

## **Introduction**

This book is intended to provide a comprehensive, practical guide to help those Canadians who are in the unpleasant position of dealing with collection agencies. My goal is to help the average Canadian who, to a large degree, is not very knowledgeable about collection agencies and options available for handling unsecured debts. This book is based on my professional experience and background, acting almost exclusively on behalf of collection agencies over a 12-year period. From 1994 to 2006 I assisted collection agencies recover tens of millions of dollars from consumers across Canada, working with collection agency owners, senior management, collection supervisors and collectors on almost a daily basis. My experience includes managing a collection agency's legal department, reviewing contracts with creditors, defending collection agencies that were sued by consumers and responding to complaints against agencies brought under human rights legislation and laws regulating collection agencies.

Canada has a large and profitable industry extending credit to consumers. This industry includes credit card issuers, banks, credit unions, finance companies, major retailers, cheque cashing operators, income tax preparation firms, and rent-to-own retailers. These businesses generate healthy profits by extending credit to consumers, sometimes at very high rates of interest which, in some cases, are so high, it could be argued they are unconscionable and government action is warranted to regulate these interest rates.

Consumers are assailed on all sides with incessant advertisements for "must have" goods. They are besieged by tempting offers of unrealistically low "introductory" interest rates on credit cards, and are encouraged by aggressive marketing campaigns to take on more and more debt. It is a never-ending merry-go-round of buying things that is fuelled by billions of dollars in consumer credit. To make matters worse, the credit industry is engaging in a number of questionable lending practices that have long-term negative consequences for consumers. It is little wonder, then, that many consumers find themselves on the receiving end of collection calls.

About two decades ago, the credit industry introduced an era of easy credit, and began aggressively promoting the use of credit among Canadians. Credit card companies solicited customers among those with less ability to pay and less than sterling credit worthiness; college and university students and low-income Canadians. Consumers were encouraged to make only the minimum monthly payments on their credit card balances, and credit card issuers would often increase a consumer's credit card limit without the cardholder's knowledge or consent. The larger the percentage of cardholders who carried a monthly balance the greater a credit card issuer's revenues. During this period the credit industry encouraged Canadian consumers to borrow money using the equity in their homes as collateral to pay for a variety of purchases or to consolidate consumer debt.

Not surprisingly, a society with access to easy credit will have its victims. There were about 80,000 personal bankruptcies in Canada in 2007.<sup>1</sup> In addition, there are thousands more Canadians resorting to consumer proposals and those repaying their debts over several years under debt management plans arranged through credit counselling agencies. Even with the ability to draw on a credit card or a line of credit, a significant number of Canadians are teetering on the edge of financial calamity. According to a 2007 report, one in five Canadians cannot afford an unforeseen expense of \$5,000 and one in ten could not handle an unforeseen expenditure of \$500.<sup>2</sup>

At some point in your life, you, like many others, may encounter problems paying your bills. Whether this is the result of a job loss, marital breakdown, health problems, family illness or some financial setback, the result is inevitably the same: the same credit grantor, who yesterday seduced you with offers of easy credit, today will unleash the full force of a collection agency to hound you to pay your account. So, at a time when you might be dealing with a personal or family crisis, you are also having to deal with calls from collection agencies.

Collectors are trained to attempt to collect payment in full during their first conversation with a consumer. The consumer will typically be told that the debt must be paid in the next few days, and if necessary, the consumer must borrow the money. When making collection calls collectors often have an aggressive edge to their voice and a tone of moral superiority. This is ironic because, as a practical matter, the collector is effectively requesting that the consumer make a voluntary payment and there is usually little, if anything, a collector can do if a consumer fails to pay a debt other than make additional collection calls.

If you do not pay an unsecured debt your creditor's only recourse to recover its money is to sue you. Today collection agencies sue few individuals on behalf of creditors. I would be very surprised if, collectively, collection agencies in Canada sue more than one in 10,000 consumer accounts placed with them for collection. However, this does not stop collection agencies from routinely threatening consumers with legal action. Collectors may often inform a consumer he will be sued if a debt is not paid by a particular date, and it is very common for a collection agency or a lawyer retained by a collection agency to threaten a person with a lawsuit if a debt is not paid by a certain date.

Many consumers receiving collection calls make poor decisions because they are not being proactive and making informed decisions about what is in their best interests given their situation. Unfortunately, many individuals receiving collection calls end up resolving a debt in a manner that is in the best interests of the collection agency or their creditor and not in their best interests. All too often consumers who are receiving collection calls act like a deer caught in a car's headlights, and stop thinking.

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<sup>1</sup> Office of the Superintendent of Bankruptcy, "Annual Statistical Report for the 2007 calendar year", p. 4.

<sup>2</sup> Certified General Accountants Association of Canada, "Where Does the Money Go: The Increasing Reliance on Household Debt in Canada" (2007), p. 96.

Collection agencies collect a significant amount of money by simply hounding people to pay their bills. If you are receiving a large number of collection calls you may feel under siege and psychologically on the defensive. One of the objectives of this book is to assist you to stop, avoid or discourage collection calls. This should make it easier for you to be proactive about your debt situation and make better decisions about how to handle your unsecured debts. This is the focus in Part One of this book, “Stopping, Avoiding, and Discouraging Collection Calls”.

In Part Two of this book, “Five Reasons Why You Might Not Have to Pay an Unsecured Debt”, I explore the many reasons why you might never have to pay a debt a collection agency claims is owing. First of all, you might have a valid defence. In many cases, a consumer may have a good defence and no longer be legally responsible to pay a debt because a limitation period has expired. Even if a consumer does not have a valid defence to a debt at the present time there may be a number of practical reasons why a consumer may never be required to pay a debt. A creditor may not be in a position to prove your debt is owing. Neither your creditor nor its collection agent may be prepared to sue you because of the costs involved and the risk of incurring a financial loss suing you. Even if your creditor were to obtain a judgment against you there is no guarantee your creditor will ever recover any monies from you. Finally, while you might not be in a position today to rely upon the expiry of a limitation period as a defence on your consumer debt you will at some future date if you are not sued.

In Part Three of this book, “Eight Options for Dealing with Your Unsecured Debts”, I review the various options a consumer might be able to use when dealing with one or more unsecured debts. Seven of these options can be described as *debt elimination strategies*. Other than filing for personal bankruptcy, a debt elimination strategy involves resolving a debt by means of payment in full, repaying the debt or a percentage thereof over time, or settling a debt for less than 100 cents on the dollar in exchange for a lump sum payment. It may be possible to settle certain unsecured debts for a lump sum payment of anywhere between five percent and 85% of an outstanding balance. Depending upon which debt elimination strategy a consumer employs the cost of resolving a debt may be anywhere between five percent and 140% of the amount a collection agency is attempting to collect. One of the major advantages of using a debt elimination strategy, other than filing for personal bankruptcy, is that it will have a positive impact on your credit rating and your ability to borrow and the cost of borrowing money in the future.

One of a consumer’s eight options for dealing with unsecured debts is a *legitimate debt avoidance strategy*. This strategy involves declining to pay a particular unsecured debt and crossing your fingers. In the case of a consumer debt you are hoping that the limitation period on your consumer debt expires without you being sued on the debt. In the case of a debt owed to the government you are hoping the government does not successfully sue you, or, in the event it does, that it cannot successfully enforce a judgment against you. If you are successful using this legitimate debt avoidance strategy you will avoid paying your unsecured debt. One of the major disadvantages of successfully using a debt avoidance strategy is its negative impact on your credit rating

and your ability to borrow money over the next few years. A derogatory mark on your credit rating will typically remain there for six years.

Collection agencies in Canada attempt to collect thousands of consumer accounts each workday. Many of these interactions between collection agencies and consumers do not involve unprofessional or unethical conduct on the part of collection agencies. However, some consumers will find themselves in the position of dealing with a collection agency that is acting in an unacceptable manner. If you are going to be able to respond effectively to an unprofessional collection agency then it is very helpful to be able to identify collection agency misconduct and know what potential responses are available to you.

In Part Four, “Dealing with Unprofessional Collection Agencies”, I describe the behavior of collectors which is *criminal* and could warrant laying a criminal charge which might result in a conviction under the *Criminal Code*. This book includes an appendix containing a province-by-province summary of *illegal* conduct by collection agencies and their employees. Part Four also describes the circumstances in which a consumer might be able to successfully sue a collection agency and receive financial compensation. In the 2007 Ontario case of *Paulin v. P.C.M. Collections Ltd.* the Ontario Superior Court of Justice awarded \$440,000 in damages in favour of a consumer against a collection agency and a collector.<sup>3</sup> Part Four also sets out a consumer’s other potential responses to collection agency misconduct. These include making a written complaint to a number of organizations: senior management at a collection agency, to senior management at your creditor, to one or more government regulators, or in some cases telling your story to the media.

I cannot emphasize enough that, when you are dealing with a collection agency, you should always obtain as much information as possible from the collector; including the collector’s name and that of his employer, the name of the creditor, the account number, and the amount of the debt. In addition, if you are making a complaint to senior management at a collection agency, your creditor, or a government regulator your complaint should be in writing. Furthermore, you should retain a copy of your correspondence and be in a position to prove that your correspondence was, in fact, received. To this end, I suggest you use X-Press Post requiring the recipient’s signature, a courier service, or registered mail. Finally, you should keep a copy of all documents you send to a collection agency, as well as all the material you receive from the agency.

In addition to this book, you can benefit from my knowledge of the Canadian collection industry by visiting [www.helpwithcollectioncalls.ca](http://www.helpwithcollectioncalls.ca), the website for my Ontario law practice. This website contains a number of special features including a list of the largest collection agencies in Canada, with office addresses and contact information, a section where consumers’ stories about collection agencies can be reproduced, and a *Who’s Who of the Canadian Collection Industry*, a list of the 1,500 most influential individuals in the Canadian consumer collection industry. Canadian residents can call me on a 900 number listed on my firm’s website and, for a fee, receive advice. I am permitted to provide legal

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<sup>3</sup> 2007 WL 4183695 (Ont. S.C.J.) 2007 CarswellOnt 7667 [*Paulin*].

advice to all Canadian residents with the exception of persons living in Québec and the three territories. In addition, I am permitted to provide practical non-legal advice to all Canadian residents.

This book contains many references to unsecured debts. It is important for you to understand the difference between unsecured and secured debt. Secured debts are those debts where the creditor has some type of collateral in the event of non-payment, the most common type being a mortgage on a house and a lien where a consumer finances the lease or purchase of a car. In contrast, unsecured debts are those debts where the creditor has no collateral in the event of a debtor's default. Virtually all credit cards, most personal loans and lines of credit are unsecured debts. As a general rule, collection agencies only collect unsecured debt from consumers. This book also contains numerous references to major credit grantors. This group includes credit card issuers, chartered banks, finance companies, major retailers, and utilities such as phone companies, cable and internet firms.

I would like to make a few comments about the language used in this book. I use the words "you", "consumer", and "debtor" at different points to describe individuals who are receiving collection calls and past due notices. I also use the term "debt", "file", or "account" to refer to an amount a collection agency claims you owe. I refer to individuals using the masculine pronoun "he" because it is awkward to make constant references to "he or she".

This book contains examples involving consumers and collection agencies that illustrate a specific point drawn from my experience. In no case do these examples depict an actual event, and in no case are any of the companies or individuals mentioned real; any perceived resemblance is purely accidental.

A collection agency may have access to tremendous resources when it comes to collecting an account from you. Some collection agencies are able to take advantage of state-of-the-art call centres, often employing hundreds of collectors, utilizing sophisticated computer software, hardware, and telephone equipment. The collector calling you will likely have gone through a training program, may have been employed for several years as a collector, and may be in a position to draw on the collective wisdom of hundreds of years worth of experience from senior management at his employer.

In contrast, the typical consumer receiving collection calls will have access to few, if any, resources. This book is intended to be a key source of information for individuals who are receiving demands for payment from collection agencies. In terms of practical information about debt collection, one of the goals of this book is to level the playing field, which in the past has been tilted heavily in favour of collection agencies.

In this book I will share with you my insights gained from working as a collection lawyer on behalf of collection agencies for 12 years. After reading this book you should be in a better position dealing with collection agencies. You should also be more knowledgeable about your options in terms of how to handle your unsecured debts. Ideally, after reading

this book you should be able to make better decisions concerning your particular debt situation. This might mean that you will be able to save thousands of dollars because you are able to avoid paying one or more unsecured debts and/or eliminate some of your debts for significantly less than the amount the collection agency originally sought. I imagine that most people receiving collection calls who read this book will obtain some peace of mind. I wish you every success in dealing with collection agencies and making good decisions concerning your unsecured debts.

# A How-to Guide for Dealing with Collection Agencies in Canada

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