



# Disputes and Litigation: Case Study

Claim for debt recovery with little substantive legal work required

Current to July 2021

## The Facts



A foreign company retained you to commence a debt recovery claim for \$20,000 against a company located in the same jurisdiction as your firm. Your main area of practice is workers' compensation. At the time, you were busy with several large files, but because the matter seemed straightforward you decided to take it on. A search verified the identity of the debtor company as a registered corporation, but it was not clear whether it had any assets in the jurisdiction. You told the client, but the client did not seem concerned and instructed you to proceed with the claim.

After an initial phone call with you, the client communicated only by email. You asked the client to send you documents to support the debt claim. The client sent a scanned copy of an invoice marked "unpaid" by email. The defendant company did not contest the claim and a default judgment was entered. You served the default judgment on the defendant company and a demand letter explaining how to make payment. The defendant company responded by immediately transferring the sum into your firm's trust account.

**NOTE:** While the legal services described in this case study are outside of the paralegal scope of practice, the red flags and best practice recommendations apply, with appropriate modifications, to the provision of legal services by paralegals.

## Red Flags



-  Legal Services sought by client are outside your usual practice area
-  Foreign company without an obvious connection to the place of litigation
-  Defendant company with no apparent assets in the jurisdiction
-  Limited documentation on the nature of the debt underlying the claim
-  Defendant does not contest default judgment
-  Defendant pays the amount with little debt recovery work required

## What Should You Have Done?



It may be difficult to establish whether one is dealing with fictitious claims, but you must be alert to the possibility of fraud, money laundering, terrorist financing, or other illegal activity where matters seem to be proceeding too smoothly.

In this scenario, you should have:

- **Proceeded with caution in accepting a matter outside your usual area of practice.**
- **Investigated facts and ascertained client objectives.** You should have been alerted by the client's lack of concern about the defendant appearing to have no assets in the jurisdiction and the ease with which the litigation was settled. In such a situation, you should have made reasonable efforts to obtain information about the client and the objectives of the retainer (Commentary [3], r. 3.2-7 of the [Rules of Professional Conduct](#); r. 3.02(5) of the [Paralegal Rules of Conduct](#); ss. 4-6 of Guideline 7, of the [Paralegal Professional Conduct Guidelines](#)).
- **Identified and managed risks.** Particularly where there are other red flags present, you should consider the risks associated with receiving a payment from a third party directly into your trust account. You might consider, for example, requesting that the third party make payment to your client directly or, at minimum, distributing settlement funds in a way that does not use your trust account as a vehicle for the funds transfer.

## Supports and Resources



- **Practice Management Helpline:** Lawyers or paralegals who have questions about their professional obligations relating to client identification and verification, fraud, money laundering, terrorist financing, or other illegal activity may wish to contact the Practice Management Helpline.

