

CANADA (1)
ISSUES FOR NON-US COLLECTION AGENCIES
AND LAWYERS TO ANSWER:

1. Are there any problems with a US claimant pursuing a claim against a debtor in Canada?

Any foreign claimant is unable to have its debt listed with Canadian credit bureaus until the debtor is sued and the Plaintiff has won its case. This severely limits collections against individual debtors. Additionally, if a foreign claimant has a foreign judgment, it must be domesticated into Canada before it can be acted upon. I will defer to my Canadian legal colleagues to answer expand upon this point.

2. The outstanding invoices are in dollars. Can the claim made in Canadian court proceedings be in dollars?

No. When our firm sues a claim on behalf of a foreign customer, we convert the debt to CAD based upon the Bank of Canada Exchange rate on the day the original transaction occurred. The courts have been fine with this.

3. If there is no contractual right to interest, can interest nonetheless be claimed and if so at what rate?

4. Can agency lawyers in your jurisdiction work upon a contingency fee basis and if so, typically what are the rates?

5. How do court costs compare with the US?

Please see the attached article we published back in the spring 2018.

6. What language would the court proceedings be in and do documents have to be translated?

Everything must be in either English or Quebec French

7. Will witnesses be required to visit your country for depositions in the trial?

8. What are the rules regarding enforcement of a US judgment in your country?

9. What personal liability is there on the officers of a corporation that has issued cheques which have not been honoured?

IF the creditor can prove that the officer knowingly issued a cheque that would not be honoured, then that officer could be prosecuted criminally; however, that is a big **IF**.

10. What liability do officers of the corporation have if the corporation goes into bankruptcy?

None.

11. Do agencies and lawyers operate a trust or client account for monies recovered from a debtor?

In Canada, all licensed agencies must maintain a client's trust account as well as post a client's trust bond.

12. Is this requirement mandatory or voluntary?

In Canada, a licensed agency must have a client's trust account.

13. What fidelity or malpractice insurance do you have?

Priority Credit maintains \$2,000,000 in Professional Liability insurance as well as \$1,000,000 in Fidelity insurance.

CANADA (2)

ISSUES FOR NON-US COLLECTION AGENCIES

AND LAWYERS TO ANSWER:

- 1. Are there any problems with a US claimant pursuing a claim against a debtor in your country?**

A US collection agency may face regulatory issues with Provincial Ministries as they are not licenced to collect debt in any of those provinces. A collector / lawyer can try to get around the Ministries by claiming jurisdiction, but are at risk of fines and regulatory enforcement.

- 2. The outstanding invoices are in dollars. Can the claim made in court proceedings be in dollars?**

Yes. A claim can be made in US dollars.

- 3. If there is no contractual right to interest, can interest nonetheless be claimed and if so at what rate?**

Yes. If interest is not specified in a contract, interest runs at the legislated rate of pre-judgment interest which is posted quarterly. In order to collect on a contracted rate of interest, the interest rate must be stated in annual terms on the contract / invoice.

- 4. Can agency lawyers in your jurisdiction work upon a contingency fee basis and if so, typically what are the rates?**

Yes. Lawyers can work on contingency. We typically charge between 20 – 25% for debt collection and litigation services.

- 5. How do court costs compare with the US?**

I do not know what court costs are in the US and I assume they vary based on region. In Canada, court costs vary based on region and whether the claim is at the Small Claims or Superior Court level.

In Ontario, Small Claims Court is capped at \$25,000. The cost of filing a claim in Ontario Small Claims Court is \$95. Then a claim must be served, which can cost money if a process server is involved. The court costs are pretty limited after that stage. Seeking a default Judgment costs \$55. There may also be additional charges for enforcement proceedings and engaging the Sheriff's office.

In Ontario, filing a claim at Superior Court costs \$220. There are usually additional costs associated with serving the claim. The proceedings often involve motions which are costly. There is also a discovery stage which typically requires that the parties rent court reporter facilities. Mediations are encouraged and often require that the parties retain a mediator and a court reporter facility. A default Judgment is obtained by way of a motion proceeding. Retaining the Sheriff for enforcement will also include court fees.

- 6. What language would the court proceedings be in and do documents have to be translated?**

Court proceedings in Ontario are available in English and French. The vast majority of proceedings are in English and usually a special request has to be made for French. This

is likely the case in most Canadian provinces other than Quebec and some of the other maritime provinces.

7. Will witnesses be required to visit your country for depositions in the trial?

We are able to perform Small Claims settlement conferences as well as depositions by teleconference or videoconference. I expect that at the trial stage a court would strongly prefer that a witness be present at the court.

8. What are the rules regarding enforcement of a US judgment in your country?

US Judgments are enforceable in Canada. The Supreme Court has confirmed this in several cases (i.e. *Saldhana v. Beals*). Some jurisdictions have legislation regarding foreign Judgment registration. The procedure for registering the Judgment will differ in different provinces.

9. What personal liability is there on the offices of a corporation that has issued cheques which have not been honoured?

Issuing a cheque that returns as NSF is technically cheque fraud. You may be able to include a claim in a lawsuit and bring an individual director into the action. Practically, this is not done and you likely would not succeed on such a claim.

In certain industries individual directors are liable for the debts of corporations under legislated Trust provisions. The Ontario Construction Lien Act mandates that parties higher up the construction chain are personally liable for debts owing to sub-contractors as the money is passed on in Trust for the final sub-contractors. Also, the Highway Traffic Act creates personal liability for the individual directors of transportation brokerage companies for remittance of funds from a shipper owing to a carrier (or factoring company that purchased the invoice).

10. What liability do officers of the corporation have if the corporation goes into bankruptcy?

Typically none, unless there is some sort of personal guarantee or obligation to the debt.

11. Do agencies and lawyers operate a trust or client account for monies recovered from a debtor?

Yes.

12. Is this requirement mandatory or voluntary?

If you are taking in funds on behalf of your client it is mandatory. Lawyers Trust Accounts are regulated by the Law Society. Collection Agencies are regulated by Provincial Ministries.

13. What fidelity or malpractice insurance do you have?

We have LawPro (Lawyers Professional Indemnity Company), which is the malpractice insurance provider for lawyers. We also have additional insurance coverage for certain types of potential losses / liabilities in addition to the required LawPro coverage.

BRAZIL

ISSUES FOR NON-US COLLECTION AGENCIES

AND LAWYERS TO ANSWER:

1. Are there any problems with a US claimant pursuing a claim against a debtor in your country?

There is no problem to an international company litigate in Brazil against a local company.

2. The outstanding invoices are in dollars. Can the claim made in court proceedings be in dollars?

Generally, we are used to place the due amount in dollars and with the converted amount into Brazilian Reais.

3. If there is no contractual right to interest, can interest nonetheless be claimed and if so at what rate?

Yes! We are able to charge 1% interest per month.

4. Can agency lawyers in your jurisdiction work upon a contingency fee basis and if so, typically what are the rates?

Basically, we are used to work on a contingency basis to make extra-judicial attempts.

5. If litigation is necessary, an attorney will necessarily propose a retainer plus a success fee. The percentage varies and will be based on the total due amount.

6. How do court costs compare with the US?

Every Brazilian State has a different court cost.

7. What language would the court proceedings be in and do documents have to be translated?

All documents to be translated into Portuguese and to be conducted by a sworn translator. Some documents to be apostilled as well.

8. Will witnesses be required to visit your country for depositions in the trial?

No need to have witnesses to visit the Country for depositions.

9. What are the rules regarding enforcement of a US judgment in your country?

A US judgment must be validated by the Brazilian Superior Court, STJ, before its execution. The judgment cannot have its terms contrary to the local law.

10. What personal liability is there on the officers of a corporation that has issued cheques which have not been honoured?

Before a lawsuit, a creditor may protest the title and the debtor will certainly have difficulties to obtain a new credit due to it. After the protest, a creditor may file with an execution against the debtor with a good chance to succeed in court.

11. What liability do officers of the corporation have if the corporation goes into bankruptcy?

If a creditor proves that the bankruptcy occurred due to a fraud, the officers may suffer a criminal charge against them.

12. Do agencies and lawyers operate a trust or client account for monies recovered from a debtor?

This is not very common in Brazil. The best practice is having the debtors paying the clients directly and according to the invoices' instructions.

13. Is this requirement mandatory or voluntary?

This is voluntary. However and if the option is having the funds to be deposited in a different banking account, the clients will have to issue new documents. This is certainly a very bureaucratic procedure.

14. What fidelity or malpractice insurance do you have?

Attorneys are not obliged to have malpractice insurance.