

Taxpayers' Ombudsman

Independent + Objective = Fair

Fair Warning

An examination into service issues
related to legal warnings issued by
the Canada Revenue Agency during
debt collection procedures



Government
of Canada

Gouvernement
du Canada

Canada

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Taxpayer Bill of Rights

1. You have the right to receive entitlements and to pay no more and no less than what is required by law.
2. You have the right to service in both official languages.
3. You have the right to privacy and confidentiality.
4. You have the right to a formal review and a subsequent appeal.
5. **You have the right to be treated professionally, courteously, and fairly.***
6. **You have the right to complete, accurate, clear, and timely information.***
7. You have the right, unless otherwise provided by law, not to pay income tax amounts in dispute before you have had an impartial review.
8. You have the right to have the law applied consistently.
9. **You have the right to lodge a service complaint and to be provided with an explanation of our findings.***
10. **You have the right to have the costs of compliance taken into account when administering tax legislation.***
11. **You have the right to expect us to be accountable.***
12. You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances.
13. **You have the right to expect us to publish our service standards and report annually.***
14. **You have the right to expect us to warn you about questionable tax schemes in a timely manner.***
15. **You have the right to be represented by a person of your choice.***
16. You have the right to lodge a service complaint and request a formal review without fear of reprisal.

* Service rights upheld by the Taxpayers' Ombudsman

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The Role of the Taxpayers' Ombudsman

- 1 The position of Taxpayers' Ombudsman (the Ombudsman) was created to support the government priorities of stronger democratic institutions, increased transparency within institutions, and the fair treatment of all Canadians. As an independent and impartial officer, the Ombudsman handles complaints about the services provided to taxpayers by the Canada Revenue Agency (CRA).
- 2 As outlined in the *Order in Council P.C. 2007-0828*, the Ombudsman's mandate is to assist, advise, and inform the Minister of National Revenue (the Minister) about any matter relating to services provided to taxpayers by the CRA.
- 3 As part of this mandate, the Ombudsman has the power to address any request for a review of a service matter or a matter arising from the application of articles 5, 6, 9, 10, 11, 13, 14, and 15 of the Taxpayer Bill of Rights. These matters are reviewed at the request of the Minister, on receipt of a complaint from a taxpayer or their representative, or on the Ombudsman's own initiative.
- 4 The Ombudsman also examines systemic service issues that may negatively affect a large number of taxpayers or a segment of the population. The findings of systemic examinations are reported to the Minister, and where necessary, include recommendations for improvements to service. The Ombudsman facilitates access for taxpayers to the proper redress mechanisms within the CRA to address service matters, and provides information to taxpayers about the mandate of the Ombudsman.

"I thought everything was going fine."

– A taxpayer



Imagine waking up on Monday morning to find your bank account cleared out and frozen by the CRA. You are unable to run your small business, and must lay off your staff, whose pay cheques have all bounced. You do have a debt with the CRA, but you thought you had been making your payments according to a payment plan, and were never made aware there was any issue on the part of the CRA.

Summary

- 5 My Office received similar complaints from taxpayers, many with a sense of urgency. Some stated the CRA had put a hold on their bank account without any kind of warning. Another taxpayer claimed the CRA “froze a personal bank account with little legal notice.” A common theme in these taxpayer experiences became evident: it was not the case that a debt was in dispute, but it was the perception that no notice had been given prior to the CRA taking legal action.
- 6 The CRA collects and enforces the collection of debts arising under the provisions of several acts, including the: *Income Tax Act; Excise Tax Act; Excise Act, 2001; Softwood Lumber Products Export Charge Act, 2006; and Air Travellers Security Charge Act.*
- 7 The CRA also collects debts under the provisions of several acts, including the: *Employment Insurance Act, Canada Student Loans Act, Canada Student Financial Assistance Act, Canada Pension Plan, Old Age Security Act, and Financial Administration Act.* The authority to collect amounts under these acts has been delegated to the CRA by Employment and Social Development Canada.¹
- 8 As part of its process to collect debts, the CRA provides notice to taxpayers through what is called a legal warning. A legal warning is a statement, given either in writing or verbally, that advises the taxpayer that the CRA can take legal action if the amount is not paid in full or if a binding payment arrangement is not made with the CRA. It is the CRA’s policy to make at least one attempt at giving legal warning to a taxpayer prior to taking legal action.
- 9 On February 21, 2017, our Office launched a systemic examination into service issues arising from the CRA’s debt collection procedures with respect to issuing legal warnings to taxpayers.² These issues relate to complaints received from taxpayers who claimed the CRA took legal action such as freezing their bank account(s) or garnishing their wages without notifying them first. Our examination focused on a review of the CRA’s debt collection policies, processes and procedures with regard to providing legal warning. We also looked at how the CRA communicates a legal warning to taxpayers.
- 10 The majority of amounts owing to the CRA are paid on time; for example, when individual income taxes are considered, approximately 90% of taxpayers pay their taxes on time. This means about 1 in 10 taxpayers do not pay an outstanding balance by the due date. The CRA has operational strategies in place to collect these amounts, including the use of a legal warning.

“CRA has put a hold on my chequing account without advising me of this legal action.”

– A taxpayer



¹ www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2r1-government-programs-collection-policies/ic13-2r1-government-programs-collection-policies.html

² www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/opened-systemic-examinations/examination-of-service-issues-related-to-canada-revenue-agency-collection-procedures-pertaining-to-legal-warnings.html

11 While conducting our research, it was important to understand the taxpayer experience in their debt collection dealings with the CRA. In doing so, we reviewed the language used by the CRA within the range of its debt collection activities. We also examined the CRA's debt collection process to consider the timing of the issuance of the legal warning, as well as for clarity and consistency. Our research included examining the letters and telephone scripts used to communicate with taxpayers.

12 Our Office was able to speak directly with CRA employees tasked with collecting debts administered by the CRA. Two focus groups were held to gain firsthand insight from the CRA's frontline workers. The employees who participated had experience issuing legal warnings as well as taking legal actions to collect debts. The focus groups enabled us to identify opportunities for the CRA to have a more consistent approach in the use of legal warnings in its debt collection process.

13 Our research revealed only a very small number of taxpayers appear to not receive a legal warning prior to the CRA taking legal action to collect a debt. However, although the CRA's template letters and telephone scripts provide notice to taxpayers about their balance and the consequences of not paying, there is a lack of understanding by taxpayers about these consequences. Many taxpayers do not understand what 'legal action' involves, or the seriousness of the specific measures that can be taken.

14 The Taxpayers' Ombudsman makes the following recommendations to address the issues raised during this systemic examination:

1. The Taxpayers' Ombudsman recommends the Canada Revenue Agency change the validity period of the legal warning back to 180 days, from 365 days.
2. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update its legal warning policies to ensure the following information is provided to taxpayers when a legal warning is given:
 - a. An explanation of the meaning of the legal warning;
 - b. The validity period of the legal warning;
 - c. The consequences of non-payment; and
 - d. What legal actions can be taken by the CRA.

A taxpayer is any individual, business, corporation, charity, or other legal entity that is subject to Canadian tax statutes, eligible to receive an amount as a benefit, or provided a service by the CRA.



3. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update the information available to taxpayers, to include:
 - a. An explanation of the collection process, including all levels of collection;
 - b. An explanation of the legal warning policy;
 - c. The validity period of the legal warning;
 - d. An explanation of when the legal warning is not required;
 - e. Exceptions about the renewal of the legal warning;
 - f. The consequences of non-payment;
 - g. When and what legal actions can be taken by the CRA; and
 - h. Definitions of terminology.
4. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update its internal and external messaging to ensure all debt payment and collections related terminology is clearly and consistently defined and used; and information communicated and available to taxpayers is clear, in plain language, complete, and consistent. External messaging includes, but is not limited to, information relayed using: the CRA website, correspondence sent to taxpayers, and procedures/scripts used to inform and direct taxpayers (for example, the Debt Management Call Centre Manual, the National Collections Manual, and the Individual Services Technical Help Guide).
5. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) ensure sufficient training is provided and knowledge is transferred to:
 - a. All CRA employees who may be involved in the collection process so they are able to accurately speak with a taxpayer about the taxpayer's debt and their particular circumstances;
 - b. All CRA employees who provide legal warnings, so they are able to provide an explanation of the meaning of the legal warning, the validity period of the legal warning, the consequences of non-payment of debts with the CRA, including legal actions that can be taken by the CRA; and
 - c. All CRA employees who may be contacted by taxpayers about collection matters (including agents at the individual tax enquiries line) so they are able to provide information to taxpayers about the consequences of non-payment of debts with the CRA, including legal actions that can be taken by the CRA.
6. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) conduct a fulsome review of processes, policies and information regarding payment arrangements, to ensure clear, fulsome, and consistent information and wording in external messaging to taxpayers, manuals, training products, policies, and procedures for CRA employees involved in the collection process and who may be contacted by taxpayers about collection matters.

7. In the course of reviewing its processes, policies and information regarding payment arrangements, the Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) consider:
 - a. Making information available to taxpayers on the parameters and other requirements for a binding payment arrangement;
 - b. The need for clarity and consistency in its terminology and definitions;
 - c. The need for clarity and consistency in its processes; and
 - d. Making information available to taxpayers to explain the differences in the types of arrangements for payment, which are not binding payment arrangements, the consequences for non-payment in each situation, and which CRA agents can make binding payment arrangements.
8. The Taxpayers' Ombudsman recommends the Canada Revenue Agency send the payment arrangement confirmation letter to all taxpayers who make a payment arrangement, unless the taxpayer requests not to receive the letter.
9. The Taxpayers' Ombudsman recommends the Canada Revenue Agency regularly review its payment and collection policies and procedures to ensure they align with a service approach consistent with the Taxpayer Bill of Rights.

Introduction

An Overview of the Issue

15 The CRA is responsible for the collection of debts under the provisions of several acts. Debts arising from acts such as the: *Income Tax Act; Excise Tax Act; Excise Act, 2001; Softwood Lumber Products Export Charge Act, 2006; and Air Travellers Security Charge Act* are administered as part of what the CRA refers to as “tax programs”. These include, but are not limited to:

- individual and corporate income tax debts;
- payroll deductions;
- goods and services tax (GST)/harmonized sales tax (HST) remittances; and
- customs, excise, and other levies.

16 The CRA collects debts arising from the *Employment Insurance Act, Canada Student Loans Act, Canada Student Financial Assistance Act, Canada Pension Plan, Old Age Security Act, and Financial Administration Act* through the authority delegated to it by Employment and Social Development Canada. The CRA uses the term “government programs” to differentiate the collection of these debts from the collection of debts under the tax programs. These debts include, but are not limited to:

- defaulted Canada Student Loans;
- Employment Insurance overpayments;
- *Canada Pension Plan* overpayments;
- Old Age Security overpayments; and
- Labour Program receivables.³

17 The CRA can enforce the collection of debts and this enforcement is called legal action. As detailed on the CRA’s website⁴, the following are the legal actions it can take to collect debts:

- **Set-off** – The CRA can issue a statutory set-off and use money owed to a taxpayer by any federal department or agency to apply to a taxpayer’s debt. For example, income tax refunds and GST/HST credit payments can be applied to any taxpayer debt. In addition, federal salaries and pensions, and payments owing to the taxpayer for performing contract work for the government can be used to pay a tax debt.

³ www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2r1-government-programs-collection-policies/ic13-2r1-government-programs-collection-policies.html

⁴ www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-refuse-pay-cooperate-canada-revenue-agency.html

- **Garnishment** – The CRA can contact a third party (for example, a bank, employer or someone who owes money to a taxpayer) with a legal notice called a requirement to pay. The requirement to pay “instructs the third party to send the money to the CRA instead of the ‘tax debtor.’”⁵ The funds will be applied to the taxpayer’s debt.
- **Certifying a debt** – Tax debts and certain government programs debts (for example, employment insurance debts) can be certified in the Federal Court of Canada by the CRA. Other government programs debts (for example, student loans), can be certified in Provincial Court by the CRA. In both cases, the CRA receives a certificate that confirms the amount owing. This has the same force and effect as a court judgment. Once the debt is registered, it can be attached to an asset. In this case the debt is a matter of public record.
- **Seizing and selling assets** – The CRA can seize and sell assets and property. If any costs are incurred (for example, advertising the property or use of court officers) the taxpayer will be responsible for paying these fees.
- **Holding another party jointly and severally responsible for the debt** – The CRA may hold another party accountable for the taxpayer’s tax debt. In the case of a corporation, for example, directors of that corporation can be held responsible for the company’s GST/HST tax debt.

18 The CRA does not automatically resort to legal action to collect and there are opportunities for taxpayers to voluntarily address their debt. In most instances, taxpayers receive an initial notice that the debt exists, a subsequent notice that it is outstanding, contact by telephone, and in some cases, separate contact by a CRA Collections Officer. When these attempts to resolve the situation fail and there are no other statutory limitations, the CRA can initiate legal action.⁶

19 It is the CRA’s policy to communicate a legal warning to taxpayers prior to taking legal action. The CRA states that a legal warning is the CRA notifying a taxpayer that legal action may be taken if they do not pay their debt in compliance with the collection process. While the CRA has the authority to collect debts, service issues may arise if no legal warning is given, if it is not thoroughly explained or properly understood, or if there is a perception a legal warning was not given.

Scope of our Examination

20 It is within the Ombudsman’s mandate to review legislation and policy when these relate to service matters (for example, those aspects affecting the CRA’s compliance with taxpayer rights outlined in the Taxpayer Bill of Rights).⁷ Since the CRA provides legal warnings and takes legal actions to collect debts, we reviewed the corresponding legislation and policy instruments that are the foundation of those actions.

5 www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/questions-answers-on-requirement-pay.html

6 Statutory limitations are based on the specific governing Acts of the debt in question and may include a restriction on when legal action can be taken, or the type of legal action that can be taken.

7 www.canada.ca/en/taxpayers-ombudsman/corporate/about-us/order-council.html

- 21 Our examination also focused on whether or not the CRA's messaging and wording is clear when agents provide a legal warning, and whether CRA agents are consistent in how they deliver legal warnings. We also examined the timing of the legal warning; that is, when it is communicated to taxpayers during the CRA's debt collection process (collection process).
- 22 Of the eight rights in the Taxpayer Bill of Rights that are specifically named in the Ombudsman's mandate, the rights most relevant to this systemic examination are:
 - the right to be treated professionally, courteously, and fairly (Article 5);
 - the right to complete, accurate, clear, and timely information (Article 6); and
 - the right to expect the CRA to be accountable (Article 11).
- 23 These rights were considered in every aspect of our examination and analysis to determine whether they were being upheld by the CRA.

Analysis

Review of Taxpayer Service Complaints

24 Our Office received complaints from taxpayers who alleged the CRA had taken legal action against them regarding a debt, either by freezing their bank account(s) or garnishing their wages, without notifying them. In some cases, complainants said the CRA had taken legal action even when they were making payments toward their debt that they thought were sufficient for the CRA.

25 Many of these taxpayers were surprised by the severity of the measures the CRA can take to recover debts without providing, what they perceive to be, adequate notice or warning. For example, one taxpayer stated “freezing bank accounts is a very serious action to take without properly warning me.”

26 In one instance, a taxpayer who filed a complaint with our Office said their employer received a legal notice from the CRA advising of a requirement to garnish their wages and to direct the funds to the CRA. The taxpayer stated the CRA took this action without notice. This taxpayer indicated the outstanding balance was under review by one area of the CRA, and the acknowledgment letter received from this area only advised the balance would continue to accrue interest, with no mention made of any legal action. The same taxpayer said they never received a legal warning letter from the CRA and was concerned that the CRA does not verify such letters have been received by the taxpayer.

Tax programs debt includes:

- *Individual income tax debts*
- *Unpaid payroll deductions*
- *Corporation income tax debts*
- *Unpaid GST/HST remittances*

Government programs debt includes:

- *Defaulted Canada Student Loans*
- *Employment Insurance overpayments and penalties*
- *Canada Pension Plan overpayments*
- *Old Age Security overpayments*

27 Another taxpayer claimed not to have received a legal warning, whether verbally or in writing. Our examination found the taxpayer was provided a legal warning but it was given five months prior to the legal action being taken.

28 Our review showed that all of the complaints we received happened after the CRA had initiated legal action. In some cases, our Office referred the taxpayer to the CRA's Service Complaints (CRA-SC) program for follow-up, as this is usually the first step in the service complaints process. However, for those complaints where our Office conducted an examination, we confirmed that in the majority of the cases the CRA was able to show it had provided legal warning to the taxpayer.

- 29 In addition to reviewing complaints received by our Office, we asked the CRA to provide information about complaints it received and processed through the CRA-SC program, on the issue of legal warnings during the 2015-2016, 2016-17 and 2017-2018 fiscal years. The information provided by the CRA showed the vast majority of the taxpayers had been given legal warning by the CRA and therefore, the CRA deemed the complaints to be without merit. The CRA did not follow up and address the root issue of the confusion around the legal warnings that were given by the CRA.
- 30 In reviewing the complaints, it was of interest to our Office that despite the CRA following its own policies and procedures with regard to providing legal warning, there was still confusion and complaints about a lack of legal warning from the CRA. As we continued our examination, our Office wanted to understand the cause of this lack of understanding.

The Canada Revenue Agency's Legal Warning Policy

- 31 The legislation on the basis of which the CRA administers the collection of tax program and government program debt does not stipulate a requirement to provide a legal warning prior to collecting the debt. However, the legislation provides the CRA with the authority to collect debts and use specific legal actions to do so. These provisions form the basis of the CRA's debt collection policies, processes, procedures, and activities.
- 32 The CRA states its practice of giving legal warning stems from the legal precedent requiring notice to be given to make taxpayers aware of a pending action. There is a common-law requirement to provide notice, as outlined in the Supreme Court of Canada decision in *R.E. Lister Ltd. v. Dunlop Canada Ltd* that cites a decision from 1868. The judgment stated "The rule has long been that enunciated in *Massey v. Sladen* (1868): the debtor must be given 'some notice on which he might reasonably expect to be able to act.'" Justice Estey further cites that decision: "It is not necessary to define what time ought to elapse between the notice and the seizure ... but for some notice on which he might reasonably expect to be able to act."⁸
- 33 The CRA's practice of giving legal warning is reflected in its debt collection policies (collection policies). Our Office found two internal documents that serve as the basis to provide legal warning to taxpayers. Both documents include a requirement to make at least one attempt to give a verbal legal warning as well as send one written legal warning letter before taking legal action.
- 34 The policy issued by the CRA's Tax Programs Division states that providing a legal warning is part of "collections contact" where taxpayers are first asked to pay their debt in full. In the event it is not possible for the CRA to obtain a payment in full, the next step is to make a mutually acceptable payment agreement with the taxpayer. The policy states collections officers need to clearly inform taxpayers that, unless a mutually acceptable arrangement is reached, legal action may be taken without further notice. This part of the collections contact is referred to as the legal warning.

⁸ *Ronald Elwyn Lister Ltd. v. Dunlop Canada Ltd.* [1982] 1 S.C.R. 726 at p. 746, citing *Massey v. Sladen* (1868), L.R. 4 Ex. 13, at p. 19.

- 35 We noted, however, the policy for the CRA's government programs does not define what constitutes legal warning and only states one must be given in writing and another attempted verbally.
- 36 Neither policy defines what a legal action is nor references any legal provisions that authorize or define legal action. Both policies state a legal warning remains valid for 365 calendar days and legal action may be taken any time during this period. If no legal action has been taken during the 365 days following the legal warning, the policies state a renewal of the legal warning might be required in some cases, but there is no information on those cases where a renewal is required or not required.
- 37 In September 2016, the CRA changed the validity period of legal warnings from 180 days to 365 days. The CRA advised our Office the change was put in place to reduce costs and the administrative burden of re-issuing a letter or verbally reiterating the legal warning to taxpayers at more frequent intervals.

Collection Restrictions

- 38 The CRA's legal warning policy for tax programs states that a legal warning is valid whether it is given before or after collections restrictions expire. These restrictions, outlined in the *Income Tax Act*, stipulate certain legal actions cannot be taken until after a specific period of time has passed since a notice or notice of assessment has been sent. The first day after this period is called the collection-commencement day.⁹
- 39 While the period of time differs in some instances, the collection-commencement day most relevant to our analysis (tax program debt) is a date 90 days after the day on which the notice of assessment was sent.¹⁰ This collection-commencement day does not prohibit contact with the taxpayer about their debt prior to the expiry of those 90 days. While the CRA is restricted from taking legal action, it can provide a legal warning to taxpayers during this period.
- 40 The CRA's legal warning policy for government programs does not mention any collections restrictions.

The Collection Process

- 41 We reviewed the CRA's collection process and focused our research on the process associated with the collection of tax program debt (tax debt), to illustrate the issues taxpayers may experience with respect to legal warnings. We consider the collection of tax debt to be applicable to most taxpayers and most likely to illustrate the issues under review. Debt arising out of government programs may skip stages or go through the stages of the collection process differently from the collection of tax debt.¹¹ Debts arising from government programs are still subject to the same legal warning policies as tax debt, despite differences in the collection processes. All findings and recommendations made as a result of our analysis of the collection process for tax debt are to be viewed as applicable to the CRA's collection of other debts.

⁹ *Income Tax Act*, s.225.1(1) <https://laws-lois.justice.gc.ca/eng/acts/i-3.3/page-250.html#docCont>

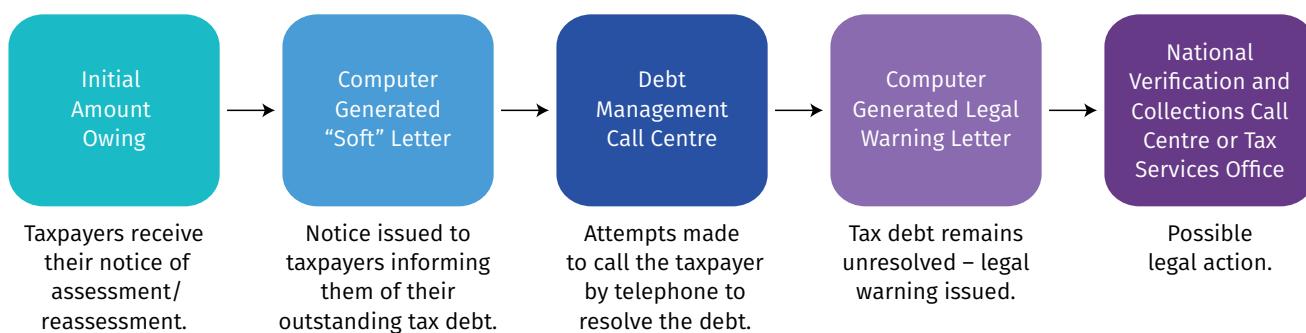
¹⁰ A charity that has been deemed to be liable for tax has a collection commencement day of one-year after the notice of assessment has been sent. [*Income Tax Act*, S. 225.1 (1.1) (b)]

¹¹ For example, the CRA does not issue system generated letters for government programs.

42 According to the CRA, the collection of tax debt moves through various stages. Figure 1 shows the usual collection process for tax debt. It may advance differently based on various factors, such as the taxpayer's specific compliance history with the CRA and/or the amount of their debt. These factors are considered and together determine the "risk score" of a taxpayer with a debt with the CRA. The risk score is the likelihood a debt will remain unpaid in part or in full. While most debt progresses through the stages (from beginning to end), there may be extreme cases where there is a debt at high risk of remaining unpaid. In these cases, the CRA may choose to take legal action immediately and without providing legal warning.¹²

43 We asked the CRA to elaborate on its system strategies and debt thresholds to better understand the effect of a taxpayer's risk score on their experience in the collection process. The CRA declined to provide additional comment and indicated that divulging the information may impact taxpayer compliance.

FIGURE 1. STAGES FOR COLLECTION OF TAX DEBT BY THE CRA.



Initial Amounts Owing

44 A tax debt is usually established following the filing and processing of an income tax return where it has been determined that the amount paid in tax was less than required. Taxpayers are first notified of their tax debt through a notice of assessment issued by the CRA. The CRA's published service standards indicate that a notice of assessment for an individual income tax return will be sent to the taxpayer within two weeks of the CRA receiving a digitally-filed return and within eight weeks of the CRA receiving a paper-filed return.¹³

12 The exception to the CRA's policy on providing legal warning involves getting a Jeopardy Order from the Federal Court on an ex-parte motion. When the Federal Court issues a Jeopardy Order, the CRA has to deliver a copy of the order to the taxpayer within a period of time prescribed by the Court.

13 This timeline is only valid for returns received on or before the filing due date. The CRA aims to meet this standard 95% of the time. www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/service-standards-cra/service-standards-2018-2019.html#lnk1

- 45 According to the CRA, for individuals, any balance is payable by April 30, which is the filing due date for individual income tax returns. For self-employed individuals and their spouses or common-law partners, any balance is payable by April 30, although the filing due date of the return is June 15.¹⁴
- 46 Generally, corporations have to pay income tax in monthly or quarterly instalments. The balance of tax owed for a tax year is due within either two or three months of the end of that tax year, depending on the circumstances of the corporation.
- 47 The notice of assessment/notice of reassessment for payroll and GST/HST assessments have a legal warning printed on them. There may be cases where further legal warning is not provided on those debts if a collections officer identifies a risk of the loss of those funds.

Computer Generated Letter (Soft)

- 48 In the event there is an outstanding balance after 40-65 calendar days have passed from the date the amount became payable, the CRA's policy is to send taxpayers what it refers to internally as a "soft collection" letter. This first letter advises taxpayers of:
 - the amount owing;
 - various payment options;
 - the phone number to call to make a payment arrangement;
 - the fact that interest will continue to accrue;
 - steps to take if they disagree with the amount owing; and
 - the internet address (URL) to consult the CRA's collection policies.
- 49 While the CRA did not provide a formal definition for "soft collection letter", we note it does not contain any text that alludes to legal action, nor does it provide a legal warning.

Contact by Telephone

- 50 If a debt remains unpaid after both the notice of assessment/reassessment and the soft collection letter have been sent, the taxpayer's account is referred (internally) to the collection program. CRA agents in the collection program work actively to collect taxpayer debt.
- 51 Once in the collection program, the debt usually becomes the responsibility of the CRA's Debt Management Call Centre (DMCC). The DMCC's mandate is to establish personal contact with taxpayers through an outbound call centre agent who advises taxpayers of their debts and attempts to make a payment arrangement.

¹⁴ If the payment due date falls on a Saturday, a Sunday, or a public holiday recognized by the CRA, any balance is payable on the next business day. Interest begins to accrue on a balance owing the day after the payment due date. <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/important-dates-individuals/filing-dates-2016-tax-return.html>

- 52 The DMCC agents are required to read certain scripts to the taxpayers over the phone. These scripts include an initial greeting, negotiating a payment arrangement, closing and recapping the conversation, as well as stating a legal warning. The scripts are listed in the Debt Management Call Centre Manual (DMCC Manual). The CRA advised our Office the legal warning scripts must be recited verbatim to taxpayers as they have been vetted by CRA legal officers.
- 53 While the DMCC agents are required to provide a legal warning, they are not authorized to take legal action to collect outstanding tax debt.

Computer Generated Letter (Legal Warning)

- 54 If a taxpayer's debt remains outstanding after contact by the DMCC, the CRA's policy is to send a legal warning letter.
- 55 The legal warning letter is similar to the soft collection letter and contains the same information (for example, the amount owing, various payment options, the phone number to call to make a payment arrangement, etc.). However, it also includes the following statement:

The purpose of this letter is to inform you that if your debt remains unpaid 90 days after the notice of assessment or reassessment was issued and a notice of objection has not been filed, we may take legal action against you at that time. This could include garnishing your income or bank account or using any other means under any applicable statutes or laws to collect the amount owing.

- 56 This letter is different from the soft collection letter in that it explicitly advises taxpayers that legal action may be taken if the debt remains unpaid for 90 days. The letter also references specific legal actions the CRA can use to collect the debt, like garnishing the taxpayer's income or bank account, as well as undefined other means the CRA can use. This letter constitutes a written legal warning.

Tax Services Office (TSO) and the National Verification and Collections Centres (NVCC)

- 57 If a debt remains outstanding after the previous stages, its collection will become the responsibility of a CRA TSO or an NVCC. As part of the CRA's collection program a collections officer will be assigned the file and attempt to collect the outstanding balance.
- 58 Most TSOs and all NVCCs have a Collections division. The CRA advised us that the legal action referenced in legal warnings issued to taxpayers can only be initiated by a collections officer at the TSO or an NVCC.

Legal Warning: The Taxpayer Experience

59 There are several touch points during the collection process where the CRA has the opportunity to communicate information to a taxpayer about their debt, and together these contribute to, and impact, the taxpayer's overall service experience. Our review of these touch points with regard to the CRA's legal warnings enabled us to make the following key observations about the source and timing of legal warnings.

60 Some of these touch points are part of the CRA's collection process and include:

- First (soft) collection letters sent to taxpayers
- Debt Management Call Centre
- Tax Services Office and National Verification and Collection Centres
- Notice of assessment for GST/HST and payroll deduction debts.

61 The DMCC and TSO/NVCC are part of the CRA's collection program and where taxpayer debt is actively collected.

62 Other touch points, that are not part of the collection process, include:

- Contact with agents at the Individual tax enquiries line/call centre
- Contact with auditors who are performing an audit of a taxpayer's account.

LETTERS AND THE DEBT MANAGEMENT CALL CENTRE

63 Taxpayers who contact the CRA's DMCC after receiving the initial soft collection letter (which does not contain a legal warning), will be advised "legal action may be initiated without further notice." This statement appears to contradict CRA's own legal warning policy, which states that legal action cannot be taken until a written legal warning notice is given.

64 For taxpayers who have made a payment arrangement, the CRA's legal warning script does not use the expression "legal action." The telephone script to be read by the DMCC agent only mentions "additional collection measures" as the consequence for non-payment of a payment arrangement. Furthermore, the script does not make reference to the specific actions the CRA may take to recover the debt.

65 We asked the CRA to clarify what is meant by "collection measures". The CRA stated it is intended to be an all-inclusive term used, amongst other things, to advise taxpayers the collection of their debt will be escalated to the TSO/NVCC. This escalation is not explained to the taxpayer.

- 66 Taxpayers who have a debt with the CRA and who have been contacted by an agent at the DMCC about payment of this debt, may interpret this call as a “collection measure”. If a taxpayer makes a payment arrangement that they fail to fulfill it for one reason or another and is no longer in touch with the CRA, no verbal notification of possible legal action is given. Without any further indication from the agent what the “additional collection measures” are, it is not unreasonable for the taxpayer to think this means they will be called by a CRA agent about paying the debt.
- 67 A CRA employee who took part in our focus group recognized that if this verbal warning given by a DMCC agent at the time a payment arrangement is made is the final contact between the CRA and the taxpayer before legal action is taken, a taxpayer might be confused by the CRA’s legal action taken against them.

TAX SERVICES OFFICE AND NATIONAL VERIFICATION AND COLLECTION CENTRES (TSO/NVCC)

- 68 According to the CRA’s policy, collections officers at a TSO/NVCC can take legal action once they have confirmed one verbal legal warning attempt was made by phone and one legal warning letter has been sent. Typically, a taxpayer whose account followed the stages of collection outlined in this report would have received verbal legal warning by an agent at the DMCC and a computer generated legal warning letter.
- 69 We examined the National Collections Manual used by collections officers at the TSO/NVCC and could not find any specific wording or script to be used when giving legal warning to taxpayers. The CRA confirmed there is no set telephone script used by collections officers of the TSO/NVCC.
- 70 We discussed each collections officer’s approach to legal warning during our focus group meetings. While employees agreed they are not required to use a formal script, they also stated the CRA provides training on what constitutes a legal warning. In one instance, an employee mentioned a supervisor had provided suggested scripts. However, when we enquired with other participants about whether this was common practice across TSO/NVCC, it was clear this was an exception. When we asked the collections officers whether having a formal script in their manual would be beneficial, it was generally agreed by the group it would be and one employee stated it would be “ideal.”
- 71 We also asked the TSO/NVCC employees if, during their exchanges with taxpayers, they explain which legal actions could be taken, and learned most employees do not give any (further) explanation unless asked specifically by the taxpayer.
- 72 Solely using a script during these conversations with taxpayers is not advisable, especially at this stage in the collection process. TSO/NVCC collections officers need to ensure they are having a conversation with the taxpayer that takes into consideration, and is responsive, to the taxpayer’s particular situation and debt. They also need to proactively explain the types of legal actions the CRA can take, what may trigger that action (for example, missing a payment) and an explanation about further notice requirements or lack thereof. The CRA providing training on what constitutes a legal warning is the preferable approach. However, it is clear this training needs to be revised to provide TSO/NVCC collections officers with the additional information they need. Providing sample

scripts as examples of what could be discussed in certain situations, but not intended to replace a legal warning with information particular to the taxpayer, would be a beneficial addition to the current training.

INDIVIDUAL TAX ENQUIRIES

- 73 The CRA operates an Individual Tax Enquiries (ITE) telephone line (1-800-959-8281) available to taxpayers who have tax-related questions. The CRA agents working in the call center handle enquiries over a wide range of issues, including those related to debts with the CRA.
- 74 The CRA advised our Office these telephone agents can make payment arrangements with taxpayers. However, only CRA employees in the collection program (such as DMCC agents and TSO/NVCC collections officers) can make what is considered to be a binding payment arrangement. ITE agents are not part of the CRA's collection program. Taxpayers who make a payment arrangement with an ITE agent, and any taxpayer speaking with an ITE agent about their debt, do not receive a legal warning or information on potential legal actions.

AUDIT

- 75 We asked the CRA about taxpayers who have an amount owing after an audit of their account(s) has been completed. The CRA stated auditors may accept payments; however, these payments are not considered a binding payment arrangement as in the collection program. Additionally, since auditors are not part of the collection program, they would not give legal warning to a taxpayer or information on potential legal actions. Administratively, the auditor would simply forward the payment made by a taxpayer to the appropriate regional tax centre for processing.

Payment Arrangements

- 76 Our analysis of the taxpayer experience regarding legal warnings revealed important differences in how the CRA views payment arrangements as compared to how a taxpayer may view these arrangements. When we examined these differences, we noted inconsistencies that can affect the taxpayer service experience. What is important is what the taxpayer understands they have done and what they understand may be the potential actions of the CRA.

Arranging to Pay

- 77 While a taxpayer may refer to the arrangement to pay a debt over time as a payment arrangement, this is not the same as what the CRA defines as a payment arrangement.
- 78 Taxpayers can arrange payments to pay the CRA at any time (for example, by sending post-dated cheques, paying by online banking, or by setting up pre-authorized debits from their bank account). The CRA states taxpayers can even make payments to auditors if the situation applies. However, these payments are based solely on the information provided by the taxpayer and, according to the CRA, are opportunities for the taxpayer to voluntarily address their tax debt.

79 It is possible these voluntary payments may not cover the entire balance of a taxpayer's debt. Furthermore, the payments may occur within a timeframe or at a frequency determined solely by the taxpayer. As a result, these payments may not meet the criteria to be recognized by the CRA as a payment arrangement. This means any taxpayer whose account is with the CRA's collection program can still be subject to legal action while making payments on their debt. The taxpayer may feel they are taking care of their debt in a way that is acceptable to the CRA and that as long as they continue these payments, the CRA will not take further action; however, this may not be case.

80 A taxpayer who contacted our Office discovered this to be the case and stated, "We were making regular payments to our tax account. One day we went to access our bank account and the account was closed and we were locked out of the account."

81 Another scenario that may be confusing and problematic for taxpayers occurs where they contact the CRA to make a payment arrangement, are unaware or are not advised that it does not meet the CRA's criteria to be recognized as a payment arrangement, and shortly thereafter receive a letter from the CRA about paying their debt. The taxpayer may ignore the letter, feeling it was just an overlap in the timing of their payment arrangement, and they had already addressed the payment of the debt such that no legal action will be taken if they continue with the payments. If that letter contained a legal warning, legal action can be taken by the CRA without further notice, resulting in severe consequences without the taxpayer actually realizing the possible consequences.

82 To better understand the issue, our Office examined what is required for a taxpayer to make a payment arrangement that the CRA recognizes, such that it will stop the collection process unless there is a default of the payment arrangement on the part of the taxpayer.

Acceptable and Binding Payment Arrangements

83 In information provided to our Office, the CRA used the words "acceptable" and "binding" to describe payment arrangements. The CRA stated that any CRA employee who interacts with the public can provide general information on how to make a payment arrangement and can accept post-dated cheques. However, these would not constitute an acceptable payment arrangement for the collection program given they were not made with a collections officer.

84 In response to our questions for this examination, the CRA stated only its employees who are part of the collection program can make what is considered to be "an acceptable and binding payment arrangement". However, the CRA also stated ITE agents *can* establish payment arrangements with taxpayers. Since ITE agents are not part of the collection program, we found these statements to be contradictory. We subsequently found the CRA views "acceptable" payment arrangements and "binding" payment arrangements as two different things.

ACCEPTABLE

- 85 We found information on “acceptable” payment arrangements listed in manuals used by ITE, DMCC, and TSO/NVCC agents/officers.
- 86 Through questions asked of the CRA, we determined that a payment arrangement is deemed acceptable based on the dollar value of the debt, the frequency of payments (for example, monthly), and the period of time over which the debt is paid (for example, 12 months). There is a pre-determined maximum period of time over which the debt can be paid and a corresponding minimum dollar amount tied to those payments. Internally, the CRA refers to the combination of these factors as “parameters”. For a payment arrangement to be acceptable, the terms must be within these parameters.
- 87 We also noted the ITE and TSO/NVCC manuals direct agents/officers to a payment calculator tool to help them determine the terms of an acceptable payment arrangement. This payment calculator is also published on the CRA’s website¹⁵ and available for use by taxpayers but the terms, or parameters, are not published alongside this calculator. When our Office tested the online calculator, the payments appeared to correspond to the CRA’s internal parameters for what is considered an acceptable payment arrangement. The calculator does not refer to the terms of the payment arrangement as “acceptable” but rather as “valid”, “satisfactory”, or “possible”. Furthermore, the payment arrangement described is referred to as a “payment scenario”.
- 88 At the DMCC, agents are directed to an internal interest calculator meant to assist them with determining the total value of the debt over time, with interest. This helps the agent determine whether the proposed arrangement is an acceptable payment arrangement.
- 89 If a payment arrangement is acceptable (meets the parameters) agents/officers must document the terms of the arrangement in the CRA’s system, and the system will not accept arrangements outside the parameters.
- 90 For pre-authorized debit arrangements submitted by taxpayers, the system automatically loads the arrangement as an acceptable payment arrangement when it meets the parameters. When post-dated cheques are entered, the system automatically loads the post-dated cheques as an acceptable payment arrangement when they meet the parameters. This means payments submitted voluntarily will be documented on the taxpayer’s account and if they are within the parameters, the scheduled payments are deemed to be an acceptable payment arrangement. A payment arrangement will be documented on the taxpayer’s account in these situations. In these instances, the taxpayer is not advised of the parameters, nor of whether the pre-authorized debits or post-dated cheques are an acceptable payment arrangement.

15 www.cra-arc.gc.ca/ebci/recc/pac/showCalculator

- 91 For those taxpayers deciding to remit payment(s) to an auditor at the conclusion of an audit, payment details are routed to the appropriate regional tax centre for processing. It is possible for the payments to be considered an acceptable payment arrangement if they meet the parameters. In this instance, the payment arrangement will be documented on the taxpayer's account. However, these parameters are not discussed by the auditor with the taxpayer, nor is the taxpayer advised whether the payments are an acceptable payment arrangement. The CRA advised us that auditors do not establish payment arrangements.
- 92 Any taxpayer who voluntarily remits a series of payments (for example, by pre-authorized debits, by post-dated cheques, or through an auditor) that meet the CRA's parameters, or who makes an acceptable payment arrangement with an ITE agent, is not advised there are consequences to missing a payment and are not provided a legal warning. Should a taxpayer miss a payment in any of these situations, their file would continue to the CRA's collection program without their knowledge. In these instances, taxpayers would receive a soft collection letter, a phone call from the DMCC, and a legal warning letter and contact with an officer from the TSO/NVCC.
- 93 Taxpayers who make payment arrangements with the DMCC or TSO/NVCC would receive a legal warning and would therefore be advised that legal action could be initiated if an acceptable payment arrangement is not made or if one is made and a payment is missed. Their experience making an acceptable payment arrangement with a DMCC agent or TSO/NVCC officer is therefore much different than when making one with an ITE agent, an auditor, or through pre-authorized debit, or post-dated cheques.

BINDING

- 94 While we found information on acceptable payment arrangements listed in manuals used by ITE, DMCC, and TSO/NVCC agents/officers, we could not find any reference to "binding" payment arrangements in any of the CRA's manuals.
- 95 As we have noted, taxpayers can make acceptable payment arrangements directly with agents at the ITE, DMCC, auditors, collections officers at the TSO/NVCC, and through pre-authorized debit and post-dated cheques. However, only payment arrangements made with DMCC agents or TSO/NVCC officers are "binding", as these agents and officers are part of the CRA's collection program. The CRA stated:

A binding payment arrangement is an agreement or promise between both parties (the taxpayer and the CRA) until such time as the agreed to amounts are paid or the arrangement is broken. The arrangement usually has an agreed upon timeline, payment amount, payment frequency, and any other conditions the CRA officer may require. If the taxpayer does not meet a deadline or defaults on the payment arrangement, there may be consequences in the form of a legal warning and/or legal action.

96 Our research shows that for all practical purposes, a binding payment arrangement is therefore one that is acceptable, may contain other conditions, and where the taxpayer is provided a legal warning. As only DMCC agents and TSO/NVCC officers can provide a legal warning, only they can enter into binding payment arrangements with taxpayers. Binding payment arrangements will be documented on a taxpayer's account.

97 Since ITE agents and auditors do not attach any conditions to the payment arrangement or provide a legal warning to the taxpayer nor do voluntary options used by taxpayers, the payment arrangements *may* turn out to be viewed by the CRA as acceptable (meets parameters like dollar amount, frequency, etc.) but not binding (no additional conditions and no legal warning provided).

98 The consequences of non-payment when a binding payment arrangement is made is that legal action can be taken by the CRA without further notice as a legal warning has already been given to the taxpayer.

99 Figure 2 shows areas of the CRA where payments/payment arrangements can be made and whether they can be acceptable or binding, whether legal warning is given, and if the payment is documented in the CRA's system.

FIGURE 2.

ARRANGING TO PAY				
Area of the CRA	Acceptable	Binding	Legal Warning Given	Documented on Taxpayer's Account
Debt Management Call Centre (DMCC)*	YES	YES	YES	YES
Tax Services Office (TSO)/ National Verification and Collection Centres (NVCC)*	YES	YES	YES	YES
Individual tax enquiries (ITE)**	YES	NO	NO	YES
Audit**	YES	NO	NO	YES
Other: [Payments processed as pre-authorized debits or post-dated cheques]	YES	NO	NO	YES

* Binding payment arrangements can be made with areas that are part of the CRA's collection program.

** The CRA accepts payments whether or not they meet the threshold for being an acceptable payment arrangement. Payment arrangements made through these mechanisms may be an acceptable payment arrangement if they satisfy established timeframe, frequency, and dollar value criteria. They are then automatically documented on the taxpayer's account as an acceptable payment arrangement.

100 Early in our research we asked the CRA if it sends a letter to the taxpayer when an acceptable payment arrangement is made, outlining the terms. The CRA responded that they only send such letters if requested by the taxpayer. In February 2018, the CRA issued an internal communication announcing the availability of a “new payment arrangement confirmation letter” for collections officers at the TSO/NVCC, and agents at the DMCC. However, these letters (for business and individuals) are not different in a meaningful way, from the previously existing letter. These letters describe the expected date(s) and amounts of the payment(s), how payments can be made, and include a legal warning statement indicating legal actions may be taken if the arrangement is not followed.

101 The new letter is still only sent upon request by the taxpayer, when a payment arrangement is made. When we asked the CRA if agents at the ITE will be able to issue the payment arrangement letter, we were advised they do not have access to the system that generates these letters. A payment arrangement letter is also not sent when taxpayers make payment(s) through an auditor, voluntarily set up a pre-authorized debit agreement, or send post-dated cheques, even if the payments meet the parameters for an acceptable payment arrangement.

102 We did not find information available to taxpayers, or any indication in the manuals of how taxpayers would become aware of this letter in order to know they can request it. Both the National Collections Manual and the DMCC Manual indicate only that a letter should sent if one is requested.

INFORMATION AVAILABLE TO TAXPAYERS ON PAYMENT ARRANGEMENTS

103 Adding to the confusion for taxpayers is that in its external messaging, the CRA does not give sufficient information on what makes a payment arrangement binding. On the CRA’s webpage *If you cannot pay in full now*, the CRA defines a payment arrangement as “an agreement you make with the CRA. It allows you to make smaller payments over time until you have paid your entire debt including applicable interest.”¹⁶ Conditions are then listed. If an individual misses a payment or has unfiled tax returns, the CRA may “cancel the payment arrangement and take action to recover your debt.” The CRA states the same consequences for businesses if they do not maintain a regular payment plan, file all tax returns on time, and stay up to date with their tax obligations. There is no explanation of what the CRA may do to recover the debt nor a link to any webpage that provides such information.

104 On this webpage, the CRA lists three ways for individuals to set up a payment arrangement: pre-authorized debit, TeleArrangement, and speaking with an agent. Two ways are listed for businesses to set up a payment arrangement: pre-authorized debit and speaking with an agent.

¹⁶ www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-cannot-pay-full.html

105 A taxpayer may take any number of actions suggested by the CRA as a payment arrangement and think it will be an agreement such that the CRA will not “take action to recover [their] debt” provided they continue to meet the above-noted listed conditions. However, this will often not be the case. For example:

- If a taxpayer sets up pre-authorized debit and it does not meet the parameters (discussed earlier in this report), it will not be considered an acceptable payment arrangement.
- If a taxpayer chooses the option of speaking with an agent and calls the telephone number provided on the webpage, they will reach the CRA’s automatic collections service. One of the self-serve options provided is to send post-dated cheques to the Sudbury TSO. No information is given on the parameters required for those cheques to be an acceptable payment arrangement; therefore, it may not be an acceptable payment arrangement.

106 In these scenarios the payments are not binding payment arrangements as they were not made with a DMCC agent or TSO/NVCC collections officer. Therefore, even if they are acceptable payment arrangements, given they are not binding payment arrangements, the debt will continue through the collection process. This means that contrary to the information on the webpage, the CRA could “take action to recover [their] debt” even if the taxpayer continues to meet the listed conditions.

107 If the taxpayer has made a payment arrangement that the CRA defines on this webpage as being one such that if the listed conditions continue to be met, the CRA will take no action to recover the debt. Therefore, they may not respond to further communications from the CRA, perceiving them to be as a result of an overlap in the timing of their payment arrangement (if it is received close to the time they make the payment arrangement through a method that does not have them communicating with a DMCC agent or TSO/NVCC collections officer) or a scam.

108 More precise and clearer information on payment arrangements need to be provided to taxpayers, both by CRA employees and in other external communications. What is important for taxpayers is to know what makes a payment arrangement binding, whether the payment arrangement they have entered into is binding, what the implications are if it is or is not binding, what their ongoing obligations are to keep that payment arrangement in good standing, and the consequences of not meeting those ongoing obligations. The information on the CRA’s website is misleading as to the implications of making a payment arrangement and continuing to meet the conditions listed there.

The Language of Collection

109 Our review of the CRA's policies, procedures and manuals with respect to legal warnings in the collection process, as well as the CRA's responses to our requests for information, showed the CRA uses terminology that can be confusing and sometimes appear contradictory. On several occasions we needed clarification from the CRA on terminology it used in its responses to our questions. There are words and expressions used by the CRA that are unique to the collection process, and understanding these is essential to framing the legal warning issue.

110 Our research also enabled us to better understand the taxpayer experience from the perspective of the terminology they may encounter, as it relates to the collection process. Since these expressions have specific meanings and specific consequences, taxpayers can be impacted if they do not understand them. It is the CRA's responsibility to ensure taxpayers understand its terminology.

111 In the previous section on "Payment Arrangements", we outlined the confusion regarding the difference in the meanings of "payment arrangement", "acceptable payment arrangement", and "binding payment arrangement". Following our review of some of the CRA's word usage, we make the following observations.

LEGAL WARNING

112 The expression "legal warning" is not defined in any letter or script used to communicate with taxpayers, nor could we find it defined in the CRA manuals we reviewed.

113 We were able to find one explicit definition of legal warning in one sentence of the Tax Programs collection policy which states that "collections officers need to clearly inform the taxpayer that, unless a mutually acceptable arrangement is reached, legal action may be taken without further notice. This part of the collections contact is referred to as the legal warning." This definition is only available internally and does not form part of training materials or manuals.

114 We could not find any information on the CRA's external website about its policy to provide taxpayers with verbal and written legal warning prior to taking legal action.



COLLECTION MEASURES

115 The expression “collection measures” is used by DMCC agents as part of a specific telephone script that is referenced when a taxpayer makes an acceptable payment arrangement. Taxpayers making a payment arrangement over the telephone are advised verbally that “additional collection measures” could be used if the taxpayer fails to comply with their arrangement. This script is the legal warning and makes the acceptable payment arrangement a binding payment arrangement. However, there is no definition in the script, the DMCC Manual, or information available to taxpayers that defines “collection measures”.

LEGAL ACTION

116 Specific examples of legal actions are provided in some of the CRA’s DMCC telephone scripts, as well as in the legal warning letter sent by the CRA to some taxpayers. In both cases, the CRA refers to “garnishing your income or bank account.”

117 The CRA lists on its website specific legal actions it can take. However, we noted it does not refer to these measures as “legal actions” and rather refers to them as “steps to recover” or “options to recover”.¹⁷

118 It is not in the procedures for DMCC agents to provide information to taxpayers who request a more detailed explanation of legal action. The DMCC Manual states “When debtors ask what type of legal action is involved, tell them the TSO/NVCC agent responsible for the account will give them full explanation.” A taxpayer may not be prepared to make a payment arrangement with a DMCC agent without first knowing further details about the legal action that could be taken. The DMCC agent was not permitted to provide this additional information and must transfer the account to the TSO/NVCC and provide the taxpayer with a telephone number to call the TSO/NVCC, to get the information on legal actions. The CRA stated it asks taxpayers to call the TSO/NVCC because it is responsible for the collection of approximately 16 different types of debts governed by different legislation, and as a result legal actions (associated with these types of debt) are considered complex.

119 Near the completion of writing this report, we discovered that the CRA has changed its procedures so that DMCC agents can provide information to taxpayers on legal actions.

NEXT COLLECTION LEVEL

120 Agents at the DMCC advise taxpayers, who are unwilling or unable to make a payment arrangement, that their account will be referred to the next collection level. While our research indicates this would be the TSO/NVCC, the DMCC Manual offers no description of the various levels of collection. Furthermore, the various levels of collection are not described on the CRA’s website.

¹⁷ www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-refuse-pay-cooperate-canada-revenue-agency.html

The Availability of Information to Taxpayers

121 We reviewed the information related to legal action and legal warning published by the CRA. In addition to our own research, the CRA provided references in its responses to our requests for information.

122 The CRA has published several online Information Circulars relevant to its policies on collections, including one entitled *Tax collections policies*¹⁸ and another entitled *Government programs collection policies*.¹⁹

123 These documents provide an overview of:

- each taxpayer's obligation to pay taxes owing;
- what to do if one cannot pay in full immediately;
- the CRA's legal action options;
- how to object or appeal an amount owing;
- some collection restrictions for tax programs; and
- other information relevant to each specific program.

124 The CRA also has a section on its website called *When you owe money – collections at the CRA*²⁰ which links taxpayers to the following informational pages:

DEBTS THE CANADA REVENUE AGENCY COLLECTS²¹

This page describes the types of debt collected by the CRA, including those related to the CRA's Tax Programs (for example, individual income tax and corporate income tax) as well as those for Government Programs (for example, defaulted student loans and Employment Insurance overpayments).

IF YOU WANT TO PAY IN FULL²²

This page encourages taxpayers to pay their debt in full to avoid interest and legal consequences. It also provides information about different ways to pay (for example, paying online, by mail, or at a financial institution).

¹⁸ www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic98-1r7.html

¹⁹ www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2r1.html

²⁰ www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra.html

²¹ www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/debts-canada-revenue-agency-collects.html

²² www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-want-pay-full.html

IF YOU CANNOT PAY IN FULL NOW²³

This page encourages taxpayers to take action by contacting the CRA right away and indicates that waiting could make the financial or legal consequences worse. It also informs the taxpayer they may be able to make a payment arrangement with the CRA.

IF YOU REFUSE TO PAY OR TO COOPERATE WITH THE CANADA REVENUE AGENCY²⁴

This page lists and describes specific options the CRA can use to recover an outstanding amount, including:

- Set-off;
- Garnishment;
- Certifying the debt;
- Seizing and selling assets; and
- Holding another party jointly responsible.

CONTACT THE CANADA REVENUE AGENCY ABOUT YOUR DEBT²⁵

This page lists telephone numbers taxpayers can use to speak with a collections agent. Options are provided for tax debt for individuals and businesses, as well as for other government programs debts. Also found here are links to the CRA's Tax collection policies and Government programs collections policies.

125 There are two videos listed as part of the series: *Debt Collection at the Canada Revenue Agency (CRA)*²⁶ in the CRA's online multimedia library on the CRA website.

126 The video *Keeping your business on track* is directed toward business owners. It explicitly references that the CRA can take legal actions (for example, seizures) if a debt remains outstanding. The other video, *What to know if you have a debt with the CRA*, encourages taxpayers to contact the CRA to avoid collections actions, and legal and financial consequences. Both videos encourage payment in full and instruct taxpayers to contact the CRA to make a payment arrangement. The webpage containing these videos displays the link to the CRA's collections webpage.

23 www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-cannot-pay-full.html

24 www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/you-refuse-pay-cooperate-canada-revenue-agency.html

25 www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/contact-canada-revenue-agency-about-your-debt.html

26 www.canada.ca/en/revenue-agency/news/cra-multimedia-library/series-debt-collection-canada-revenue-agency-cra.html?clp=cllctns/srs-cllctns-ndvdlis-eng&fmt=mp4

Findings

127 While there are circumstances where a taxpayer would not receive a legal warning (for example, after moving without updating their mailing address or phone number with the CRA), we find these instances would be anomalies. Providing a legal warning to taxpayers is a documented and practiced element of the CRA's operations. The issue lies in the lack of clarity in the information available and provided to taxpayers about the collection process and what is meant by the legal warning provided by the CRA.

128 There are differences in the wording of some of the legal warning scripts in the CRA's DMCC Manual. Some reference "collection measures" and others reference "legal action". Since employees must read the script verbatim and there is no definition in the DMCC Manual for the expression "collection measures", it is likely some taxpayers are not informed about the possible consequences of non-payment. Some taxpayers may be unnecessarily transferred to a TSO/NVCC for the next collection level, when a simple explanation about collection measures and legal action by a DMCC agent would have provided sufficient clarity. Taxpayers who are fully informed of the potential legal actions earlier in the collection process may be more inclined to make a payment arrangement (for example, without the CRA transferring them to the TSO/NVCC).

129 Providing consistent definitions across all collections manuals would help CRA employees in their work to inform taxpayers about the legal actions the CRA can take. It is also important for employees to have a solid knowledge and understanding of the terms and expressions they use within the context of the CRA's collection program. This would help ensure employees in the CRA's collection program provide clear, accurate and consistent information to taxpayers.

The Taxpayer Service Experience

130 Our research also revealed it is possible for two taxpayers who are in identical (debt) situations to have different service experiences with the CRA, depending on the area of the CRA with which they are in contact.

131 For example, we noted if a taxpayer calls the CRA's ITE line, legal warning is not provided when an acceptable payment arrangement is made. The consequences of not paying are not explained. The terms of the acceptable payment arrangement made with the ITE agent are not considered binding from a collections perspective. If the same taxpayer calls the CRA's DMCC to make a payment arrangement, an explicit legal warning is given; the payment arrangement is binding; and the consequences of not paying are explained. The difference between the payment arrangements in these two scenarios would not be clear to the taxpayer.

- 132 Our Office noted it is also possible for a taxpayer to make a payment arrangement with an agent at the CRA's ITE line, but due to the timing of the CRA's letters, the taxpayer also ends up calling the DMCC (by following the direction in the letter). The same taxpayer would have an entirely different service experience when dealing with the two areas of the CRA but this difference in service would remain unexplained. Regardless of its internal operations, the CRA needs to ensure the same level of service is provided to taxpayers, or explain why there may be differences and what to expect.
- 133 These inconsistencies constitute a service gap, one that could cause confusion for taxpayers due to differences in the CRA's approach to debt collection. While the CRA has empowered some employees outside its collection program to discuss payments in general and/or negotiate the terms of a payment arrangement, it is unlikely taxpayers making a payment arrangement with an ITE agent or an auditor, or by pre-authorized debit or post-dated cheques, would be aware the payment arrangement carries less weight, or is less binding. The CRA does not communicate these differences to taxpayers and we find this to be a shortcoming in the CRA's communications.

Clarity and consistency

- 134 Owing a debt to the CRA and the associated implications can be stressful and confusing for taxpayers. Clarity and consistency in information is a taxpayer right. Clarity and consistency in information about the implications of a debt with the CRA and the collection process will help taxpayers in meeting their obligations. The CRA is not consistent in its use of collection-related terminology and this lack of consistency affects the clarity of the CRA's messaging to taxpayers.
- 135 The CRA uses expressions like "steps to recover" or "options to recover" on its website. At the DMCC, some scripts refer to "collection measures" and some to "legal action". The CRA's collection manuals refer to "legal action". The CRA's use of these expressions is confusing. Since all of these terms refer to legal action, it would be beneficial for the CRA to use the same language consistently. It is important that where these expressions are used by the CRA's employees, explicit definitions are made available to CRA employees so a clear explanation can be provided to taxpayers. Consistency of language should also be reflected on the CRA's website and other external facing communications.
- 136 While the CRA advised our Office its legal warning policy is the same for its Tax Programs and Government Programs, we found a difference in the two policies. The legal warning policy under its Tax Programs defines legal warning and states taxpayers are to be clearly informed an acceptable payment arrangement must be reached or "legal action may be taken without further notice". The policy under its Government Programs does not list any elements of what constitutes a legal warning, nor does it include a definition.

137 We could not find an explicit definition of legal warning in any other CRA document; therefore, it is our view the CRA does not communicate to its employees as thoroughly, broadly, or as unequivocally as it should what constitutes a legal warning. The CRA should work to publish explicit definitions for legal warning in its internal documents (for example, collection manuals). This also needs to be reflected in the CRA's external communications.

Transparency: Communicating Consequences

138 The CRA does much to be transparent about the collection of debt and the communication of the consequences of non-payment (legal action). The CRA posts information on its website (including information circulars), includes legal warning statements to taxpayers in certain letters and telephone scripts, and explains and defines actions it will take to collect debt. The CRA also encourages taxpayers to call to arrange payment.

139 However, we find the CRA is not always clear and consistent in these communications to taxpayers, especially about the collection process, where they are in that process, and what that means in their situation. Taxpayers may be unsure what specific measures can be taken and when. For example, when reference is made to a next collection level in a telephone script, taxpayers may be left wondering what levels have come before, and what levels remain (including legal action).

140 Communicating a legal warning at some touch points in the collection process (for example, the legal warning letter or the DMCC) and not others (for example, the soft collection letter) puts an onus on taxpayers to understand a changing message. The taxpayer comes to learn about legal action mid-way through the collection process. The consequences of non-payment or legal action would be clearer to taxpayers if they were communicated consistently by the CRA throughout the entire collection process.

141 When taxpayers make a payment arrangement with an agent at the CRA's ITE line, they are not informed of any consequences of non-payment and no mention is made of legal action. It is our view all CRA employees who discuss payments and payment arrangements with taxpayers should receive relevant training with regard to payments, payment arrangements, the collection process and the consequences of non-payment. These employees should be required to explain to taxpayers the consequences of non-payment that are relevant to the area with which the taxpayer is in contact (for example, ITE vs. DMCC).

142 More precise and clearer information on payment arrangements need to be provided to taxpayers, both by CRA employees and in other external communications. What is important for taxpayers is to know what makes a payment arrangement binding, whether the payment arrangement they have entered into is binding, what the implications are if it is or is not binding, what their ongoing obligations are to keep that payment arrangement in good standing, and the consequences of not meeting those ongoing obligations. The information on the CRA's website is misleading as to the implications of making a payment arrangement and continuing to meet the conditions listed there.

- 143 Legal warning, once given, is valid for 365 days. As this is a long period of time, it is reasonable that some taxpayers would not be mindful of the specific consequences communicated to them up to a year before, especially when those consequences may not be clear. This is important because legal action can take place at any time during that 365 day period, without further notice.
- 144 Since the CRA does not communicate this validity period to taxpayers clearly and openly, it is understandable some taxpayers would be surprised by legal action after a long period of time, especially when they may not have clearly understood things such as the nature of their payment arrangement, or what actions the CRA could take without further notice. The CRA should provide information on the terms and validity period of its legal warning.

Conclusion

145 In its role in collecting debt, the CRA will need to take legal action from time to time. There is a requirement to provide reasonable notice prior to taking legal action – this is a legal warning. The CRA must also respect, meet, and uphold the rights in the Taxpayer Bill of Rights. Together, these form a standard of service that must be followed through the CRA's collection process. The CRA needs to balance the objective of taking enforcement measures when necessary to bring in tax revenue with ensuring its approach aligns with the taxpayer rights outlined in the Taxpayer Bill of Rights.

146 Article 11 of the Taxpayer Bill of Rights states taxpayers have the right to expect the CRA to be accountable. When the CRA takes legal action against a taxpayer, the consequences to the taxpayer are serious and immediate. Prior to this action, the CRA has a responsibility to ensure the information it communicates to taxpayers fosters an awareness of the consequences of non-payment of their debt. Therefore, the collection and payment related information provided in its letters, on its website and via its employees all play a vital role in the CRA's accountability with respect to collection of debt. To ensure accountability, it is important the CRA be mindful of the taxpayer's payment and collection related experience as a whole, throughout all of these taxpayer touch points.

147 Taxpayers also have a right to be treated professionally, courteously, and fairly, and the right to complete, accurate, clear and timely information (Articles 5 and 6 of the Taxpayer Bill of Rights). The CRA must ensure it maximizes its interactions with taxpayers; not only at the outset, but throughout its entire collection process. Working with taxpayers to pay their debt, providing clear information, providing fulsome information specific to the taxpayer's situation, and transparency, help to promote voluntary compliance and trust.

148 Information is a valuable resource, one which is expected by taxpayers, and which is their right. There are opportunities for the CRA to review its messaging and the timing of its messaging to taxpayers. The well-timed delivery of relevant, clear information helps taxpayers make informed decisions. With regard to legal warning, it can also help to manage expectations and in some cases, minimize a taxpayer's perception that they have not received legal warning.

149 An overarching consideration for the CRA in its communications with taxpayers is that information needs to be provided to the taxpayer in a way that cannot be misunderstood. It is not enough to provide details that appear likely to be understood. This applies not only to information in a single document or communication, but applies to the interaction of information in all documents and communications on a topic.

150 It is the CRA's responsibility to ensure taxpayers do not have to gather information in bits and pieces, from different CRA webpages, written communications, or CRA employees. Taxpayers should not have to figure out the meaning of different terms or be left to interpret language used by the CRA in order to understand what is going on in their situation. Taxpayers should have all the relevant information they need, when they need it. The CRA needs to approach this from the perspective of the taxpayer in the situation who needs to understand their obligations and options; not from the perspective of the CRA meeting a requirement to provide a legal warning.

Recommendations

151 To address the issues raised in this report, the Taxpayers' Ombudsman makes the following recommendations to the Minister of National Revenue and the Chair of the Board of Management of the CRA, for both Tax Programs and Government Programs:

1. The Taxpayers' Ombudsman recommends the Canada Revenue Agency change the validity period of the legal warning back to 180 days, from 365 days.
2. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update its legal warning policies to ensure the following information is provided to taxpayers when a legal warning is given:
 - a. An explanation of the meaning of the legal warning;
 - b. The validity period of the legal warning;
 - c. The consequences of non-payment; and
 - d. What legal actions can be taken by the CRA.
3. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update the information available to taxpayers, to include:
 - a. An explanation of the collection process, including all levels of collection;
 - b. An explanation of the legal warning policy;
 - c. The validity period of the legal warning;
 - d. An explanation of when the legal warning is not required;
 - e. Exceptions about the renewal of the legal warning;
 - f. The consequences of non-payment;
 - g. When and what legal actions can be taken by the CRA; and
 - h. Definitions of terminology.
4. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) update its internal and external messaging to ensure all debt payment and collections related terminology is clearly and consistently defined and used; and information communicated and available to taxpayers is clear, in plain language, complete, and consistent. External messaging includes, but is not limited to, information relayed using: the CRA website, correspondence sent to taxpayers, and procedures/scripts used to inform and direct taxpayers (for example, the Debt Management Call Centre Manual, the National Collections Manual, and the Individual Services Technical Help Guide (ISTHG), etc.).

5. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) ensure sufficient training is provided and knowledge is transferred to:
 - a. All CRA employees who may be involved in the collection process so they are able to accurately speak with a taxpayer about the taxpayer's debt and their particular circumstances;
 - b. All CRA employees who provide legal warnings, so they are able to provide an explanation of the meaning of the legal warning, the validity period of the legal warning, the consequences of non-payment of debts with the CRA, including legal actions that can be taken by the CRA; and
 - c. All CRA employees who may be contacted by taxpayers about collection matters (including agents at the individual tax enquiries line) so they are able to provide information to taxpayers about the consequences of non-payment of debts with the CRA, including legal actions that can be taken by the CRA.
6. The Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) conduct a fulsome review of processes, policies and information regarding payment arrangements, to ensure clear, fulsome, and consistent information and wording in external messaging to taxpayers, manuals, training products, policies, and procedures for CRA employees involved in the collection process and who may be contacted by taxpayers about collection matters.
7. In the course of reviewing its processes, policies and information regarding payment arrangements, the Taxpayers' Ombudsman recommends the Canada Revenue Agency (CRA) consider:
 - a. Making information available to taxpayers on the parameters and other requirements for a binding payment arrangement;
 - b. The need for clarity and consistency in its terminology and definitions;
 - c. The need for clarity and consistency in its processes; and
 - d. Making information available to taxpayers to explain the differences in the types of arrangements for payment, which are not binding payment arrangements, the consequences for non-payment in each situation, and which CRA agents can make binding payment arrangements.
8. The Taxpayers' Ombudsman recommends the Canada Revenue Agency send the payment arrangement confirmation letter to all taxpayers who make a payment arrangement, unless the taxpayer requests not to receive the letter.
9. The Taxpayers' Ombudsman recommends the Canada Revenue Agency regularly review its payment and collection policies and procedures to ensure they align with a service approach consistent with the Taxpayer Bill of Rights.