

Litigation - Canada

Hague Convention – service of documents abroad

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Introduction

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Introduction

Obtaining judgment against an adversary is the first and often most heavily contemplated step for litigators and litigants alike. However, equally important is a litigant's ability to enforce a judgment, particularly against a non-resident party.

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters was concluded on November 15 1965 to ensure that judicial and extrajudicial documents are served abroad with sufficient notice and in a simplified and expedited procedure.⁽¹⁾ Approximately 147 states are 'members' or 'non-member contracting states' under the Hague Convention.⁽²⁾ Service of judicial and non-judicial documents on a corporation or individuals in a contracting state or non-member contracting state must follow the procedures prescribed by the Hague Convention.

Ensuring documents are properly served in Canada

As Canada is a signatory to the Hague Convention, service of documents on a Canadian corporation (regardless of the province(s) in which the corporation is registered) or an individual must comply with the Hague Convention's prescribed steps. The proper steps for service on a Canadian resident are as follows:

- Engage the proper authority or judicial officer in your own jurisdiction to forward a request for service to the central authority of the province in which the corporation is registered or the individual is resident.
- Engage an official translator to translate the document into either of the official Canadian languages, English or French.
- Execute a request for service in accordance with the province's internal law (in Ontario, the Rules of Civil Procedure) or by a particular method requested by the applicant (a request which will be considered by the central authority). The central authority will be responsible for complying with the nuances of the local law, such as personal service requirements.
- Pay costs for the execution of service to the central authority (approximately C\$100).
- Obtain from the proper authority or judicial office in your own jurisdiction the complete certificate (in French, *attestation*) from the province's central authority which states whether the document has been served (and by which method) or the reasons why the document has not been served.

The timing for completion of service by a central authority varies from state to state.⁽³⁾

Mechanisms to protect recipients of served documents

Protecting your client from foreign judgments ought to start with a consideration of whether a claimant, plaintiff, judgment creditor or other serving party has properly complied with the rules for service pursuant to the Hague Convention.

Defendant's protection prior to decision (Article 15)

Default judgments can occur against your client if foreign actions or claims remain unanswered. Before rendering a default judgment where a foreign resident has not answered to claims served upon it, the courts in contracting states are required to consider whether service was properly effected in accordance with the Hague Convention. The Hague Convention sets out the test for service which a judge in a contracting state must consider in rendering a judgment involving to a foreign party. Ultimately, the proof of claim is subject to the domestic state's law. Where a writ of summons or equivalent document has been (ostensibly) served abroad and the defendant has not appeared, judgment shall not be given until it is established that:

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- the document was served by a method prescribed by the internal law of the foreign state (or in Canada, the province), or was delivered to the defendant or to its residence by another method provided for by the Hague Convention; and
- the service or delivery was effected in sufficient time to enable the defendant to defend.

A judge may nonetheless grant judgment if all of the following conditions are fulfilled:

- The contracting state has made a declaration to this effect;
- The document was transmitted by one of the methods provided for in the Hague Convention;
- No certificate confirming service has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the requested state; and
- A period of time considered adequate by the judge, but of not less than six months, has elapsed since the date of transmission of the service.

If the above conditions have been met, the service requirement under the Hague Convention has been fulfilled such that a judgment against a foreign resident may be granted.

Defendant's protection after decision (Article 16)

In some cases a client does not seek legal advice until after a default judgment has been rendered. Where a judgment by default has been rendered, a defendant can be relieved of the effects of the expiration of the time for appeal if the following conditions are fulfilled:

- Application for relief is filed within a reasonable time after the defendant has knowledge of the judgment or within the time fixed by the state in its declaration;
- The defendant, without any fault on its part, did not have knowledge of the document in sufficient time to defend or knowledge of the judgment in sufficient time to appeal; and
- The defendant has disclosed a *prima facie* defence to the action on the merits.

For further information on this topic please contact [Douglas BB Stewart](#) or [Kathryn McCulloch](#) at Dentons by telephone (+1 416 863 4511) or email (douglas.stewart@dentons.com or kathryn.mcculloch@dentons.com).

Endnotes

(1) Preamble of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, concluded November 15 1965, accessed on June 30 2015 at www.hcch.net/index_en.php?act=conventions.text&cid=17. Further information with respect to the Hague Convention, including the central authority for various nations, can be found online by following the same link.

(2) A complete list of the Hague Convention's Contracting States can be found at: www.hcch.net.

(3) The Hague Convention website contains a comprehensive list of the approximate times for service: www.hcch.net.

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