PRAIRIE PROVINCES

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1. LEGAL SYSTEM OVERVIEW

Canada is divided into a series of provinces and territories. The provinces and territories each maintain a certain jurisdiction in the area of administration of justice. Therefore, there are differences between the legal systems of each province and territory.

The provinces of Manitoba, Saskatchewan and Alberta comprise what is known as Canada's Prairie region (the "Prairie Provinces"). The relationship between the Government of Canada and the Prairie provinces is defined by a federal system in which authority is divided between the federal and provincial levels of government. The constitution accords jurisdiction to the provinces over contractual matters, including debt collection.

Having been established in 1870 (Manitoba) and 1905 (Saskatchewan and Alberta), the Prairie provinces are relatively young legal jurisdictions. However, their legal systems are informed by centuries of common-law tradition. As a result, laws in Manitoba, Saskatchewan and Alberta consist not only of statutes enacted by the Government of Canada and the three provinces, but also of legal precedent and judicial interpretation of statutes in the form of case law.

Although the Prairie provinces are separate political units, they have much in common in their respective laws on debt collection. While there are strong similarities, it should also be noted that commercial laws in the three provinces are not always identical. Creditors or their representatives are therefore advised to consult an authority specific to the province in which they are interested prior to commencing any action.

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I gratefully acknowledge the very capable assistance of Lindsay Mulholland, Associate Lawyer at D'Arcy & Deacon LLP in connection with the preparation of the chapter.

2. THIRD-PARTY COLLECTION

Third party collection services are widely available in the Prairie provinces, and are commonly offered by lawyers, bailiffs and collection agents. The role of the third party will be contingent on when, in the debt collection process, they are introduced and what the parties have included in their contract for service. Each type of third party service provider offers a distinct set of skills and knowledge and relieves the creditor of the burden of debt collection. The majority of collection work in the Prairie provinces is dealt with at the initial stages either internally by an employee of the creditor or externally by a collection agent.

Often the best preliminary course of action is calling the debtor on the phone. This can either be done personally or by a third party, such as your lawyer or collection agent. If phoning the debtor does not result in satisfaction of the debt or a written agreement stipulating a payment schedule, if a creditor has not already done so, they may want to hire a collection agency.

A demand letter should be sent to the debtor demanding payment of the debt. The letter should state that if satisfactory arrangements are not made within a certain period of time the next step will be court action. Creditors have the option of either drafting their own demand letter or hiring a lawyer. Clearly, the lawyer is a more expensive option; however, letters from lawyers can be more effective due to the associated intimidation.

Some creditors prefer to hire a lawyer for the above-noted preliminary stages of debt collection. However, the primary function of a lawyer will be to proceed with court action. In the Prairie provinces, lawyers are best equipped to initiate civil actions for the collection of debts, to obtain judgment and to enforce the judgment for a creditor.

Creditors should note that lawyers, bailiffs and collection agents are subject to regulation by provincial legislation. This is an important point to bear in mind, as these laws may impose limits or restrictions on the measures that may be taken in the course of collections. Three statutes that creditors should be aware of include Manitoba's Consumer Protection Act, C.C.S.M., c. C200, Saskatchewan's Collections Agents Act, R.S.S. 1978, c. C-15, and Alberta's Fair Trading Act, R.S.A. 2000, c. F-2, and their respective regulations. These Acts govern what collection agents may or may not do to collect debts. The federal

Criminal Code is also a statute with relevance to debt collection, particularly the sections concerning threats, extortion and theft.

3. TYPICAL FEE STRUCTURES

(a) Collection agencies

There are no set fee schedules for third party collection services, and they vary from one service provider to another. Fees depend on the degree of involvement required, the complexity of the file, and general market conditions.

Collection agencies normally work on a contingency fee basis, and charge clients a percentage of the debt recovered. However, there are statutory restrictions stated in Alberta's Collection and Debt Repayment Practices Regulation, Alta. Reg. 194/1999, and Manitoba's Consumer Protection Regulation, Man. Reg. 227/2006, limiting the amount of fees an agency may collect and who they may collect them from. Generally, the recovery of personal debt is usually subject to a higher percentage than commercial debts. Note that if a collection agent must commence court proceedings, clients are usually requested to cover legal costs up front.

(b) Lawyers

In the case of lawyers, debt collection work may also be done on a contingency basis. If litigation is required, lawyers will usually request a retainer to cover basic expenses and court fees at a minimum. The size of the retainer will largely depend on whether the action is being defended. The alternative to contingency fee agreements is hourly rates. With this structure you can expect legal fees from between $150 to $400 an hour. Lawyers will keep time records of the time that they spend on a file and then provide the creditor with an account for fees, disbursements and taxes. Lawyers will normally send out interim Statements of Account for payment as the matter progresses through the court system.

4. PRE-LITIGATION COLLECTION PROCEDURES

(a) Investigation and research

The most common methods of investigation and sources of public records used to determine the particulars regarding specific debtors include the following:

(i) **Credit Bureau searches**: Agencies such as those from Equifax or Trans Union, provide complete information on a debtor, including credit checks, past litigation, current court proceedings, previous addresses, and the names of current creditors.

(ii) **Existing databases**: Collection agencies maintain records on many debtors. Therefore, if the debtor was the subject of a past collection proceeding, information maintained in the records can help with the current investigation.

(iii) **Personal Property Registry (PPR)**: When attempting to locate a debtor or to determine what assets may be recoverable from a judgment against that debtor, the PPR can be a very helpful tool. First, it can provide up-to-date information regarding the debtor's assets that have been pledged as security. This will be useful in determining what property, if any, may be recoverable under a judgment against the debtor. The PPR will disclose those assets that have been pledged as security for other debts. In order for an unsecured judgment creditor to determine the extent of potential recovery, it is important to consider the nature and extent of secured assets, since secured creditors rank in priority to judgment creditors in Alberta, Saskatchewan and Manitoba. Secondly, it may provide information as to the location of a debtor. The provincial websites of the Personal Property Registries are as follows:

Manitoba:
https://direct.gov.mb.ca/ppr/actions/mainPage

Saskatchewan:
http://www.publications.gov.sk.ca/details.cfm?p=11035

Alberta:
http://www.servicealberta.gov.ab.ca/554.cfm

(iv) **Scrubbing**: A collection agency will often enter into a contract for "scrubbing" services with a "scrubbing" agency. A scrubbing agency is an organization that collects data from numerous sources. The scrubbing agency will provide the most recent demographic information it has on the debtor(s) in question. This information would have been received from other clients of the scrubbing agency in exchange for the provision of similar information by it regarding different debtors. This service is similar to that provided by credit bureau agencies. However, scrubbing agencies provide demographic information only and not the financial particulars that are provided by credit bureau agencies. This system is generally utilized within the collection industry, the credit-granting industry and by businesses requiring updated information for direct mailing purposes.

(v) **Court records search**: The Manitoba online Court Registry (at http://www.jus.gov.mb.ca), is the only one of its kind in Canada that provides comprehensive details of all claims filed in both the Court of Queen's Bench and Small Claims Court. A simple search of a debtor's last name in the registry can potentially provide a wealth of information. If a court file with the debtor's name is found, simply requisitioning that file and reviewing its contents may lead to the debtor's address or his or her place of employment, among other things.

Alberta's online court registry (found at "http://www.albertacourts.ab.ca/home/judgmentsfromallcourts/tabid/72/default.aspx") is unlike Manitoba's system because it requires more case information than a debtor's last name.

The Saskatchewan courts do not currently have an online search engine. For information on how and where to submit hard copy requests for court records, the following website

may be of assistance, "http://www.sasklawcourts.ca/default.asp?pg=Access Guidelines".

(vi) **Corporate search**: This is an important search to conduct in order to ascertain a debtor's corporate status and to ensure that a debtor is properly identified on any documentation. The search will also reveal the corporate debtor's head office address and the names and addresses of the directors and officers. The basic information obtained from a corporate search will be useful to a creditor during the initiation of a civil action. The provincial websites of the Companies' Offices are as follows:

Manitoba:
http://companiesoffice.gov.mb.ca/search_registry.html
Saskatchewan:
http://www.isc.ca/corporateregistry/Pages/default.aspx
Alberta:
http://www.servicealberta.ca/811.cfm

(b) Privacy

While conducting an investigation of a debtor, creditors should be aware of privacy legislation. The Personal Information Protection and Electronic Documents Act (PIPEDA), SC 2000, c. 5, is Canada's federal privacy legislation which sets out the ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. The law gives individuals the right to access and to request correction of the personal information that may have been collected about them.

Alberta's Personal Information Protection Act (Alta. PIPA), S.A. 2003, c. P-6.5, has been deemed to be "substantially similar" to PIPEDA. It applies to the private sector in Alberta in respect of all commercial activity, with only limited application to non-profit organizations. Alta. PIPA covers the personal information of customers, non-customers and employees of an organization. It also applies to federal works, undertakings or businesses operating in Alberta and to the collection, use and disclosure of personal information outside of Alberta or internationally. The Alberta Information and Privacy Commissioner can issue binding orders requiring compliance. Indivi-

duals can launch court proceedings claiming damages for breach of the Alta. PIPA.

Saskatchewan and Manitoba have not introduced general (non-health) privacy legislation covering the private sector. Therefore, PIPEDA applies to the collection, use and disclosure of general private sector personal information in those provinces.

The Prairie provinces all have legislation dealing with consumer credit reporting (Alberta: Fair Trading Act, R.S.A. 2000, c. F-2; Manitoba: Personal Investigations Act, C.C.S.M., c. P34; Saskatchewan: Credit Reporting Act, S.S. 2004, c. C-43.2). These Acts typically impose an obligation on credit-reporting agencies to ensure the accuracy of the information, place limits on the disclosure of the information and give consumers the right to have access to and challenge the accuracy of the information.

Consent clauses contained in debt instruments whereby a debtor consents to Motor Vehicles Branch searches and/or searches of the records of registered credit bureaus allow creditors to obtain information required in order to locate a debtor or locate potentially recoverable assets.

(c) Negotiating with the debtor

A demand letter is often the final stage before initiating formal debt collection proceedings. Given that the Supreme Court of Canada has ruled that a debtor must be given some notice upon which the debtor might reasonably expect to be able to act, a demand letter is the best option for a creditor. To the extent that creditors rely upon verbal communications, notes should be logged either electronically or on paper to confirm the contents of the discussions. The debtor should be provided with a deadline for compliance. In order to ensure compliance with the requirement to provide notice to a debtor, creditors would be wise to send out written demand letters as a matter of course.

Where a demand letter has not resulted in a payment agreement between the parties, a creditor or an agent has at their disposal a wide range of methods to compel or convince a debtor to pay. However, certain collection techniques may be prohibited under provincial law. In particular, collection agencies in particular must be aware of statutes prohibiting certain collection techniques listed in each provincial statute (Manitoba: Consumer Protection Act; Saskatchewan: Collections Agents Act; Alberta: Fair Trading Act).

Some practices that collection agents are prohibited from using include phone calls to debtors at night, phone calls so frequent as to constitute harassment, the communication of false information that may adversely affect the debtor and the mere threat of communicating detrimental information about a debtor to their employer, spouse or family members. In addition, Manitoba and Alberta expressly prohibit collection agents from threatening legal action without the lawful authority to do so.

Agents and all others collecting debts are subject to the Criminal Code and in the case of lawyers, to rules and ethical guidelines governing the legal profession. Aggressive or heavy-handed collection methods may lead to significant costs and damages being assessed against a creditor.

5. ACCESSIBILITY TO JUSTICE — EFFICIENCY AND INDEPENDENCE

When attempts at settling a debt informally have failed, creditors will typically turn to the courts to resolve the matter. Over the years, courts in Manitoba, Saskatchewan and Alberta have introduced measures to provide more efficient and expeditious proceedings in commercial matters such as debt collections. In particular, Small Claims Courts are very experienced with debtor-creditor issues, and are able to resolve them efficiently. Their simplified rules and procedures mean that self-represented litigants can present their case without knowledge of the formalities observed in higher courts. However, retaining the services of a lawyer knowledgeable in collections is a wise choice, even in most small claims.

Courts in each of three Prairie provinces are highly regarded, and are recognized as independent bodies free from external influence, bias, or corruption. Debtors and creditors alike may approach the courts with confidence in their integrity. Justices of the civil courts in each of the three Prairie provinces are appointed by the Government of Canada. Judicial selection committees exist in each of the three Prairie provinces and the committees consist of representatives of the courts, the bar associations, the law societies and the public. Applicants must demonstrate knowledge of the law, moral and ethical standards, personal integrity and respect in the legal and broader community before the judicial selection committees will clear their application for consideration by the Government of Canada. Once appointed, civil court judges in the three Prairie provinces remain judges until the age of

75, the date of resignation or the date of a finding if misconduct by the judicial council and confirmed by the Government of Canada.

6. JURISDICTION OF THE COURTS

The size of the claim and the complexity of the matter are two chief considerations in selecting the appropriate court in which to bring an action. In relatively straightforward commercial claims for less than the maximum permitted value, Small Claims Court is a viable option. Small claims courts are a division of the provincial courts operating in each of the Prairie provinces, and provide a streamlined process allowing for efficient summary resolution in an informal and inexpensive manner. Note that in each province, small claims are limited to a set dollar figure. At the time of writing, the maximum small claims were $10 000 in Manitoba, $20 000 in Saskatchewan, and $25 000 in Alberta. Judgments awarded in Small Claims Court are enforceable in the same manner as any other court judgment.

The Court of Queen's Bench functions as the superior trial court in each of the Prairie provinces. If the value of a claim exceeds the maximum limit in a Small Claims Court, a creditor must proceed in the Court of Queen's Bench. In claims involving complex facts, a Court of Queen's Bench claim may be preferable even if its value is beneath the Small Claims threshold. A Small Claims Court decision may be appealed to the Court of Queen's Bench in each of the Prairie provinces within 30 days of the date the of judgment.

7. ESTABLISHING JURISDICTION

As Canadian courts become more willing to recognize judgments granted in another jurisdiction, it becomes less necessary to chase a debtor into its home jurisdiction in order to obtain judgment. Claims are normally brought in the province where the debt arose. The rules of court applicable to each province set out specific details about which judicial centre a plaintiff may commence a claim in, although in most cases, it will be brought where the debtor conducts business or resides.

The respective Court Rules in all of the Prairie provinces provide for service outside of their jurisdiction. Therefore, physical presence of the debtor within a certain jurisdiction is not required to commence court action against them. Bringing an action where a debtor is carrying on business and/or the majority of a debtor's assets are situated,

maximizes a creditor's opportunities to enforce the judgment, if successful.

If jurisdiction becomes an issue at trial, the courts will consider the real and substantial connection of the parties and the transaction to the province in question. If jurisdiction is inconvenient or prejudicial to the interests of one or more parties, the court may refuse jurisdiction over the matter.

The following are reasons for Canadian courts to refuse jurisdiction:

(i) lis alibi pendens – meaning that the dispute is pending elsewhere;
(ii) vexatious and frivolous proceedings;
(iii) valid jurisdiction and arbitration clauses;
(iv) genuine submission by the parties to another jurisdiction;
(v) forum non conveniens–where a different jurisdiction has a greater real and substantial connection to the cause of action.

A forum having a real and substantial connection to a cause of action may not be the most suitable forum for hearing the action. Even where a commencement document has been served, a court could later find that the province where commencement occurred is forum non conveniens, meaning there is a forum that is more suitable for the ends of justice. The burden is on the plaintiff to prove there is a better jurisdiction. In determining the most convenient forum, the court examines not only the proposed defendant's cost or convenience but also the general cost and convenience to all of the parties and witnesses. Additional factors to be considered in any discussion of appropriate forum:

(1) where each party resides;
(2) where each party carries on business;
(3) where the cause of action arose;
(4) where the loss or damage occurred;
(5) any judicial advantage to the plaintiff in the action;
(6) any judicial disadvantage to the defendant in the action;
(7) convenience or inconvenience to potential witnesses;
(8) costs of conducting litigation in the jurisdiction;
(9) difficulty in proving foreign law, if necessary.

8. CHOICE OF LAW AND JURISDICTION CLAUSES

In commercial contracts, it is common to find clauses by which the parties determine how any disputes are to be settled. Thus, choice-of-law clauses and choice-of-jurisdiction clauses are an integral part of contract negotiations. A choice-of-law clause selects the laws of a certain jurisdiction to be the laws that will apply to the contract. As an example, where a contract involves parties from the province of Saskatchewan and the state of New York, those parties may agree that the laws of the province of Saskatchewan will govern the contract. Common jurisdiction clauses include those mandating the use of certain courts or using alternative dispute resolution as a step before commencing court proceedings. A choice of forum clause specifically determines that the courts in a certain province will determine any disputes in connection with the contract. As an example, parties to a contract from the province of Alberta and the state of California may agree that all disputes in connection with the contract shall be resolved by the courts in the province of Alberta.

Party autonomy has long been recognized for choice-of-law purposes if they are in good faith, legal, and do not offend public policy. However, a defendant may still introduce evidence to show why that contractual choice is inappropriate. Courts always maintain the discretion to either enforce choice-of-law and choice-of-forum clauses or override them, depending on the circumstances.

9. ARBITRATION CLAUSES

As noted above, courts in the Prairie provinces normally defer to valid choice of law and jurisdiction clauses. Where such clauses specify that any dispute will be settled through alternative dispute resolution methods such as arbitration, courts will be reluctant to accept jurisdiction without the parties first attempting to resolve the matter in compliance with the contract. Arbitration clauses should be carefully drafted to ensure that collection related disputes are included within their scope.

10. BASIC REQUIREMENTS FOR FILING SUIT

When commencing an action, creditors should ensure that they have originals of all documents relevant to the dispute, including contracts, cheques and other records related to the debt. It is also important that a creditor is absolutely certain that the proper party is named in the

action. Corporate searches are an essential preliminary step for that reason.

In most cases, documents prepared in languages other than English or French will have to be translated for use in court. Although the scope of French-language services provided in Prairie region courts is expanding, it may also be necessary to translate French documents for use in court.

11. AUTHENTICATION OF DOCUMENTS

Documents such as records, letters, bills, contracts, and similar writing form part of evidence in many lawsuits. In court, the best evidence rule requires that when a document is offered as evidence, the original document or writing has to be produced and submitted. To be admitted as evidence, a document has to be properly identified or authenticated.

However, the authentication of documents is not usually required at the outset of a commercial collection action. The claim may be filed with the court by a law firm that has been provided with copies of the relevant documents. If the matter is contested and proceeds to a trial or court hearing, then at that time, original documents may be required for use before the courts.

Authentication is a rule that requires evidence to be sufficient to support a finding that the item in question is what it is in fact purported to be by its proponent. This means that evidence must be proven genuine to be admissible. If the debtor defends against the action, or a document itself becomes an issue in the dispute, it may become necessary to submit the document to a notary public for certification or to obtain a translated copy of the document.

The following are common methods for document authentication:

(i) a witness, who is present during the signing of the document, can identify and attest to the existence of the document;

(ii) a trier of fact, in which the jury or judge would compare a known example of a signature with the signature on a disputed document;

(iii) records of business transactions can be identified and authenticated by the custodian of the records;

(iv) certified copies of public records, official documents, and newspapers are self-authenticating documents that do not require outside authentication to be admitted as court evidence

Documents issued in one country and intended for use in another country must be "authenticated" or "legalized" in order to be recognized as valid in the foreign country. The number and type of authentication certificates you will need depend on the nature of the document and whether or not the foreign country is a party to the multilateral treaty on "legalization" of documents.

Canada is a party to a treaty called the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (HLCC) therefore, obtaining a special "apostille" certificate is generally all that is required. An apostille is a special certificate that is attached to the document being certified.

12. FROM LAW SUIT TO JUDGMENT

(a) General overview

Commercial claims are filed in the same manner as other civil claims before Small Claims Court or the Court of Queen's Bench. While specific filing requirements vary by province, certain aspects of filing commercial claims are consistent. For instance, commercial claims will generally be commenced by filing a Statement of Claim. This is a document that names the parties, defines the issues on which the courts must adjudicate to determine the matters in dispute and provides fair notice to the other side as to the case it will have to meet. Statements of Claim are prepared according to a form prescribed by the courts in the Prairie provinces.

(b) Right to make special demands

In addition to pursuing the original debt under the heading of general damages, a creditor may claim other types of damages as well. Special (i.e., related) damages, interest and costs are routine even at the Small Claims level, and should be included in a creditor's statement of claim. In contrast, punitive damages are rarely awarded in commercial collection matters and only then in exceptional circumstances involving highly reprehensible conduct.

A court may award costs that were incurred in the course of pursuing an issue before the court. Costs are regulated by tariffs contained in the rules of court in Manitoba and Saskatchewan. Included in recognized costs are witness travel expenses and other administrative costs associated with preparing and conducting the court matter. In Alberta, cost regulation is under Schedule C of the rules of court. In all Prairie provinces, costs are in the discretion of the court. However, creditors will normally be awarded costs in accordance with the tariffs or regulations for default judgments and summary judgments. There is generally more discretion in the area of costs when matters proceed to a trial.

(c) Delay for debtor appearance / default to consent

It is not unusual for debtors to resort to a variety of methods to delay court action, or to thwart a creditor's attempts to recover a debt. These will often include various procedural stalling tactics such as numerous motions and applications, lengthy examinations and attempts at obtaining security for costs. While debtors may be tempted to forestall an action through creative delays, this approach can often backfire as courts will frequently assess costs against parties taking unnecessary or vexatious steps in a proceeding.

(d) Default judgment

In commercial collection actions, it is not unusual for a debtor to fail to appear or file a defence to an action. When this occurs, a creditor has the option of seeking default judgment, which dispenses with the need for a court hearing.

In Manitoba, a defendant served within the province has 20 days to respond. This increases to 40 days if served elsewhere in Canada or the United States and 60 days for defendants served any place else in the world. In Saskatchewan, defendants served within the province have 20 days to respond, increasing to 30 days if served elsewhere in Canada or the United States and 40 days for defendants served anywhere else in the world. Timelines in Alberta are different, with 15 days allotted for responses by defendants served within the province, 40 days for responses by defendants served elsewhere in Canada, or as fixed by the court for defendants served outside of Canada. When dealing with court deadlines, it is essential that a creditor pay careful attention to the rules of the province where the claim was brought. If a statement of

defence is not filed within these timeframes, a creditor may obtain Default Judgment against the debtor and then proceed with enforcement of the judgment.

(e) Defences available to the defendant (debtor)

After a debtor has been served with a statement of claim they can either settle the dispute with the creditor out of court or file a statement of defence. A statement of defence declares which allegations in the statement of claim are admitted and which are denied. A debtor may also be entitled to demand particulars where they request more information from the creditor about anything in the claim.

After the debtor serves the statement of defence, each party must serve an affidavit of documents on every party within the limitation period prescribed in the rules of court. For example, in Manitoba and Saskatchewan, it is 10 days after the statement of defence is filed. In Alberta a plaintiff must serve an affidavit within three months from the date he/she is served with a statement of defence. A defendant must serve an affidavit of records within a month from the date they are served with the plaintiff's affidavit. Affidavits must disclose all documents relating to any matter in issue in the action that are, or have been in the possession, control or power of the party. This includes exhibits and expert reports. After affidavits of documents have been exchanged, the parties are entitled to examine for discovery any other party adverse in interest.

At any time, a debtor may bring an application dismissing the action for delay where the plaintiff creditor unreasonably delayed the prosecution of the action, without justification, to the prejudice of the debtor.

Security for costs may be sought by a debtor, which may result in a creditor being forced to post security for costs. An order will commonly be made where the creditor claimant is ordinarily resident outside Manitoba. The amount of security that the plaintiff will be required to post is discretionary. Where an order is granted, the plaintiff may not take any steps in the proceeding until the security has been given.

By way of counterclaim, a debtor can assert any claim or right, including a set-off that the defendant has against the plaintiff. A counterclaim is an action that stands on its own. If the main action is discontinued, abandoned or dismissed, a creditor can still proceed with the counterclaim.

Each of the Prairie provinces has an Interprovincial Subpoena Act, for cases where a person to be examined resides outside the respective province. The witness may be subpoenaed to secure attendance of that witness, and the person shall be paid attendance money in accordance with the Act.

In Alberta, where a proposed witness lives outside of the jurisdiction of the court, or intends to leave the jurisdiction a court order can be made authorizing the taking of evidence and directing a transcript of the evidence to be prepared. In addition, a court may order production, and authorize a letter or request to be sent to the judicial authority in which the person to be questioned is located, requesting the issue of the necessary court order or document to require the witness to attend to give evidence. The ultimate transcript of the evidence given must identify the name of the person recording the evidence and the date when it was taken and must certify the transcript as accurate and complete. Once the transcript is prepared and certified as complete and accurate, the person authorized to take evidence must return the authorization, the transcript and exhibits to the court clerk where the action is located. They must also keep a copy of the transcript and exhibits and notify the parties that appeared at the questioning that the transcript is complete and has been sent to the court clerk.

In Saskatchewan, if a person to be examined is not in the province, the court may order the person to attend for an examination before a particular person and at a particular place. The place will be where the court determines it to be the most just and convenient in the circumstances. This usually means that the court will order the examination to occur in the location where the person to be examined resides; however, it may also mean that in some cases the court will order the person to attend an examination in Saskatchewan.

(f) Availability of extra-ordinary remedies

The general rule in Canadian courts is that judgment must be obtained before execution can occur. However, the problem of absconding debtors has given rise to a set of pre-judgment remedies. These are commonly used by creditors to freeze a debtor's assets and hold them until judgment is obtained. Some debtors will take steps to judgment-proof themselves prior to the commencement of proceedings. However, once a claim is filed, a creditor can invoke a prejudgment remedy if they

have sound reasons to believe a debtor may abscond. Three pre-judgment remedies often used in prairie jurisdictions include:

(i) attachment of assets;

(ii) Mareva injunctions;

(iii) prejudgment garnishment.

These pre-judgment remedies are explained below.

All three Prairie provinces have enacted legislation allowing courts to grant prejudgment attachment of an absconding debtor's assets. The purpose of an attachment order is to hold assets until judgment is obtained. It is useful when a debtor is hiding, dissipating or otherwise putting assets out of reach from a creditor.

A creditor may be required to post security as a condition of the sheriff proceeding to execute an attaching order. The amount of security is twice the amount of the creditor's claim or other such amount the court orders. The form of security is at the discretion of the court, and may be cash, personal bond with or without surety.

Mareva injunctions restrain a debtor from disposing of assets within the jurisdiction pending trial. It is usual that the plaintiff applying for a Mareva injunction must give an undertaking in damages, supported by bond or security.

Prejudgment garnishment orders are used to attach all debts due and payable at the time of service, and they become payable into court. This remedy is often invoked in situations involving a liquidated demand such as a debt.

Security may be required as is the case with prejudgment attachment and Mareva injunctions. Where security is ordered, a condition will be that the creditor prosecute the proceeding without delay. A party that obtains an attaching order or a garnishing order before judgment and fails to obtain judgment or obtains judgment for a lesser amount than the amount claims, may be held liable for any damages that result from enforcement of the order.

In Manitoba, interim recovery of personal property is available where recovery is claimed and the creditor alleges that the property was unlawfully taken or that it is being unlawfully detained by the debtor. A creditor will be required to pay security into court set at twice the stated value of the property. The sheriff will then be directed to take the

property from the debtor and detain it. Interim preservation of property is also available in Manitoba where a court may grant an interim order for the custody or preservation of any property that is subject to a claim. The court may authorize the entry on or into the property in the possession of a debtor or a third party for the purpose of obtaining custody or preserving the subject property.

(g) Trial

Depending on the venue and the complexity of the matter, a trial of a commercial collection may range from a simple in-person hearing in front of a Small Claims Court judge to a complicated multi-day case argued by lawyers before the Court of Queen's Bench. This section will outline the procedural steps at the superior trial court level.

A trial will begin with preliminary matters, including opening motions. Once completed, the plaintiff proceeds with his or her case. The usual process includes an opening statement, the direct examination, cross-examination and redirect examination of witnesses, followed by the reading in of evidence from examination for discovery. The defendant then has an opportunity to present its case following the same process as the plaintiff. Once complete, both sides will have the opportunity to present reply evidence and closing arguments, and the plaintiff may then present a response. Finally, judgment is given (or reserved, if additional time is necessary), and submissions are made regarding costs. Depending on the number of witnesses and the amount of evidence, some civil trials last for many days, although commercial collections actions tend to be very short.

The hearsay rule excludes oral testimony or written evidence of a statement made out of court, where the evidence is being tendered to prove the truth of what was said. An individual must testify in court and be subject to cross-examination. A witness must testify in court under oath, must testify before the opposite party, in public, and be the subject of contemporaneous cross-examination to allow the other side an opportunity to reveal any defects in the evidence. Furthermore, witnesses should attend court since documentary evidence is usually put before the court through witnesses, through questioning, or agreement.

The objectives of cross examination are:

(i) to elicit facts from an opposing witness; and

(ii) if possible, to destroy, weaken or qualify any harmful evidence that that witness or other witnesses have given.

The courts tend to allow broad scope in cross-examination. The right to cross-examine extends to an inquiry into the source and extent of the witness' knowledge, the accuracy of memory, motives or bias. A witness can also be impeached by showing that he/she made previous contradictory statements.

Videoconferencing attracts attention in courtrooms for the same reason it does in business: cost cutting. Lawyers remain cautious, however, with using video conferencing due to the lack of non-verbal cues. While video conferencing is permissible, some of the legal profession remains attached to the classic setting of a witness on the stand in person versus on a screen.

Each of the Prairie provinces has a language act, allowing for court proceedings in either of Canada's official languages — English or French. Where the need for a translator arises, the associated costs will be awarded at the end of the trial.

(h) The judgment

In simple matters, judgment may be rendered immediately. However, written decisions are commonplace and may be released days, weeks or months after the conclusion of court proceedings. If an oral decision is given, costs may be spoken to immediately thereafter. If there is a written decision, the parties will have to reconvene at a later date to discuss costs. The successful party at trial will then have the opportunity to draft a form of judgment to be filed with the court for signature, at which time the appeal period begins to run.

The general rule for costs is that the successful party at trial is entitled to their party costs, as well as those against the unsuccessful party. Costs and disbursements are determined in accordance with statutory schedules enacted in each province, and do not always cover all costs incurred by the successful party.

Once a creditor obtains judgment against a debtor the creditor has available a series of legal remedies by which he/she can collect the amount of the claim, together with interest and costs. The original debt merges into the judgment.

Under the Court of Appeal Rules in Alberta, an appeal does not operate as a stay of enforcement of proceedings under the decision

appealed from unless the Court of Queen's Bench stays enforcement or proceedings of the decision pending appeal. The Manitoba Court of Queen's Bench Rules state that an appeal to the Court of Appeal does not operate as a stay of execution of the judgment pending the appeal. However, the judge who granted the order may stay the order at any time before the appeal is determined.

Saskatchewan, however, adopted the opposite, under rule 15 of the Court of Appeal Rules. Once an appeal from a money judgment has been filed, execution on that judgment is automatically stayed.

13. ENFORCEMENT OF JUDGMENT

Once judgment is obtained, the cause of action becomes a matter of record. Judgment creditors have several tools with which to enforce the judgment. However, it is important to be aware of the rules specific to the jurisdiction in question, as they can be quite technical. In Manitoba, many of the rules regarding judgment enforcement are encompassed in the Court of Queen's Bench Rules, while in Saskatchewan judgment enforcement law is an amalgamation of several statutes and the common law. By comparison, Alberta has taken the step of enacting a comprehensive statute in this area known as the Civil Enforcement Act, R.S.A. 2000, c. C-15. Despite the different legal approaches, the substance is identical in all three provinces: judgment-enforcement law enables creditors to satisfy money judgments.

Judgment enforcement proceedings are conducted through the superior trial courts (in the Prairie provinces, this is the Court of Queen's Bench), and creditors should be aware that it is possible to incur significant costs in the process. To get a clear picture of a judgment debtor's assets, it is often useful to conduct an examination in aid of execution, or where available, to have the debtor complete a statutory declaration of assets.

There are four primary judgment enforcement tools available to judgment creditors in the Prairie provinces.

(a) Garnishment

The first, and probably the most straightforward approach, is garnishment. This method consists of attaching to money owed by the debtor by a garnishee in satisfaction of the judgment debt. In essence, the creditor steps in between the garnishee and the debtor and collects the money that would otherwise be paid to the debtor. Typical

garnishment targets include wages, bank accounts and other debts owing to the judgment debtor. Employment earnings are an additional target for post-judgment garnishment; however, the applicable provincial legislation should be consulted for exempt percentages that may not be garnished by a judgment creditor. Post-judgment garnishment requires the filing and service of documents as prescribed by Manitoba's Garnishment Act, C.C.S.M., c. G20, Saskatchewan's Attachment of Debts Act, R.S.S. 1978, c. A-32, and Alberta's Civil Enforcement Act.

(b) Seizure of assets

The second primary judgment enforcement tool consists of the seizure of assets through Writs of Execution. By filing and serving the appropriate documents, a judgment creditor may engage the services of a licensed bailiff or civil enforcement agency to assist with the seizure of personal property, and in some cases, real property. Bailiffs and civil enforcement agencies then facilitate the liquidation of these assets to satisfy the judgment debt.

Each of the Prairie provinces have exemption legislation that should be reviewed before seizing assets as they contain specific assets that are exempt from seizure, unless they exceed the maximum stated value. The underlying principle is that a debtor and his/her family should not be deprived of an ability to earn a living. Therefore, common exempt items are food, clothing, furniture, homestead within a set acre limit and tools. In Saskatchewan, the Exemptions Act, R.S.S. 1978, c. E-14, and The Saskatchewan Farm Security Act, S.S. 1988-1989, c. S-17.1, are applicable. In Alberta, the Civil Enforcement Act governs exemptions, and in Manitoba the Executions Act, C.C.S.M., c. E160, addresses exemptions. The onus is on the debtor to prove that particular assets are exempt from seizure. In all the Prairie provinces, corporations are not entitled to exemptions.

(c) Receivership

The third primary judgment-enforcement tool, and one rarely seen outside of large debt collections, is an application to appoint a receiver. This remedy is used against debtors with sufficiently sizeable assets, as the costs of receivership usually run quite high. Courts in the Prairie provinces tend to grant applications for receivership as a last resort once other avenues for enforcement have been exhausted.

A creditor has lawful authority to petition a debtor into bankruptcy. However, there are advantages and disadvantages to bankruptcy. More sophisticated debtors are aware of the disadvantages and are aware that this is a step that will rarely be taken by unsecured creditors. Since bankruptcies in Canada are administered by trustees, creditors lose control of the collection and distribution of monies owed.

(d) Registration of judgment against real property and sale of real property

In the Prairie provinces, judgments are most often registered against title as an inexpensive means of securing the judgment amount pending sale of the real property and / or satisfaction of the judgment by other means. In practice, however, registration of a judgment does not usually lead to a judgment sale. Debtors who have sufficient equity in real property usually have the means to satisfy the judgment in another way, such as borrowing money on security of the land. Furthermore, many creditors prefer other remedies, such as garnishment and writs of seizure and sale, since they are less costly and less time consuming.

In Manitoba, a certificate of the creditor's money judgment may be filed in the land titles office to form a lien on land registered to the judgment debtor. Creditors must be aware that the name on the certificate of judgment must be identical to the name on the land title. Once registered, the judgment creditor can recover on land sales in accordance with their priority on that land. Priority is determined based on the order of registration, with the first registered creditor receiving top priority.

Sale proceedings may not be commenced until one year has passed since registration. Judgment sale proceedings are commenced by notice of application in accordance with The Judgments Act, R.S.M. 1987, c. J10. In addition to The Judgments Act, creditors should be aware of The Real Property Act, C.C.S.M. c. R30, and The Law of Property Act, R.S.M. 1987, c. L90. The money realized on a judgment sale is paid into court for distribution by order of a judge.

In Alberta, Part 7 of the Civil Enforcement Act, R.S.A. 2000, c. C-15, governs the enforcement of judgments against land. Section 67 states that all land belonging to an enforcement debtor, whether registered under the Land Titles Act, R.S.A. 2000, c. L-4, or not, is liable to sale. To initiate a sale, a creditor must provide such instructions to the civil enforcement agency. The agency then may use any commercially

reasonable method to sell the debtor's land. A sale may be executed 180 days after notice is given to the debtor. The agency must also inform the debtor of the method of sale at least 30 days prior to the sale. Once sold, the money becomes a "distributable fund", which the agency has authority to distribute. The agency must determine all eligible claims and distribute the funds in the order of priority set out.

In Saskatchewan, writs of execution can bind land. A writ of execution is a document commanding the sheriff to seize and sell property of a judgment debtor to satisfy the judgment and attendant costs. Writs are governed by the Executions Act, R.S.S. 1978, c. E-12, The Land Titles Act, and the Rules of Court.

Writs are obtained by application to the court. Once received, the creditor sends the issued writ to the sheriff with instructions to register it in the sheriff's office. The sheriff will require the creditor to guarantee costs of any enforcement activity. It is also the responsibility of the creditor to register the judgment in the Saskatchewan Writ Registry, by way of a financing statement. Once registered in the Saskatchewan Writ Registry, the writ binds future interests in land acquired by the judgment debtor and any interest to which it is specifically attached.

The sheriff can only sell land under a writ after one year from the date it was delivered to the sheriff's office. Under The Executions Act, a creditor must apply to the court for leave to conduct the sale.

Practically, a sale date two or two-and-a-half months after instructions are given to the sheriff is typical. A sale is conducted through individual bids. A full record of the proceedings is kept by the sheriff. Where no bids or only insufficient bids are received, the sheriff will adjourn the sale and post a new date and time following the same procedures. No sale of land by the sheriff has any effect until it is confirmed by the court under s. 160 of The Land Titles Act. In order to obtain confirmation, there must be strict compliance with the requirements for the sale of land.

14. RIGHT OF APPEAL

Parties have the right to appeal a trial decision. However, the process for doing so depends on which court initially heard the matter. Appeals from Small Claims in the Prairie region are properly brought to the Court of Queen's Bench in the same province, where they are heard de novo, or are heard as a new trial. For decisions by the Court of Queen's Bench, appeals are properly brought to the Court of Appeal. Note that

the Court of Appeal does not rehear cases, but rather, reviews the trial decision for any errors in law, jurisdiction, or in limited instances, errors in fact that may have occurred.

15. CURRENCY

Courts in Manitoba, Saskatchewan, and Alberta use Canadian currency exclusively. Where foreign money obligations are at issue, they are converted to Canadian funds in accordance with the applicable rules of court.

16. RECOGNITION OF FOREIGN JUDGMENTS

To enforce a foreign judgment in a Prairie province, a judgment creditor must determine whether the judgment was issued in a reciprocating jurisdiction by consulting the reciprocal statute for the appropriate province. If the judgment was issued in a reciprocating jurisdiction, the enforcement requirements generally involve a court application with true copies of the foreign claim, judgment and proof of service in the original action. Registration of a foreign judgment within a reciprocating jurisdiction does not permit the court accepting registration to review the judgment on its merits. If an application is granted, the judgment is enforceable as any other judgment issued by the court with the same prescriptive periods for enforcement applicable in the state where the judgment is registered. In instances where the judgment was obtained in a non-reciprocating jurisdiction, the judgment creditor will most likely have to sue for its value in the place where the debtor is situated.

If a Saskatchewan judgment is under appeal, it may not be registered in a reciprocating jurisdiction. However, judgments pending appeal in Alberta and Manitoba may still be registered. This is because a judgment must be enforceable in the original state to be registered. Therefore, whether the judgment is enforceable depends on the stay of execution rules provided for in the rules of court in the original jurisdiction.

17. FOREIGN ARBITRAL AWARDS

Foreign arbitral awards made in accordance with international law are enforceable in Manitoba, Saskatchewan and Alberta. All three of the Prairie provinces have enacted legislation concerning international commercial arbitration putting into force the Model Law on Interna-

tional Commercial Arbitration as adopted by the United Nations Commission on International Trade Law.

18. STATUTE OF LIMITATIONS

Each province has a statute with a comprehensive list of limitation periods during which a claim must be brought. In Manitoba, The Limitation of Actions Act, C.C.S.M., c. L150, allows six years to bring an action for the recovery of money (excluding debt charged upon land), and 10 years to bring an action on a judgment. In Saskatchewan and Alberta, The Limitations Act (so named in both provinces) provides a general limitation period of two years. Note that ultimate limitation periods of 30 years in Manitoba, 15 years in Saskatchewan and 10 years in Alberta apply. Judgments in the Prairie provinces must be renewed within 10 years if the Judgment is not satisfied within that time frame.

19. JUDICIAL DISPUTE RESOLUTION

Courts in the Prairie provinces offer various forms of judicial dispute resolution services during the litigation process. The process is generally informal, non-binding and without prejudice and helps parties reach settlement without further litigation. Judicial dispute resolution made take place at any time after claim has been filed with the court.

In Manitoba and Alberta, there are no formalized or mandatory mediation rules, so parties are free to determine their own process, in consultation with the courts. Generally, counsel will file briefs outlining the relevant facts, issues and positions on settlement before attending mediation. How the mediation is actually conducted will depend on the mediator. Some mediators get each party to make an opening statement through counsel. The parties then take turns expanding on the information during the mediation.

The parties to judge-led mediation sessions may be required to sign a mediation agreement confirming that all matters discussed during the mediation are being discussed on a without prejudice basis and may not be used by either party in the event that the matter proceeds to a trial. Judges may also engage in shuttle diplomacy. This involves the judge meeting separately with the parties in an attempt to encourage a resolution of the dispute. The judge involved in the judicial mediation or the judicial dispute resolution process will not be the judge at a trial if a trial takes place following a failed judicial mediation.

Unlike the superior court in Alberta and Manitoba, Saskatchewan's Court of Queen's Bench requires mediation. Rule 42 of Saskatchewan's Court of Queen's Bench Rules, makes mediation mandatory after the close of pleadings. Litigants must attend and choose whether they will be accompanied by counsel, but in most cases counsel will attend. Mediators are assigned by the Department of Justice. Once complete, the mediator will file a Certificate of Completion. No further steps may be taken in the action until the Certificate is filed.

20. SPECIAL FEATURES

Special features of Manitoba, Saskatchewan, and Alberta have been highlighted above; however, some additional unique features are discussed below.

The Manitoba Court of Queen's Bench, unlike many other courts in Canada, offers Judicially Assisted Dispute Resolution ("JADR"). When a matter is referred to JADR, a Court of Queen's Bench judge acts as a neutral third party and assists the litigants in reaching an agreement by facilitating negotiations through judicial mediation. The judge is referred to as a facilitator. A claim must be filed with the Court of Queen's Bench before parties can go to JADR.

An additional unique feature in Manitoba is the online Court Registry. A simple search of a debtor's last name in the registry can potentially provide a wealth of information. If a court file with the debtor's name is found, simply requisitioning that file and reviewing its contents may lead to the debtor's address or his or her place of employment.

In Saskatchewan, as noted above, an appeal automatically stays a Court of Queen's Bench Order. This is the opposite rule that has been adopted by Alberta, Manitoba and most of the other Canadian provinces. Saskatchewan is also one of three provinces, along with Quebec and Ontario, requiring mediation in the civil court process.

Through the Civil Enforcement Act, Alberta is one of the few provinces with comprehensive legislation governing judgment enforcement. This simplifies judgment enforcement by minimizing the number of acts which have to be consulted and complied with by a creditor.