.

Such creditors will be interested to know that, in their particular situations, there may be a simpler, quicker and more economic legal approach.

Such an approach is offered by the *Creditors' Relief Act* (the "CRA"). It is available to both Canadian and foreign creditors who are trying to collect from Ontario debtors who have already been sued successfully by somebody else, who have not "paid up" (or "satisfied" the judgements against them) and where such unsatisfied judgements are registered with the sheriff.

In these situations, the CRA allows the creditor to "piggyback" on successful suits that have already been conducted against the debtor. Sections 6 to 13 of the CRA allow the creditor to deliver to the debtor a short affidavit of claim and notice of claim. If the debtor does not deliver notice, within 10 days of service, that it contests the claim, the creditor can obtain a certificate from the court. The certificate is then registered with the sheriff. After registration, if the sheriff receives any funds (for example, as a result of other judgment creditors' collection efforts), the creditor shares in the distribution on a pro-rated basis.

This procedure under the CRA can result in a "judgment" registered with the sheriff in one-third of the time compared to proceeding by way of a regular action (that is, by Statement of Claim or Notice of Application).

The CRA can also be an effective tool for enforcing foreign judgments.

If a creditor has a judgment from a Canadian province or territory (other than Quebec), or from the United Kingdom, the judgment can be recognized in Ontario, which has reciprocal enforcement agreements with these other jurisdictions.

However, if a creditor has a judgment from another jurisdiction in the world, the Ontario court will not recognize it as an Ontario judgment. The usual method of enforcing this foreign judgment will be to sue as a debt. In other words, the judgment creditor will have to start a new action or application.

This is where the CRA is at its most effective. If the debtor in question has an execution registered against it in Ontario, the CRA permits the foreign creditor to deliver the affidavit of claim and notice of claim. If 10 days pass without the debtor contesting the claim in the prescribed form, the foreign judgment creditor can obtain a certificate and register it with the sheriff. Using this process, the foreign judgment creditor will share in the distribution with the other judgment creditors, but without the bother of having to begin a new action (or application) and prosecute the matter to judgment. ■