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Canada

Amicable

Collection Process

Atradius Collections Canada follows a collection process that is professional at all times with the objective to retain relationships between client and debtor whenever possible. Our combination of professional collection representatives teamed with leading technology, comprehensive collection programs and outstanding customer support is very powerful. In order to facilitate a case, we will conduct a thorough investigation and we research, when necessary, public records, consulting credit rating agency records, and land registries.

Disputes

AC Canada's collectors operate carefully, to fully understand cases filed. Where a dispute arises, AC will communicate between client and debtor in an amicable manner acting as an arbitrator to eventually resolve any issues or concerns that may have caused the debtor to stop paying. Our approach is to avoid costly litigation and to act on the best interest of our clients at all times.

LDC

AC Canada will be in direct contact with all debtors/clients whenever possible, however if required, we have LDC contacts throughout Canada to assist in your collection needs.

Interest

The collection of interest and collection costs are not permissible under Canadian law, however if the Terms and Condition of the contractual agreement with the client and debtor is provided with a clause that permits the collection of such interest and costs, it may be added to the case amount. Note that Canada's Criminal Code makes it a crime to set an interest rate of over 60%.

Language

Canada has two official languages; English and French the latter is used mainly in the provinces of Quebec, Manitoba, Ontario and New Brunswick.

Legal Phase

Lawyer debt collection

AC Canada offers you a selected professional network of the most experienced law firms in Canada who specialise in the collection of debt.

Legal system overview

Under the Canadian constitution, commercial law is generally within provincial jurisdiction. There are however, exceptions such as interest, currency, bankruptcy and insolvency, which are governed under federal law. Canada includes ten provinces and three territories which all utilise the common law system that originates in Great Britain.

An exception is Quebec that has a civil law system. The Civil Code of Quebec is based on code Napoleon.

Jurisdiction of Court

Province of British Columbia

Case amount - A case up to 25.000 CAD is handled in the Provincial Court of British Columbia Small Claims Court division.

Cases exceeding 25.000 CAD are handled in the Supreme Court of British Columbia. There are exceptions where a case greater than 25.000 CAD may waive the excess to be represented in small claims court, or a case less than 25.000 CAD that may be represented in the Superior court with the risk of a penalty of not being awarded court costs.

Court Costs - All costs or part of the costs are awarded to the winner of the trial.

Basic requirements for filing

- Documents must be in English
- A claim must be supported by certified documents
- The client needs to appear in court – may be awarded a proxy holder if the debtor permits

Statutes of limitation - The limitation period to sue on a debt in British Columbia is six years from the later date of when the debt was incurred, or when the debt was last recognized

Currency - Carried out in the currency of Canada unless it is made, executed, entered into, done or carried out in the currency of a different country.

Judgement

- Judgement will often be granted verbally at the conclusion of the trial, but may be delayed a few days to several months with very little power to the parties to hasten the process.
- Foreign judgements are generally recognized in the courts of British Columbia
- Judgement limitation is 10 years Enforcement is carried out via a bank account, or with other monies owing to the debtor, seizing assets of value such as motor vehicles or equipment or by the registration of judgement against titles of property.

Prairie Provinces – Alberta, Saskatchewan, Manitoba

Case amount

- A case up to 25.000 CAD in Alberta and 10.000 CAD in Saskatchewan and Manitoba is handled in the Provincial Small claims court
- Cases exceeding the Small Claims court provision will be applied for in the Court of the Queen's Bench in each of the Prairie Provinces. Court Costs

General rule is that the successful party at trial is entitled to the costs against the unsuccessful party.

Basic requirements for filing

- Documents must be in French or English and if they are in another language, they must be translated. Preferred language is English.
- A creditor must have originals of all documents relevant to the dispute. Statutes of limitation
- Saskatchewan and Alberta the general limitation period is two years
- Manitoba the limitation is six years Currency

Security for Costs if the Plaintiff is out of Province is mandatory in Saskatchewan and Manitoba

Canadian currency exclusively converted in accordance with the rules of the court

Judgement - Useful to conduct an examination in aid of execution or have the debtor complete a statutory declarations of assets.
Enforcement tools include: garnishment, seizure of assets or property and appointment of a receiver.

Province of Ontario

Case Amount

- Cases up to 10 000 (small claims court limit is now 25 000) CAD are presented to Small Claims Court. Creditors and Debtors can represent themselves

- Cases over 10.000 CAD (change to over 25 000) are represented in Superior Court
- Cases under 50.000 CAD, summary trial with no pre-trial and are therefore less expensive
- Cases over 50.000 CAD Extensive pre-trial procedures such as examinations for discovery are common. There is opportunity to obtain damaging information about the debtor. It is common to negotiate the Settlement.

Court Costs

The successful party is usually awarded a portion of their legal fees to be paid by the opposing party.

Basic requirement for filing

- Jurisdiction is established in the location of the debtor
- Documents that support the claim
- Security for costs may be required if the plaintiff does not reside in Ontario to cover costs should the debtor be successful.
- It may be required to have translated documents authenticated by a notary certificate.

Statute of Limitation - Collection action must be filed within two years of the date of default or from the date of the last written acknowledgement.

Currency - Judgements are carried out in Canadian Currency.

Judgement - Can be enforced through the examination of the judgement debtor

Seizure and sale of property; garnishment; sale of real estate

Recognition of Foreign Judgements - To enforce a foreign judgement in Ontario, the court will require certified copies of the judgement, the claim and proof of service of both claim and judgement.

Province of Quebec

Case amount

- Cases up to 7.000 CAD can be trialled in Small Claims Court
- A plaintiff must represent themselves
- A plaintiff cannot have more than 5 people employed
- Cases up to 70.000 CAD are trialled in the Quebec Court
- Cases greater than 70.000 CAD are trialled in the Superior Court of Canada

Court Costs

Court costs and expert costs are usually awarded to the successful party but not the legal fees. Attorney fees and administrative charges may be claimed if the contract makes acceptable provision.

Basic requirement for filing

- Documents to support the claim
- Security for costs may be required if the plaintiff does not reside in Quebec to cover costs should the debtor be successful
- Unless proceedings by default, witnesses are necessary. Video conferencing is available
- Although French is the official language, the use of English or French is allowed

Statute of limitation - Statute of limitation for commercial documents is three years after the due date. If payments have been made on account the prescriptive period may be interrupted.

New Brunswick Limitation period is now 2 years.

Currency - All currency is in Canadian dollars. If a foreign currency is alleged in the proceedings, the court will be given evidence of the conversion rate.

Judgement

- The debtor or representative of the debtor may be summoned to be interrogated at court as to its assets.
- All assets can be seized except for personal assets. Remedies can include garnishment of bank accounts or other assets in the hands of third parties.
- Foreign judgements are recognized and governed by the Civil Code of Quebec
- Statute of limitation on a foreign judgement is 10 years.
- At any stage of the proceedings the parties may request a settlement conference

Atlantic Provinces – New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador Jurisdiction of Court

Case amount - Cases are handled in Small claims court

- Up to 25.000 CAD in Nova Scotia
- Up to 8.000 CAD in Prince Edward Island
- Up to 6.000 CAD in Newfoundland and New Brunswick (up to 25 000 handled in small claims court for New Brunswick)
- Up to 5.000 CAD in Labrador Court costs

Legal fees can be recovered as costs along with court fees, witness fees, copying costs etc. Travel costs of the counsel to the place of trial are not generally recoverable, but necessary travel costs of witnesses, including parties, are recoverable

Basic requirements for filing

- Documents to support the claim
- Documents must be in English unless the claim is in New Brunswick where the official language is French and English
- Translated documents must bear an affidavit by an expert in that foreign language Statute of limitation

Statute of limitation for commercial documents is six years from the time the debt arose. This period may be restarted if the cause of action is confirmed by either a written acknowledgement of the cause of action or by partial payment

Currency - The judgement of the court will be expressed in Canadian dollars. If the debt is in another currency, it will be converted to Canadian dollars with the conversion rate as of the date of entering judgement

Judgement

- The creditor may require the judgement debtor to submit to an examination regarding the nature and extent of the debtor's assets.
- All assets can be seized except for personal assets. Remedies can include garnishment of bank accounts or other assets in the hands

of third parties.

- The courts will recognize and enforce foreign judgements if satisfied that the original court had proper jurisdiction.

Insolvencies - Canada

The insolvency process is a legal proceeding that is dealt with under the provisions of the Bankruptcy and Insolvency Act.

This Act is administered by the Office of the Superintendent of Bankruptcy at a federal level. A Trustee in bankruptcy licensed by the Superintendent of Bankruptcy is hired to handle the process of proposals and bankruptcies. Only licensed Trustees can provide bankruptcy services.

There are four main insolvency options:

1. Proposal - An offer is made to creditors who are owed money in an effort to settle the debt. This proposal may or may not be formal.
2. Bankruptcy - The assets of an individual or company are liquidated and the proceeds are given to creditors who are owed money. Some assets are exempt from liquidation, depending on the province. Secured creditors are paid and once all securities are completed, unsecured creditors are paid with the remaining funds and if any, a dividend. A proof of claims must be filed by the creditor within the prescribed timelines given by the Trustee in order to receive any dividend.
3. Receivership – A secured creditor, often a bank or other large creditor represented by receiver, comes in and generally takes control of the assets of the company. Once a complete audit is performed, the company may operate under the receivership or if it is insolvent beyond salvation, the receiver can petition the company into bankruptcy. When a company operates under a Receivership it may ask for the delivery of goods. These orders are protected by the Receivership and will not take part of a possible bankruptcy as they are guaranteed.
4. Company Creditors' Arrangement Act – (CCAA) – A compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them. The court may, on the application in a summary way of the company, of any such creditor or of the Trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs. This process may last several months or even years.

A debtor company in respect of which an order has been made under this Act may not sell or dispose of any of its assets outside the ordinary course of its business unless authorized to do so by Court.

When a debtor company is engaged in proceedings under the CCAA, it is granted a stay out of other proceedings. Secured creditors are unable to act upon their security and other creditors are unable to seek redress from the courts. The reform is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse

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