

COLLECTION OF MONEY OWING TO THE RM

INTRODUCTION

I have, over the years I have worked with SARM, received many inquiries as to how an RM can go about collecting money which is owed to it.

The purpose of my presentation today is to provide some information on how to go about collecting money owing to the RM.

Specifically, I will speak about:

- i) the collection of taxes generally;
- ii) what amounts may be added to the tax roll; and
- iii) what you can do if you cannot add an amount to the tax roll.

COLLECTION OF PROPERTY TAXES

I do not propose to go in to this in detail as all of you are, I expect, quite familiar with the collection of property taxes. In addition, reference can be made to the Tax Enforcement Procedures Manual which is available on the Government Relations website.

I propose just to highlight a few statutory provisions which should be borne in mind in this regard.

Firstly, regard should be had to subsection 266(1) of *The Municipalities Act*, which reads as follows:

“**266(1)** Taxes imposed with respect to a financial year of a municipality pursuant to this Act or any other Act are deemed to have been imposed on January 1.
...”

Secondly, reference should also be made to section 275 of *The Municipalities Act*, which reads as follows:

“**275** Taxes due to a municipality:

- (a) are an amount owing to the municipality;
- (b) are recoverable as a debt due to the municipality;
- (c) take priority over all claims except those of the Crown; and
- (d) are a lien against the property, if the tax is:
 - (i) a property tax;
 - (ii) a special tax; or
 - (iii) a local improvement special assessment.”

Finally, reference should be had to subsection 320(1) of *The Municipalities Act*, which reads as follows:

“**320(1)** The taxes due on any property:

- (a) are a lien against the property; and
- (b) are collectable by action or distraint in priority to every claim, privilege, lien or encumbrance, except that of the Crown.
...”

Options to collect taxes include:

- i) registration of a tax lien and eventually taking title to the property, in accordance with the provisions of *The Tax Enforcement Act*;
- ii) collecting rent from a tenant, pursuant to section 321 of *The Municipalities Act*;
- iii) attaching proceeds of a policy of insurance, if property in respect of which taxes are owing is damaged or destroyed, pursuant to section 322 of *The Municipalities Act*;
- iv) by means of seizure of goods under a distress warrant, pursuant to sections 323 to 335 of *The Municipalities Act*; or
- v) by commencing a civil action.

Registering a Tax Lien and eventually taking title to the land is generally the preferred method as it usually is the best way to ensure the amount owing is paid in full. There will, however, be situations where that is not the case. I will speak of these shortly.

ADDING AMOUNTS OWING TO THE TAX ROLL

There are a number of other types of amounts owing to an RM which may be added to the tax roll and collected in the same manner.

These include:

i) amounts owing for a public utility service, including both the cost of a service connection and usage charges, as per clauses 369(1)(a) and (b) of *The Municipalities Act*;

ii) costs incurred by an RM to remedy a contravention of a bylaw, pursuant to clause 369(1)(c) of *The Municipalities Act*;

Note this can be done only “if the contravention occurred on all or part of the parcel” and if the RM has strictly complied with the requirements of the Act in terms of giving notice to the owner of the property etc. ... (see generally sections 364 to 366 and 390 re service of the Act).

iii) costs incurred to eliminate an emergency, pursuant to clause 369(2)(b) of *The Municipalities Act*;

Note an “emergency” is defined as “a situation in which there is imminent danger to public safety or of serious harm to property”. In other words, situations where the RM cannot wait for an owner to act. Note it applies “whether or not the emergency involves a contravention of [the] Act or a bylaw”.

iv) costs incurred “with respect to a dangerous animal”, pursuant to clause 369(2)(c) of *The Municipalities Act*;

Note this would apply, for example to a dangerous dog but not, for example, to livestock (given the definition of “animal” in the Act).

v) amounts owing for custom work, pursuant to section 405 of *The Municipalities Act*;

Note it applies to “any land owned by the person for whom the work or service was performed”.

vi) costs incurred to deal with noxious weeds, pursuant to section 29 of *The Noxious Weeds Act*; and

vii) costs incurred to arrange for the destruction of pests, pursuant to section 21 of *The Pest Control Act*.

CIVIL ACTIONS

Introduction

As you will appreciate, there may be situations where you either cannot add an amount owing to the tax roll or you do not want to utilize the enforcement provisions of *The Tax Enforcement Act*.

Examples where you cannot add an amount to the tax roll include:

i) where the contravention of a bylaw did not occur on a parcel of land assessed to the person liable (for example, where it occurred on a road allowance);

ii) where the liability is not one which the legislature has given the municipality authority to add the costs to the tax roll (for example,

expenses paid by a municipality under *The Stray Animals Act* or a claim for compensation for injury done to a municipal road;) or

iii) where the claim is a simple claim in contract or tort (for example, where a contractor defaults and the RM is put to some extra expense).

An example of when the municipality may not want to utilize the enforcement provisions of *The Tax Enforcement Act* even though it can would be where the property is worth less than the amount owing.

In that case, what you can do?

One option is to bring a civil action.

Preliminary Considerations

➤ In What Court Would you Bring the Action?

Two options:

- Provincial Court, Small Claims Division
- Court of Queen's Bench

Former can only be used if the claim is for an amount that does not exceed \$15,000.00.

Also, cannot go in Provincial Court, Small Claims Division for certain claims (for example, claims for libel or slander).

Has a number of advantages:

- i) less costly, both because the court fees are less (maximum \$100.00 to commence an action, as compared to \$200.00 in Queen's Bench) and because procedure simpler;
- ii) do not need to have a lawyer; and

In contrast, in the Court of Queen's Bench, a corporation must be represented by a lawyer, "unless otherwise ordered" (Queen's Bench Rule 10).

- iii) possibility of having the matter dealt with closer to home.

Provincial Court has a total of 81 locations throughout the Province of Saskatchewan, as opposed to only 12 in the Court of Queen's Bench.

➤ **Who should you sue?**

Consideration must be given to who you sue.

Particularly when dealing with contractors, there can sometimes be confusion as to who you were dealing with. If it was a corporation, make

sure you have the correct legal name of the company. [This information can be obtained from the Corporations Branch.] If it was a partnership, make sure you have the correct names of all of the partners. Finally, if it was an individual, make sure you have the full and correct name.

If claim in any way related to ownership of land, check the title and use the name as it appears on the title.

➤ **Even if you obtained a judgment for the payment of money, is there any prospect of obtaining satisfaction of the same?**

No matter how good your claim, there is probably no point in pursuing the claim if the proposed defendant does not have the means to pay the same.

If the defendant does not voluntarily pay, then you have to take steps to enforce the judgment.

It is important to realize that it is not up to the courts to enforce your judgment. There are some court procedures that can be utilized, but it is up to the judgment creditor to use them.

It should also be noted that enforcement remedies are at your expense. While in some instances the costs are added to the amount owing, not all are.

Thus it is important to consider the means of the proposed defendant, before commencing an action.

This requires you to look at things such as the defendant's income, expenses, assets and liabilities.

If the proposed defendant has land, for example, that is helpful as you can have a Writ of Execution issued upon a judgment and register the same against whatever parcels of land he owns.

But the mere fact the proposed defendant has land is no guarantee that you will collect. If there is an existing registered mortgage against the title, it will take priority over your claim.

➤ **By what date must you sue?**

You cannot wait indefinitely to start a court action. Saskatchewan has enacted legislation, called *The Limitations Act*, which requires parties to bring actions within a specified period of time after the claim arises, failing which their claim will be barred.

For most actions, the limitation period is 2 years.

Thus, for example, if a contractor breaches a contract with the RM and the RM sustains a loss as a result, you must commence the action within 2 years from the date of the breach.

The Process/Provincial Court Small Claims Division

I will now speak about the process in the Provincial Court Small Claims Division (I will not address the process in the Court of Queen's Bench as you would need a lawyer to proceed in that court in any event).

Refer to www.sasklawcourts.ca for further information in this regard.

The starting point is to identify clearly what it is you are seeking – if the payment of money, precisely how much – and why it is that you believe that the proposed defendant should pay it.

I recommend you put together a point form of events. This will be helpful in drafting a summary of your claim, as well as in preparing for a trial.

What you next do is draft what is called a Statement of Plaintiff's Claim, which should:

- Identify the parties (the RM is called Plaintiff and the person who you sue is called Defendant).
- Set out the basis for the claim.
- Identify the relief sought.

This then is taken to the Clerk of the Provincial Court closest to where you are (clerks are located at one of 13 Judicial Centres, each of which is in charge of a number of Circuit Points). [See map on website].

The Clerk will review the claim. If any obvious deficiencies, will advise. Otherwise, will refer to a judge (will likely not happen while you are there. Will review and then send to you later.)

I have spoken with some of the clerks. You can mail in a signed Statement of Plaintiff's Claim, along with the applicable fee [minimum \$20. 1% of claim, to a maximum of \$100.00]. If fine, they prepare and have the judge sign a Summons which is then sent to you to arrange for service.

If in doubt, they can send you an Information Package to assist you in putting together a claim. May even draft it for you. Someone has to sign on behalf of the RM however.

Once the Summons is issued, it is then up to you to effect service of a copy of the same, including the Statement of Plaintiffs' Claim, on the defendant.

See sections 8, 15 and 16 of *The Small Claims Act, 1997*, in that regard.

- Must be served on the defendant at least 10 days before the scheduled court date as shown in the Summons.

- Generally, service is effected on an individual personally. With respect to a corporation, best to serve by registered mail to the registered office of the corporation.
- Proof of service is required to be filed with the court, at least if the defendant fails to appear and you want to take out judgment.

The matter will either be set for (i) a Case Management Conference or (ii) a Trial.

Pursuant to section 7.1 of *The Small Claims Act, 1997*, a claim must first go to a Case Management Conference, unless the judge is of the view that a case management conference would not be beneficial”.

Case Management Conference

All parties must attend the case management conference and have authority to settle the claim.

Must bring all relevant documents.

Note it is “without prejudice”, i.e. no communication may be made to the trial judge as to the proceedings at the case management conference, except as disclosed in the “case management conference report” prepared by the judge.

Judge will try to help the parties to resolve their dispute. Failing that, matter would be set down for a trial.

This is a good opportunity to get the dispute resolved so you should go well prepared, and ready to discuss possible resolutions.

Going to Trial

Failing a settlement, you will then need to prepare for a trial.

As was noted earlier, it is helpful if you have put together a chronology of events to help you in this regard.

Steps to prepare:

- Identify facts to be proved.
- Identify how to prove those facts.
 - Witnesses?
 - Documents?

- Prepare outline of questions to be asked of each witness (including notes for cross examination of any witnesses likely to be called on behalf of the defendant).
- Prepare outline for argument.
- Consider whether any statutory or regulatory provisions need to be brought to the attention of the court (or even decided cases).

Note the trial would proceed as follows:

Plaintiffs' Evidence

- Direct and Cross Examination

Defendants' Evidence

- Direct and Cross Examination

Closing Arguments

- Plaintiff, then Defendant.

The judge may render a decision at the conclusion of the trial, however more often the decision is reserved and provided in writing to the parties at a later date.

A Certificate of Judgment is then issued, reflecting the decision of the judge.

The unsuccessful party then has 30 days from the judgment, within which to appeal the judgment. This is done by serving and filing what is called a Notice of Appeal.

To be filed “with the Local Registrar of the Court of Queen’s Bench at the judicial centre nearest to the place where the trial was held” [see www.sasklawcourts.ca for court locations].

In terms of enforcing the judgment, if the defendant does not voluntarily pay the same, the first step is to register the judgment “in the office of the local registrar of the Court of Queen’s Bench at the judicial centre nearest to the place where the trial was held”. Note there is a fee - \$10.00 I believe. Cannot be enforced until the appeal period has expired.