

Table of Contents

<i>Preface</i>	v
<i>List of Statutes and Regulations</i>	xv
1 INSTRUCTING THE LAWYER	18
1. Purpose of Collection	17
(a) Fees	18
(b) Knowing the Debtor	21
2. The Role of the Creditor	21
3. The Role of the Collection Lawyer	23
(a) Sound Legal Judgment	24
(b) Efficient Service	24
(c) Good Business Practices	25
(d) Reasonable Fees	26
4. Instructing the Lawyer	26
(a) Creditor's Preparation	26
(b) Lawyer's Preparation	27
(c) First Meeting with New Client	27
(d) Follow-Up Instructions on Large and/or Complex Cases	28
5. Further Meetings	28
6. Review of Pleadings and Other Documents	29
7. Opinions and Correspondence	29
8. Evaluating the Case	29
9. Billings	30
Appendix I Precedents	31
2 COLLECTION LITIGATION	41
1. Acknowledge Receipt of Account	42
2. Review Client's Documents	43
(a) Amount Owning	44
(b) Interest	45
(c) Foreign Currency	46
(d) Limitation Periods	46
3. Make Demand	47
4. Conduct Searches	48
(a) Name Search	49
(b) Personal Property Security Search	50
(c) Execution Search	51
(d) Land Registry Office Search	52
(e) Bank Act Search	53

(f) Bulk Sales Act Search.....	54
(g) Bankruptcy Search.....	54
(h) Other Searches.....	56
5. Consider Pre-judgment and Self-help Remedies	60
6. Consider Bankruptcy Proceedings.....	62
7. Prepare Statement of Claim.....	62
(a) Choice of Courts.....	62
(b) Regular Claim	63
(c) Simplified Procedure under Rule 76	66
(d) Civil Case Management under Rule 77	70
8. Attend Mandatory Mediation.....	73
9. Obtain Judgment.....	73
(a) Default Judgment	73
(b) Summary Judgment	76
(c) Judgment after Trial.....	78
10. Negotiate Settlement.....	79
Appendix I List of Searches	83
Appendix II Statutory References.....	85
Appendix III Precedents.....	126
Appendix IV Locations for Personal Property Security Services	178
3 ENFORCEMENT OF JUDGMENT DEBTS	181
1. Introduction	182
2. File Writ of Seizure and Sale.....	183
3. Exempt Assets Not Available to Judgment Creditors.....	184
(a) Provincial.....	184
(b) Federal	186
(c) Common Law	187
4. Judgment Debtor Examinations	187
(a) Scope of Examination	187
(b) Examination of Officer or Director of Corporate Debtor	188
(c) Examination of Any Other Person	189
(d) Service of Notice of Examination.....	190
(e) Costs of Examination.....	191
(f) Contempt Order	191
(g) Questions to be Asked	192
5. Garnishments	193
(a) Obtaining Notice of Garnishment	193
(b) Service of Notice of Garnishment	194
(c) Liability to Pay	195
(d) Duration of Notice	195

TABLE OF CONTENTS xi

(e) Garnishee’s Responsibilities and Statement.....	195
(f) Garnishment Hearing	196
6. Distribution Under Creditors’ Relief Act.....	196
7. Sale of Real Estate and Other Property	197
(a) Writ of Seizure and Sale	197
(b) Sale of Land	198
(c) Possession	199
8. Reciprocal Enforcement of Judgments.....	200
Appendix I Statutory References	201
Appendix II Precedents	224
Appendix III Questions to be Asked on an Examination of Judgment Debtor	262
4 PROCEEDINGS IN SMALL CLAIMS COURT.....	279
1. Introduction	280
2. Jurisdiction.....	281
(a) Monetary.....	281
(b) Territorial.....	281
(c) Types of Action	282
3. Starting the Action.....	283
(a) Writing a Demand Letter.....	283
(b) Completing the Claim Form	283
(c) Service	286
(d) Fees and Disbursements.....	287
4. The Defence, Counterclaim and Third Party Claims.....	288
5. Default Judgment and Summary Judgment	289
6. Discovery	292
(a) Discovery of Documents	292
(b) Oral Discovery.....	292
7. Settlement Conference	292
8. Motions	294
9. Offer to Settle	296
10. Notice of Trial.....	296
11. The Trial	297
(a) Trial Preparation	297
(b) The Trial	297
12. Costs	298
13. Appeals	298
14. Enforcement of Orders	298
(a) Examination of the Debtor or Other Person	300

(b) Writ of Seizure and Sale with Respect to Personal Property.....	302
(c) Writ of Seizure and Sale with Respect to Land	303
(d) Writ of Delivery	304
(e) Garnishment	304
(f) Hearing Before Referee.....	307
(g) Consolidation Orders	307
Appendix I Statutory References	309
Appendix II Location of the Small Claims Court	379
Appendix III Precedents.....	386
Appendix IV Schedule of Fees.....	452
5 COLLECTION AGAINST DECEASED ESTATES	453
1. Representation of the Estate.....	453
(a) Where the Debtor Dies with a Last Will	454
(b) Where the Debtor Dies Intestate.....	455
(c) Other Circumstances	455
2. Procedure to Establish Claim Against the Estate	456
(a) Continuing an Action	456
(b) Commencing an Action in the Superior Court of Justice.....	457
(c) Summary Procedure	458
(d) Proceeding Against an Insolvent Estate.....	459
Appendix I Statutory References.....	461
Appendix II Precedents	467
6 CONSTRUCTION LIENS	491
1. Introduction	491
2. The Lien	493
(a) Description of the Lien	493
(b) Types of Lien Claimants.....	493
(c) Types of Property that May be Liened.....	494
(d) Holdbacks and the Extent of the Lien.....	494
3. Enforcement of the Lien.....	494
4. Procedural Rules	495
(a) Other Pleadings.....	495
(b) Reference to a Master.....	496
(c) Settlement Meeting.....	496
(d) Trial	496
5. Vacating the Lien	497
Appendix I Statutory References.....	499
Appendix II Precedents	502

7 BANKRUPTCY	507
1. Defining Bankruptcy	508
2. Advice to Creditors Concerning Bankruptcy.....	509
(a) Bankruptcy Court is Not a Collection Agency	509
(b) Attacking Fraudulent Preferences and Fraudulent Conveyances	509
(c) Preventing Further Waste of Assets.....	510
(d) Review of Financial Statements	510
(e) Prior Secured Interests	511
(f) Priority of Creditors	511
(g) Costs of Bankruptcy	512
3. Involuntary Bankruptcy	512
(a) Commercial List	512
(b) Application for a Bankruptcy Order	512
(c) Affidavit Verifying Position.....	514
(d) Filing the Application for a Bankruptcy Order	514
(e) Service	515
(f) Bankruptcy Order	515
(g) Interim Receiving Order.....	516
(h) Dispute.....	517
4. Effect of Bankruptcy	518
5. Section 38 Proceedings	519
6. Discharge	520
Appendix I Statutory References.....	521
Appendix II Precedents.....	528
 8 LAWYER AND CLIENT COLLECTIONS	 553
1. Introduction	553
2. Retainer	554
(a) Liability for the Bill	554
(b) Scope of the Retainer	555
(c) Basis for Establishing Fees	556
3. Considering Whether to Commence an Action on the Bill or Whether to Assess the Bill	557
Appendix I Statutory References.....	561
Appendix II Precedents	565
 9 EXTRAORDINARY REMEDIES.....	 581

1. Introduction	581
2. Fraudulent Conveyances Act	582
(a) Scope of the FCA	582
(b) Intention of the Parties	583
(c) Effect of Transaction.....	584
(d) When to Bring an Action.....	585
(e) Preservation of Real Estate Assets.....	585
(f) Evidence.....	586
3. Assignment and Preferences Act	586
(a) The Fraudulent Conveyance	586
(b) Unjust Preferences	587
(c) Intention	587
(d) Insolvency.....	588
(e) Contrast to Bankruptcy Preferences	588
4. Equitable Execution	589
5. Injunctions and Interim Receivers	589
6. Recovery of Personal Property Under Rules 44 and 45.....	592
(a) Rule 44.....	593
(b) Rule 45.....	594
Appendix I Statutory References.....	595
Appendix II Precedents	605
10 LANDLORD’S RIGHT OF DISTRESS	613
1. Introduction	613
2. Conditions to Distrain.....	614
3. Restrictions on the Right to Exercise Distress.....	615
4. Method and Manner of Distress.....	616
(a) Preliminary Steps	616
(b) Conduct Searches	616
(c) The Mechanics	618
5. Important Points.....	625
6. Defences.....	625
7. Judicial Remedies	626
Appendix I Statutory References.....	629
Appendix II Precedents	636
<i>Index</i>	645