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Payment Defaults - Understanding Legal Fees in a Credit Agreement

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When you sign a contract, there will usually be a clause where you agree to be liable for legal costs and charges if you default on payments and the matter is handed over to attorneys.

Attorneys cannot charge what they like, but must follow a tariff of charges as set out in the Rules of the Magistrates' Court Act.

1. PARTY AND PARTY COSTS

- Costs are allocated according to a **court tariff**
- These include **NECESSARY expenses** incurred to move the case forward and will not include such costs as casual conversations or providing updates etc
- Costs necessarily incurred in the course of prosecuting or defending a claim
- Tariff A : Claims up to R12,000
- Tariff B : Claims between R12,000 – R50,000
- Tariff C : Claims between R50,000 – R100,000
- The court order will set out who is liable for the costs of the suit. (The successful litigant will be able to recover his legal fees from the unsuccessful litigant)
- Note that these costs belong to the client, and not to the attorney

2. ATTORNEY AND CLIENT COSTS

- Normally punitive
- Also on a **prescribed scale or tariff**
- Will include **ALL costs**, not only necessary costs (eg If one party has arranged for witnesses to be present and the other party is unprepared and calls for a postponement – These costs will be allocated to the party causing the delay)
- These costs are recoverable from the other side where there is a court order to this effect (Have to be in the “prayer” to the pleadings)
- Also belong to the client, not the attorney.

3. ATTORNEY AND OWN CLIENT COSTS

- Courts will not include these costs in any award
- These costs are **not governed according to a tariff** although there are guidelines published by the Law Society.
- The excess must be settled by the client with his attorney
- These belong to the attorney and are costs incurred for services rendered and disbursements made on behalf of the client

Note:

- The judgement debt can only be calculated with reference to the capital amount, plus interest plus outstanding fees /charges
- Collection costs are then added
- 103(5) of the NCA puts a value to this and stipulates that the aggregate of interest, charges and collection costs cannot exceed the amount of the judgement debt

Illustrate:

- Outstanding capital = R4k
- Interest and collection costs to date of judgement = R1k
- Judgement debt = R5k
- Future interest and charges (including legal costs) cannot exceed R5k

According to the NCA, amounts that accrue during the time the consumer is in default may not, in aggregate, exceed the balance of the principal debt.

Under the NCA, *in duplum* is extended to include all charges associated with the recovery of a loan and includes interest, service fees, initiation fees, administration costs and collection costs.

(Note that attorneys maintain that *in duplum* does not include lawyers' fees effectively allowing them to charge defaulters amounts well in excess of the principal amount of the loan).