

Some Rules to Watch Out For Regarding Services Agreements in Quebec

It is often assumed that Quebec contract law rules, while based in the (European-style) Civil Law system, are essentially similar to Ontario common law requirements. In fact this is often not the case even for some fairly typical business and contractual relationships. This is illustrated by the following Articles (sections) contained in the Quebec Civil Code:

2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

2126. The contractor or the provider of services may not resiliate the contract unilaterally except for a serious reason, and never at an inopportune moment; otherwise, he is liable for any injury caused to the client as a result of the resiliation. Where the contractor or the provider of services resiliates the contract, he is bound to do all that is immediately necessary to prevent any loss.

2129. Upon resiliation of the contract, the client is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property furnished, where it can be returned to him and used by him. For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned. In either case, each party is liable for any other injury that the other party may have suffered.

A Contract of Enterprise or Services

The above provisions apply to a "contract of enterprise or for services". Article 2098 C.C. defines this as a contract whereby a person "...undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay." This covers a broad range of commonly encountered commercial agreements, everything from construction contracts to information technology services to manufacturing agreements (but not employment agreements).

Article 2125 C.C.'s Special Protection for the Client

The effect of Article 2125 C.C. is that the "client", i.e., the party receiving the work or services, can during the term and even without a special clause in the contract, terminate the agreement without paying normal civil law damages. Normally, both in Quebec and here, if someone violates a contract, they are liable to pay the innocent party the amount necessary to put him in the position he would have been in had the contract been performed to term. But under Quebec contract law a recipient of work or services can terminate the contract before its agreed upon end without paying that full indemnity. The Quebec approach is premised on the idea that a services recipient should be able to quit an arrangement whose commercial viability has, from his standpoint, changed. In such a case, he still must recompense the provider but as provided in Article 2129 C.C., the liability is limited to losses incurred by the services provider to the date of termination of the contract. The provider will receive no compensation for the profit foregone for the period between the original termination date and the date the services recipient ended the relationship.

Comparison with Ontario Law

The limited liability afforded by Article 2129 C.C. is similar to the common law *quantum meruit* approach which focuses on what is reasonable to pay based on the benefits received by the terminating party prior to termination and not on the losses which the innocent party would incur over the original contract term. However, in Ontario, this type of limited recovery does not apply to the normal breach of a services or independent contract. Rather, full loss of profit or "expectation" damages would be available to the innocent party.

Thus, in one reported Quebec case a recipient of services was able to terminate the contract early simply by paying a proportionate amount of the contracted remuneration, i.e., calculated to the date he ended the contract, which was much more favourable, given the length of the original term, than paying normal expectation damages. Thus, despite having signed an agreement with a fixed term, the services provider did not receive the full, anticipated benefit of his contract.

Excluding or Modifying Articles 2125-2126 and 2129 C.C.

The provider would have been protected had a clause been inserted in the contract whereby his client waived the application of Articles 2125 and 2129 C.C. Parties can, in other words, derogate voluntarily from these rules because they are not matters of "public order" under Quebec law (or what is called public policy in Ontario).

Accordingly, a provider of work or services should be alive to the special risk he faces in Quebec and that by utilizing qualified legal assistance to help draft the contract, he can go a long way to mitigating this and other risks arising from this form of contract.

When the Provider Wishes to Terminate

For his part, the provider of work or services in Quebec also is given a preferential position when terminating the agreement. However, his right is subject to more onerous conditions than for his co-contractant in that Article 2126 C.C. states the service provider can only terminate the contract for a "serious reason" and only at an "opportune" moment.

In one case under Article 2126 C.C., the claim by a recipient of services that his provider breached the contract succeeded with full damages recovery because the provider could not satisfy the court that it terminated the agreement at an opportune moment. However, while the provider's right to end the contract early is more restrictive than the client's right to do so, the services or work provider still has more opportunities to limit his damages than under Ontario common law. For example, if there was a regulatory change which made it uneconomic for the provider to continue to produce the work or services in question, that might well constitute a "serious reason". Perhaps, too, the service provider could choose a time to terminate which is relatively favourable to the client, say, where supply of the service exceeds demand, and/or where the client is given reasonable notice to locate another provider. In those instances, arguably, the provider could extricate from the contract by paying damages to the client calculated, not by reference to the client's anticipated loss over the full contract term, but simply covering the period until the provider chose to end the contract.

Because of the above situation, a recipient of services will want to exclude the provider's right to terminate early in the contract yet (if possible) not agree to a parallel exclusion - and vice versa. The result might be that there is a reciprocal waiving of the provisions of the Civil Code in question, or that only one of the parties waives his rights.

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If we can be of assistance to your business when dealing with contractual matters in Quebec, please do not hesitate to [contact us](#).