

Debt Recovery Regulation Unit

Unité de la réglementation du
recouvrement des dettes

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Registrar of Collection Agencies

27 October 2008

To Collection Agencies per the attached list

Re: Use of "draft" statements of claim/ lawyers letters

I wish to address two issues with you, as the reference line would suggest. The first is the practice of including a "draft" statement of claim with demand letters; the second is the sending of demand letters purportedly from lawyers without reference to the collection agency. I have received complaints about these practices from both debtors and collection agencies.

The first issue is that of including "draft" statements of claim with demand letters. I am not going to cloud this issue dealing with questions like whether the agency has the authority from its client to sue, or whether the limitation period for commencing an action has passed. Those questions go to the propriety of commencing an action not the propriety of sending a "draft" statement of claim to a debtor.

In my mind there can be no other reason to send a "draft" statement of claim than in the hope that it will lend more credence to the agency's assertion that failure to pay may result in the commencement of an action and therefore elicit payment. The practice trades on the expectation that debtors will be unknowledgeable about court process and interpret the "draft" statement of claim as a greater commitment to pursuing the matter in court than actually exists; it relies on debtors not recognizing that the document enclosed with the demand letter is little more than boiler plate with little investment in time and thought. In my opinion, if this was not the case agencies would simply threaten to sue if payment was not received, and issue and serve a statement of claim if payment was not forthcoming. Accordingly I believe the practice of enclosing a "draft" statement of claim is both deceitful and misleading.

Subsection 2 of section 21 of the *Collection Agencies Act* provides me with the authority to order that letters, forms and the like that I believe are misleading or deceitful to not be used. This is not an order, but is advice that I find the practice objectionable for the reasons set out and therefore require it to stop. Further complaints respecting this matter will result in an order directed to the agency involved.

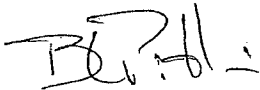
I would also draw your attention to the provisions of the *Debt Collectors Act*, RSO 1990, Chapter D4. which creates the offence of using imitations of court forms. I would argue that the provision is applicable to the circumstance discussed here. Irrespective of whether you agree, I think the provision is instructive of a public policy that frowns on the use of court forms for other than their intention; the actual commencement and prosecution of an action.

The second matter is that of demand letters sent by lawyers retained by collection agencies. In the samples of the letters I have received, the lawyer fails to indicate by whom they have been retained, but simply state that a debt is owed to a particular creditor. The letter then goes on to speak of a statement of claim having been drafted and that an action may be commenced if payment is not received, in some instances "draft" statements of claim are included. For the same reasons as stated above I find this practice to be deceitful and misleading, doubly so because of the inference that a lawyer is involved. Where a lawyer does something on behalf of a collection agency it is no different, as far as I am concerned, than the agency doing it itself. The practice of entering into an arrangement with a lawyer, whether as employee or on a fee for service basis, to send letters without an indication that the agency has retained their services for that purpose and permitting the lawyer to enclose with their letter a "draft" statement of claim is to cease. Failure to heed this advice will result in the issue of an order and the taking of such enforcement measures as necessary to obtain compliance.

I am aware that the use of "draft" statements of claim was common in the past and thought that it was relegated to the past. Unfortunately that does not seem to be the case and consequently this letter. So that everyone is on an equal footing you now have my position on the questions and my expectation. If you are an agency that indulges in either of the practices, I ask that you cease and no more will be said.

Should you wish to discuss this matter, or any other, please don't hesitate to contact me.

Yours truly

A handwritten signature in black ink, appearing to read "B. Pitkin".

Brian Pitkin, CD
Registrar