

Civil Enforcement Monthly Bulletin: Civil Enforcement Costs – who pays them, can they be taxed, how much are they?

When I am conducting trainings throughout the province to Civil Enforcement customers, I am often asked about the costs incurred in civil enforcement actions. How are these costs paid, can an assessment office tax/reduce the costs claimed and what can I expect these costs to be? Since this is such a hot topic, I thought it would be a great topic for this month's bulletin.

How are the civil enforcement costs incurred on a file paid for?

Civil enforcement costs incurred on a file are most commonly paid two ways:

1. Debtor provides settlement to the bailiff. When a debtor offers settlement to cease civil enforcement actions, the debtor must provide full payment of the instructing parties debt and all civil enforcement costs incurred. If a debtor provides payment for the debt only, civil enforcement actions can proceed to recover the civil enforcement costs.
2. Sale of seized property. When a settlement is not obtained and instead the seizure results in a sale of the seized goods; the act states that upon distribution, the first item payable from sales proceeds is all outstanding and all previously paid civil enforcement costs relating to the matter.

If the event that a debtor is unable to offer settlement and/or the debtor does not have sufficient goods to seize and sell to cover the debt, payment of the civil enforcement costs remain the responsibility of the instructing party. In this situation it is important to remember that as per section 13.1 of the Alberta Rules of Court civil enforcement costs incurred can be added directly to your judgment amount.

Section 13.1 of the Alberta Rules of court states: In addition to the amount recovered by the judgment, there may be levied under any writ of enforcement (a) the fees and expenses incurred in enforcing the writ of enforcement, and (b) interest on the amount recovered.

A Judgment in the Province of Alberta is valid for 10 years. If your debtor is not a position to cover the debt at this time, they may find themselves in a substantially different financial position sometime over the next 10 years. Therefore it is very important to ensure that these costs are added to your writ, so that they can be included in future actions against this debtor, by yourself or other related writ holders.

Can an Assessment Officer tax a civil enforcement invoice?

The quick and easy answer to this question is NO. An Assessment Officer has no authority over the invoices produced by a Civil Enforcement Agency with respect to enforcing a Writ. Under the Civil Enforcement Act of Alberta, Civil Enforcement Agencies are required to provide the Sheriff of Alberta a tariff of their fees. These fee schedules must include all items billable to a client under a civil enforcement action. Under each agency's agreement with the Sheriff of Alberta, agencies must adhere to the costs detailed within these fee schedules without variance. As long as an agency has billed according to the above noted fee schedules, an Assessment Officer has no authority to tax or reduce the costs incurred.

Please find below two recent court rulings with respect to the taxation of Civil Enforcement Costs:

Toronto Dominion Bank and Bradley D. Hawes – Court of Queen's Bench Alberta, Docket 1001 10453

Hans Zurcher and Allied Shortridge Civil Enforcement Agency Inc. – Court of Queen's Bench, Action 0803 02493

If you, or your client, have incurred Civil Enforcement costs on an active matter, these costs should be added to your writ, without taxation, as soon as possible to protect your interest should another related party start a civil enforcement action against this debtor.

What can I expect the civil enforcement costs to be?

This is one of the most commonly asked questions and at the same time one of the most difficult questions to answer. Civil enforcement files can vary dramatically in complexity and in the time require for the bailiff to

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work/complete the file. When you combine this with the complexity of civil enforcement fee schedules, as noted above, it can be difficult to provide an uncomplicated answer to this question. We realize this can prove frustrating to clients and can cause a client to question whether or not they should proceed with enforcing their judgment. Therefore we are pleased to announce that Consolidated Civil Enforcement has taken an unprecedented step in Civil Enforcement fee schedules, we have moved our civil enforcement files to a “Flat Fee” system.

We have taken more than 12 individual items from our old fee schedule and compiled them into one new “Flat Fee”. Included in these new flat fees are the actions require under the Civil Enforcement Act on all files: including the required PPR searches, and the payment of the Government Cost Recovery fee to the Sheriff of Alberta, required civil enforcement notices. We have also included an allocation for bailiff time, bailiff kilometers and bailiff phone calls in each of our new “Flat Fee” rates.

I have included a sample of these new rates below, in an effort to better understanding of what the costs incurred on a civil enforcement file could be.

Simple Seizure - Single Location, Single Bailiff, Personal Property Seizure

<i>A Simple Seizure includes: File Opening, 2 Hours Bailiff Time, All Bailiff Kilometers, All Bailiff Phone Calls, Registration and Discharge of Seizure at Alberta Personal Property Registry, 1 Hour Recovery Manager Resource Time, 2 Personal Property Registry Searches, Government Cost Recovery Fee, 2 Civil Enforcement Documents or Notices and Service of Seizure Documents</i>	\$950
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Complex Seizure - RRSP, Bank Account, Shares, Multiple Locations, Court Orders, Cash, Additional Bailiff

<i>A Complex Seizure includes: File opening, 2 Hours Bailiff Time, All Bailiff Kilometers, All Bailiff Phone Calls, Registration and Discharge of Seizure at Alberta Personal Property Registry, 2 Hours Recovery Manager Resource Time, 2 Personal Property Registry Searches, Government Cost Recovery Fee, 2 Civil Enforcement Documents or Notices and Service of Civil Enforcement Seizure Documents</i>	\$1,250
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Section 54 Seizure - Serial Numbered Goods as defined by the Alberta Personal Property Registry

<i>A Section 54 Seizure includes: File Opening, 1 Hour Bailiff Time, All Bailiff Phone Calls, Registration and Discharge of Seizure at Alberta Personal Property Registry, 1 Hour Recovery Manager Resource Time, Government Cost Recovery Fee, 2 Personal Property Registry Searches, 2 Civil Enforcement Documents or Notices and Service of Seizure Documents</i>	\$750
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Please note this is only a sample of our new fee schedule, for a copy of our complete schedule; please do not hesitate to contact any of our civil enforcement staff.

I hope this bulletin has helped you better understand what costs you can expect to incur, who pays these costs and can these costs be taxed. If you have any questions relating to the information provided above, or if I can assist you with any other civil enforcement questions/needs, please do not hesitate to drop me an email at patriciaw@ccebailiff.ca or contact me by phone at (403) 668-8804 or (780) 448-5833 ext. 8804.

Have a wonderful January, stay dry and warm in this wonderful winter wonderland we call Alberta.

Patricia Wilson

Director, Civil Enforcement