

Your business is going great guns! You've just been given a large contract which means you'll earn enough to take your family on a nice vacation this year! The customer seemed to be honest, so you had no misgivings when you made the deal.

However, your vacation plans can easily turn into a nightmare if your customer doesn't pay your fees. If that happens, you will need a well-prepared file and a good dose of patience to claim what you're owed.

In the following pages, the *Quebec Bar Foundation* describes easy ways to limit the effects of poor payers. The old saying "an ounce of prevention is worth a pound of cure" really applies here! However, despite the precautions you've taken, bad debts can occur. What should you do? Reading this booklet will help you better understand some of the recourses available to you if you are not paid what you are owed. ■

# your RIGHTS your Business

## Collecting Your Unpaid Accounts

**D**o you know the proverb, "A debt paid is a friend kept"? In business, the same principle applies: debts paid mean good customers. It is therefore very important to negotiate the different terms of your agreement with each of your customers to avoid any misunderstanding which could jeopardize the harmony that should prevail between you.

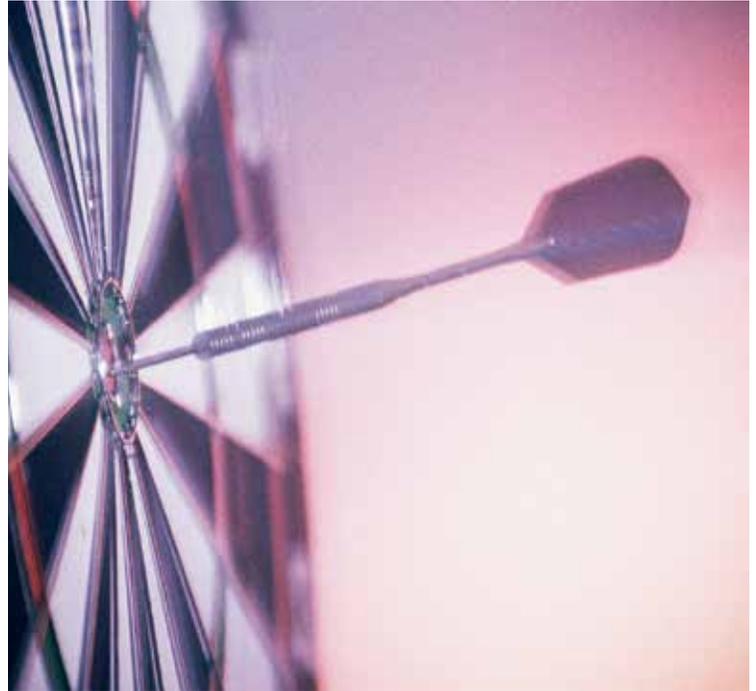
### Don't be taken by surprise

Setting up clear policies for your business respecting invoicing, the payment of goods or fees and the collection of accounts is an effective means of controlling your cash flow and minimizing your bad debts.

In this regard, prepare a list of the minimum terms you would like your customers to agree to. Set up policies based on those terms and show them to your customers when you are negotiating a contract.

### 1. Written agreements

As you well know, words fly, writings remain... Obviously, a written contract will be useful if you find yourself in court but, contrary to popular belief, it is also the best tool to avoid getting yourself into such a situation. Going through the exercise of writing out your agreement, you and your customer will be able to determine whether you have both understood the details of the agreement the same way. To find out



## Targeting justice!

more about contracts, see *Booklet 4 "You and Your Contracts"*.

For example, Phillip is a computer graphics designer. Before beginning a new contract, he has the good habit of always preparing a contract in the form of a checklist. It takes him two minutes to check off the type of work to be performed, indicate the cost of labour and materials, write down the date and have his customer sign. He is even careful to use the same form of document for his billing, which saves him a lot of time transcribing information. Phillip also had the great idea of printing his company's policies on the back of his invoices so customers can find them easily.

### 2. Terms of payment

To avoid the burden of financing large amounts yourself, it is a good idea to take a look at your suppliers' terms of payment before deciding on yours. If your customer pays what he owes you first and then you pay your suppliers, you are less likely to be short of cash.

Your payment policy should meet your needs. It can take several forms and be amended according to the requirements of a particular contract.

Here are a few examples of some terms of payment:

- ✦ the goods sold are payable upon delivery;

- ★ the services rendered are payable within 30 days of the invoice date;
- ★ the services rendered are payable according to progress on the work, such as:
  - **phase 1:** when the documentary research is finished;
  - **phase 2:** when the outline is submitted;
  - **phase 3:** when your final article is submitted;
- ★ payment of a 20% deposit of the amount of the estimate is payable before work begins;
- ★ any delay in payment bears interest at 18% per year.



### 3. Disbursements

By clearly explaining to your customer how you expect to be reimbursed when expenses are incurred during performance of a contract, you will avoid disagreements and unpleasant surprises. Here are a few examples of costs that could be reimbursed to you:

- ★ your automobile travel (ex. 34¢/km);
- ★ your parking costs (ex. reimbursable at cost);
- ★ your long-distance charges (ex. reimbursable at cost);
- ★ your photocopies (ex. 10¢/page);
- ★ your meals (ex. reimbursable at cost up to a maximum of \$40 per day for

travel exceeding 20 kilometres from your place of business);

- ★ your fee to open a file (ex. \$20).

There is no pre-established policy for disbursements. Prepare a list of what you want to be reimbursed and negotiate it with your customer.

### 4. Billing

Often, the invoice is a document which sets out the agreement entered into between your customer and your business. The information on it should therefore be easy to read and understandable. Here are a few suggestions of points to be included in a standard invoice:

- ★ the title (ex. “Invoice”)
- ★ the billing date;
- ★ complete contact information for your business, using your business name;
- ★ the sequential number of the invoice to ensure better follow-up;
- ★ complete contact information for your customer, including the exact name of his business, his address, telephone number, etc. If there is a problem, this information will be useful to show with whom you did business;
- ★ a description of the services rendered or goods sold and delivered, along with the quantity. For services payable by the hour, indicate the number of hours and multiply them by the hourly rate;
- ★ the disbursements incurred during performance of the contract;
- ★ your Quebec sales tax (QST) and goods and services tax (GST) numbers and the amount of tax claimed;

- ★ the sub-total before tax and the total price, including all expenses claimed;
- ★ the payment deadline.

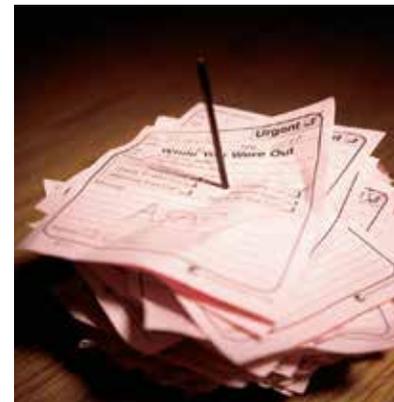
### 5. Reminders

Several situations may require that you send one or more customers statements of account or reminders in order to be paid.

A statement of account is a reminder to the customer asking him to pay the invoice previously sent to him. This is a document which essentially sets out the same information as your invoice. You may wish to change the title from “Invoice” to “Statement of Account” and indicate the date it is issued. You can also add a clearly visible note stating that the account is overdue.

For example, 30 days after sending an invoice to her customer, Marilyn still has not received a cheque. She calls Richard, her customer, to find out whether she will be paid soon. Richard tells her that he did not receive her invoice. Not believing him for a moment, Marilyn decides to send a statement of account. A few days later, a cheque arrives with the words “final payment”. However, the amount of the cheque is much less than what Richard owed her. Should Marilyn cash the cheque? Absolutely not! By cashing a cheque with the words “final payment”, Marilyn would be implicitly accepting the price paid by her customer and waive her right to claim the missing balance.

Two important points are raised in this example. The first one deals with the need to prepare a statement of account in some situations. The second one is what to do when you receive a cheque with the words



“final payment”. Although it may be tempting to cash a cheque for an amount less than what you invoiced, doing so can cost you dearly. It is better to be patient and to send a new statement of account. Be sure to keep your initial invoice and the copy of the statements of account sent previously. They could be important evidence in the case of legal action.

### Nothing's working: you have to sue

Your attempts to prevent the worst have failed. You are seriously considering turning to the legal system to claim what you are owed. Keep in mind that you can settle with the other party out-of-court any time before a judgement is rendered.

### Legal action

Your demand letter didn't do any good! Are you thinking of suing? In theory, you have three years from the date the amount is due to take legal action. For example, if the invoice you sent your customer indicated “payment due within 30 days of the date of the invoice”, the three-year period begins to run at the expiry of those 30 days.

However, it is better to take your legal steps as quickly as possible. That way, the facts will be fresh in your mind and it will be easier to find witnesses to support your version of the facts.

# The DEMAND letter

Some signs are very clear. Your customer does not return your calls or, an even more telling sign, you receive a cheque stamped “Non-sufficient funds”. What should you do?

It may be time to think about sending a demand letter. This is a formal document which informs the recipient that, if he fails to fulfil his contractual obligations within a certain time, legal action may be taken against him.

You can draft a demand letter yourself or ask a lawyer to do it for you. A lawyer charges a relatively small amount to draft such a document and send it to the other party.

The content of a demand letter is very simple. It must contain two main ideas:

## 1. WHY THE DEMAND

It is important to remind the other party what caused you to send a demand letter. There can be many reasons which would make you send a demand letter. You weren't paid for services rendered or the person did not deliver the goods you have been expecting for weeks. Take the trouble to explain the steps you have already taken and indicate what you want the other person to do.

## 2. THE TIME GIVEN AND THE FAILURE TO ACT

Your document must state that, if you do not receive your payment or goods within a specific time, you will have no choice but to claim what is owed to you before the court, without further notice. This can be worded as follows:

*“Should we fail to receive the amount of \$500 at our offices, by certified cheque made payable to Pauline Barker within 10 days of receipt hereof, we will have no choice but to institute legal proceedings against you, without further notice or delay.”*

By adding “Without prejudice” in capital letters on the demand letter, you will be able to change the amount of your claim later or institute other recourses. Don't forget to sign your demand letter and keep a copy in your file.

Send the original to the person in default by registered mail or bailiff, so you'll have proof he received the letter.

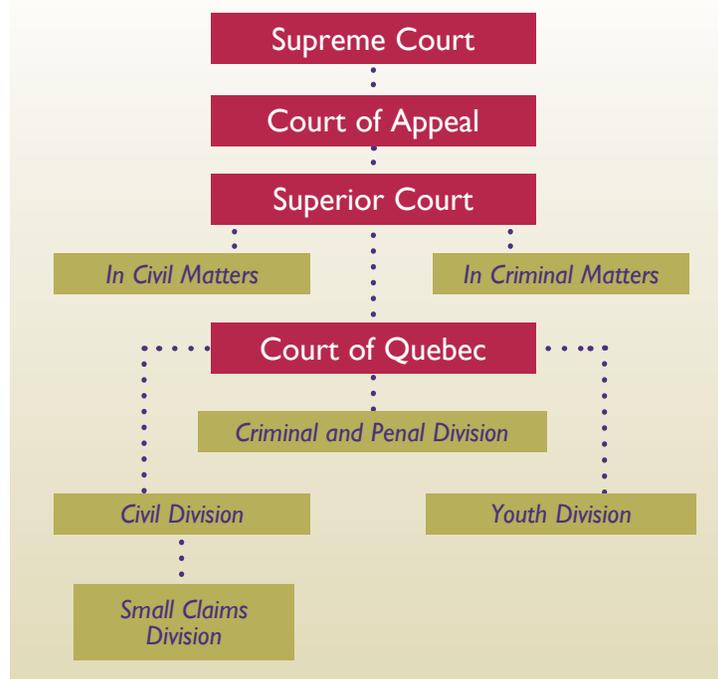


In Quebec, a claim for an unpaid amount for services rendered or for goods sold and delivered may be made before:

- ★ the Small Claims Court (your claim must be \$15,000 or less);
- ★ the Court of Quebec, Civil Division (your claim must be less than \$70,000);
- ★ the Superior Court, in Civil Matters (your claim must be \$70,000 or more).

You may be wondering in what city your action should be taken if you and the person sued have your respective business offices in different cities. In theory, an action is taken in the judicial district where the contract was entered into or in

## The Courts in Quebec



the district where the business place of the person you're suing is located. If you have questions about this, it is always advisable to consult a lawyer.

For example, Joseph owns a painting business in Longueuil. He is claiming \$20,000 from his customer, Manuel. This customer has his place of business in Laval and this is where the contract was signed. The court with authority to hear Joseph's case is the Court of Quebec, at the Laval Courthouse. If the contract had been signed in Montreal, Joseph would also have been able to take his action before the Court of Quebec in the judicial district of Montreal.

The amount of your claim can be reduced if you wish to be heard by Small Claims

Court judge. Many people take advantage of this option, given the lack of formalism before this court and the resulting lower costs.

For example, Peter, who is an architect, is owed \$17,000 by one of his customers. In order to be heard by a Small Claims Court judge, he reduces it to \$15,000. However, Peter could not have divided up his claim to create two or more of them.

### Small Claims Court

The Small Claims Court is not accessible to just anyone. Certain eligibility requirements must be met to be able to appear before it. If you are doing business under your own name, there are two conditions: your claim must be \$15,000 or less and the other party must live or have an office in Quebec.

However, when you represent a company or partnership and that legal person is suing, things are more complicated. Other than the fact that the claim must be \$15,000 or less and the other party must live or have a place of business in Quebec, a legal person can only have its case heard before the Small Claims Court if, during the 12 months preceding its application, it had under its management five or less people

bound to it by an employment agreement.

For example, *Litho Inc.* sold three lithographs to a customer who refused to pay the \$2,500 owed. This small company may argue its case before the Small Claims Court because, for the past 12 months, its staff has been made up of four people: a secretary, two designers and an administrator bound by an employment contract.

Contrary to the other courts, before the Small Claims Court, you cannot be represented by a lawyer. The Small Claims Court is meant to be accessible and informal. You are the only one who can plead your case. For companies and partnerships, an officer or designated representative may present the case to the judge. Expect to spend at least half a day to one full day to prepare your file and another half-day for the hearing.

### 1. Suing for what you're owed

When you take a legal action, you play the role of petitioner. As such, it is up to you to prove your claim. In short, you have to convince the judge that your action is well-founded. It is not enough to tell the court your version of the facts. A judge renders his decision based on the evidence submitted to him as well as the legal rules that apply to your case.

To file a claim in Small Claims Court, you have to fill out a form in which you explain the facts of your situation and indicate the amount of your claim. You also have to sign a document confirming that you have told the truth in describing your version of the facts. It is strongly recommended that you make an appointment with a clerk by telephoning the courthouse in your region.

The clerk will help you prepare your documents and your case. Before meeting him, straighten up your papers and clear your thoughts!

Make sure you bring the following information and documents with you, if they are relevant:

- ✦ the complete name and address of the party being sued;
- ✦ the invoice or contract supporting your claim (copies are accepted when the originals have been given to the other party);
- ✦ the latest statement of account sent to your customer (a copy is accepted under the same circumstances as invoices);
- ✦ a copy of the demand letter with proof of receipt;
- ✦ the original of the cheque with the words "Non-sufficient funds" stamped on it by the financial institution;
- ✦ a complete list of the witnesses you would like to have heard, with their exact, up-to-date contact information.

You will need three copies of the documents you intend to use when your case is heard: the first for your own file, the second one for the judge who will hear your case and the third one for the other party, which you will give him the day of the hearing.

When you go to your appointment with the clerk, don't forget to bring with you the amount it costs to open a file. This fee varies between \$75.25 and \$250, depending on the amount you are claiming and the legal form of your business (self-employed worker, company, partnership). These rates are indexed on January 1<sup>st</sup> every year. You can find

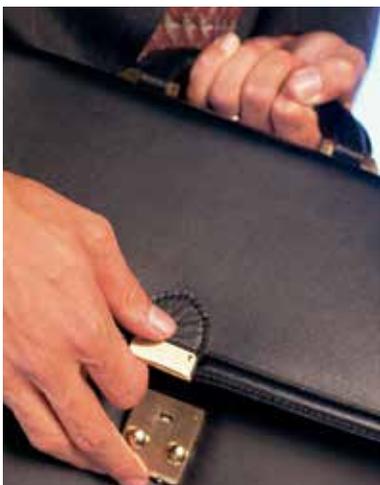
out what they are at the courthouse nearest you. Most places accept various methods of payment: cash, debit card, certified cheque and certain credit cards.

Once this step is completed, it is up to the clerk to let the parties know by mail of the date, place and time of the hearing. The amount of time before you are heard varies from one courthouse to another, but it



is generally around six months.

Since you will meet with the clerk at the courthouse, it might be a good idea to take the opportunity to attend the hearing of one or more cases being presented before a Small Claims Court judge. By becoming familiar with how a trial is conducted, you will be more confident when the time comes for your hearing.



## 2. The big day has arrived: the hearing

There are three golden rules to be followed:

1. Be prepared. Mentally go over the facts of your case and decide on the order in which you will explain them to the judge.
2. Be on time. If you are late, you could lose your case.
3. Dress properly. A judge may refuse to hear someone who is not suitably attired.

When you arrive at the courthouse, find out where your hearing room is. Go to it and check the hearing roll. The roll is the list of cases which will be heard that day. It is normally available in the hearing room. Make sure you are on the list and check what number you are, then wait to be called.

When it is your turn, go to the indicated place in the room. After verifying your last name, first name, age and address, you will be asked to make a solemn

affirmation before the court, i.e. to solemnly affirm that you will tell the truth and nothing but the truth. Once those formalities are over, the judge will hear you. It will be time to explain your version of the facts and give him the documents in support of your case. You will give the documents as you go along. Also give a copy of the same documents to the other party.

If you have witnesses to be heard in support of your claims, be aware that Small Claims Court judges normally ask questions of the witnesses themselves. However, be prepared to intervene.

When you have finished describing your version of the facts, the judge will ask the other party to give his version. It is important not to interrupt the other party or the witnesses when they are speaking.

The judge may hand down his judgement right away or reserve the possibility of handing it down later. If the latter option is chosen, you will receive a written judgement by mail within a few weeks. This decision is final and cannot be appealed before another court. ■



## REMINDER

- ✓ Preventive management of your customer accounts will help you avoid a certain number of bad debts.
- ✓ A demand letter is used to formally advise a person that you intend to sue him if he fails to do something within the reasonable time you give him.
- ✓ A legal action must be submitted to the right court. The jurisdiction of the courts varies depending mainly on the amount of the claim.
- ✓ It is important to prepare your case well before the hearing.
- ✓ A judgement rendered in your favour will allow you to collect what you are owed only if your debtor has the necessary assets to pay you.

### IF YOU NEED HELP

#### THE MAIN COURT OFFICES

Laval: ..... 450-686-5001

Longueuil: ..... 450-646-4067

Montreal: ..... 514-393-2304

Quebec City: ... 418-649-3508

Sherbrooke: ... 819-822-6936

Trois-Rivières: . 819-372-4150

#### **Register of personal and movable real rights**

Tel.: 1-800-465-4949

[www.rdprm.gouv.qc.ca/en/pages/english.html](http://www.rdprm.gouv.qc.ca/en/pages/english.html)

#### NEED A LAWYER?

Referral service

Montreal: [www.barreaudemontreal.qc.ca/en](http://www.barreaudemontreal.qc.ca/en)

Quebec City: [www.barreau.qc.ca/quebec](http://www.barreau.qc.ca/quebec)

Elsewhere in Quebec: [www.barreau.qc.ca/aap](http://www.barreau.qc.ca/aap)



# SEIZURE, *the* ultimate step!

Imagine how discouraged you feel: you spent a lot of energy putting forward your rights and winning your case but you can't collect what you owe because the defendant simply doesn't have the money to pay you. To avoid this unfortunate situation, take the time to assess the risk before taking a legal action.

Even if solvency is not an issue and you have obtained a judgement in your favour, the other party may still refuse to pay you. Upon receiving the decision, the Defendant has 30 days to do what the judgement orders him to do (pay, deliver materials, etc.). If, after this time, the defendant is still in default, you can prepare a proceeding to enforce the judgement and force the person to pay you the amount of money through a seizure. As seizure is a complex procedure, it is recommended that you ask a lawyer to help you. Although a lawyer can't represent you before the Small Claims Court, you can use one to have a judgement rendered by a Small Claims Court judge enforced.

For such a procedure to be effective, it is very important to ensure that the person has property which could be seized. Not all property can be seized. For example, Rita obtained a judgement in her favour ordering Anne, an artist, to pay her \$2,750. Although the 30 days have gone by, Rita still has not been paid. She decides to hire a bailiff to have some of Anne's property seized. In our example, the bailiff cannot seize Anne's computer, because property used for a professional activity is exempt from seizure. Also, Anne must be able to keep a minimum of \$6,000 of furniture. However, her sailboat could be seized, which would allow for the repayment in full of the amount awarded under the judgement and the costs incurred by the seizure.



If Rita had obtained a judgement against the company *GoodArt Inc.*, only property belonging to the company could be seized; Anne's personal property could not be touched.

Avoid unpleasant surprises! You can always check whether property is the subject of a hypothec by consulting the register of personal and movable real rights. This way, you can ensure that a vehicle has not already been given to guarantee a loan, for example. The register can also tell you whether the defendant has reimbursed his entire debt and whether the vehicle is now free of any lien.

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**The information found in this booklet is general and does not constitute a legal opinion.  
If you have specific questions or a legal problem, don't hesitate to consult a lawyer.**