

# Convention Between Government of Canada and Government of French Republic 1997

## **Civil Section Documents - Convention between the Government of Canada and the Government of the French Republic**

**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE FRENCH REPUBLIC**, hereinafter referred to as the "Contracting States",

**WISHING** to enhance their relations in the judicial area by facilitating the recognition and enforcement of judgments in civil and commercial matters and mutual legal assistance in maintenance matters,

**HAVE AGREED** upon the following provisions:

### **CHAPTER I - SCOPE OF APPLICATION**

#### **Article 1**

1. This Convention shall apply to judgments in civil and commercial matters rendered by a court of one Contracting State, including maintenance matters, status of natural persons, matrimonial matters, and custody of and access to children.
2. This Convention shall not apply to judgments for the recovery of taxes, duties, fines or monetary penalties, nor to those rendered by administrative tribunals.
3. Judgments that determine any of the following shall also be excluded from the application of this Convention:
  - (a) bankruptcy, insolvency or the winding up of companies or other artificial persons;
  - (b) the legal capacity of natural persons;
  - (c) guardianship of children involving public authorities;
  - (d) the management of the affairs of persons not capable of managing their own affairs;
  - (e) succession to or the administration of the estates of deceased persons.

#### **Article 2**

This Convention shall apply to judgments rendered after the Convention comes into force. However, this Convention shall apply regardless of the date on which the judgments on maintenance matters, status of natural persons, and custody of and access to children were rendered.

## **CHAPTER II - RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

### **Article 3**

The provisions of this chapter do not apply to maintenance.

### **Article 4**

Judgments rendered by the courts of one Contracting State shall be recognized and may be declared enforceable or registered for the purpose of enforcement in the other Contracting State if the following conditions are met:

- (a) The judgment was rendered by a court having jurisdiction pursuant to the rules set out in Article 5 or the rules recognized in the law of the requested State;
- (b) The judgment is no longer subject to appeal in the State of origin and is enforceable; however, in matters of custody of and access to children, the judgment may be enforceable in the State of origin even on an interim basis;
- (c) In the case of a default judgment, the defendant was lawfully served or received notice of the commencement of the proceedings in sufficient time to present a defence;
- (d) The judgment is not contrary to the public policy of the requested State;
- (e) Proceedings between the same parties, based on the same facts and having the same purpose as in the State of origin:
  - (i) are not pending before a court of the requested State that was seized of the matter prior to it being brought before the court of the State of origin, or
  - (ii) have not resulted in a judgment rendered by a court of the requested State, or
  - (iii) have not resulted in a judgment rendered by a court of a third State that meets the conditions for its recognition and enforcement in the requested State.

### **Article 5**

The court of the State of origin shall be deemed to have jurisdiction within the meaning of this Convention if in particular:

- (a) The defendant had his or her habitual residence, if a natural person, or its principal place of business, if an artificial person, in the State of origin when the proceedings were started;

- (b) The defendant had a place of business or branch in the State of origin when the proceedings were started and was served in that State in connection with a dispute related to the activities of that place of business or branch;
- (c) In an action for damages in tort, quasi-delict or delict, the wrongful act occurred in the State of origin;
- (d) The claim is related to a dispute in connection with rights in rem in immovable property located in the State of origin;
- (e) The defendant expressly submitted in writing to the jurisdiction of the court of the State of origin;
- (f) The defendant appeared without challenging the court's jurisdiction or presented a defence on the merits;
- (g) The contractual obligation that is the subject of the dispute was or should have been performed in the State of origin;
- (h) For any question related to the validity or administration of a trust established in the State of origin or to trust assets located in that State, the trustee, settlor or beneficiary had his or her habitual residence or its principal place of business in the State of origin;
- (i) In matters of custody of and access to children, the child had his or her habitual residence in the State of origin at the commencement of the proceedings on the merits;
- (j) In matrimonial matters, both spouses had their last common habitual residence in the State of origin.

## **Article 6**

1. Judgments rendered by a court in Canada shall be enforced in France after having been declared enforceable there on the application of any interested party to the president of the *tribunal de grande instance* of the domicile of the party against whom enforcement is requested or, failing that, where enforcement is to take place.
2. Judgments rendered by a French court shall be enforced in Canada after being declared enforceable or registered for that purpose on the application of any interested party:
  - (a) to the Federal Court of Canada, in the case of a judgment relating to a matter within the jurisdiction of that Court;
  - (b) to a court of a province or territory designated pursuant to Article 25, in the case of any other judgment.
3. The procedure for securing the enforcement of the judgment shall be governed by the law of the requested State.
4. Unless the defendant presents proof to the contrary, the findings of fact on which the court of the State of origin based its jurisdiction shall be presumed valid.

5. The court of the requested State shall not examine the merits of the judgment.
6. If the judgment disposed of several claims, partial enforcement may be granted.

#### **Article 7**

1. The party requesting recognition or enforcement of a judgment shall produce:
  - (a) a copy of the judgment certified by the competent authority of the court of the State of origin;
  - (b) in the case of a default judgment, any document proving that the defaulting party was lawfully served or received notice of the commencement of the proceedings in due time;
  - (c) any document capable of showing that, under the law of the State of origin, the judgment is enforceable and is no longer subject to appeal, except for judgments relating to custody of and access to children.
2. If these documents are in a language other than that of the court of the requested State, they shall be accompanied by a certified translation.

### **CHAPTER III - RECOGNITION AND ENFORCEMENT OF JUDGMENTS OF THIRD STATES**

#### **Article 8**

In the instances specified in Articles 59 of the Brussels Convention of September 27, 1968 and the Lugano Convention of September 16, 1988 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, judgments rendered in a third State that is a party to either of those Conventions against a person domiciled or habitually resident in Canada shall not be recognized or enforced in France by application of those Conventions.

#### **Article 9**

For the application of Article 8:

- (a) A person shall be considered to be domiciled in Canada only if he or she resides there under conditions in which it is apparent that the person has close ties with Canada;
- (b) A company or association shall be considered to be domiciled in Canada only if it was established or formed pursuant to a law in force in Canada and has a registered office there, or if its management and control are based in Canada.

## **CHAPTER IV - MUTUAL LEGAL ASSISTANCE FOR THE RECOVERY OF MAINTENANCE**

### **Article 10**

1. The Contracting States shall give each other mutual legal assistance for the recovery of maintenance.
2. For the purposes of this assistance, France shall designate the authority responsible for the recovery of maintenance which is the Ministry of Justice.
3. Canada may designate more than one authority and this designation shall be done in accordance with the arrangements concluded pursuant to Article 26 of this Convention.

### **Article 11**

1. Maintenance means payment for support granted to the children or the spouse who have their habitual residence in one Contracting State.
2. Only orders which have established or varied maintenance and that have been rendered by a court that is competent under the following paragraph are covered by the assistance provided for in this chapter.
3. A court is considered to be competent if:
  - (a) both the claimant and the respondent were habitually resident in the State of origin; or
  - (b) the respondent, who was not habitually resident in the State of origin, submitted clearly to the jurisdiction of the court of that State.

### **Article 12**

Authorities responsible for the recovery shall take the appropriate measures:

- (a) to locate the debtor;
- (b) to initiate proceedings on behalf of the claimant for the recognition and the enforcement of an order within the meaning of Article 11;
- (c) to implement any appropriate procedure for the compulsory enforcement of an order that is declared enforceable or registered for the purpose of enforcement in accordance with Article 16;
- (d) to facilitate the transfer of sums recovered to the claimant.

### **Article 13**

1. Authorities responsible for the recovery shall bear their own costs in applying this chapter.

2. These authorities and other public services of the Contracting States shall not impose any charges on the claimant or the State of origin in relation to proceedings referred to in this chapter. In particular, they may not require any payment from the claimant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel.

#### **Article 14**

1. The claimant in favour of whom an order, within the meaning of Article 11, has been made by a court of one Contracting State and that is to be enforced in the other Contracting State, shall apply for assistance, pursuant to Article 12, to the authority of the State where the order was made.

2. This authority shall transmit the application to the authority of the other Contracting State if the application contains the information and documents referred to in the arrangements concluded pursuant to Article 26.

#### **Article 15**

1. The procedure for securing the enforcement of the order shall be governed by the law of the requested State.

2. Unless the defendant presents proof to the contrary, the findings of fact on which the court of the State of origin based its jurisdiction shall be presumed valid.

3. The court of the requested State shall not examine the merits of the order.

#### **Article 16**

Orders that establish or vary maintenance rendered by the courts of one Contracting State shall be recognized and may be declared enforceable or registered for the purpose of enforcement in the other Contracting State if the following conditions are met:

(a) The order was issued by a court exercising its jurisdiction pursuant to Article 11;

(b) The order may be enforceable in the State of origin even on an interim basis;

(c) In the case of an order obtained by default, the respondent who was habitually resident in the State of origin was lawfully served or received notice of the commencement of the proceedings in sufficient time to present a defence;

(d) The order is not contrary to the public policy of the requested State;

(e) Proceedings between the same parties, based on the same facts and having the same purpose as in the State of origin:

- (i) are not pending before a court of the requested State that was seized of the matter prior to it being brought before the court of the State of origin, or
- (ii) have not resulted in an order rendered by a court of the requested State, or
- (iii) have not resulted in an order rendered by a court of a third State that meets the conditions for its recognition and enforcement in the requested State.

## **CHAPTER V - GENERAL PROVISIONS**

### **Article 17**

1. This Convention shall not derogate from international instruments to which both Contracting States become parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.
2. However, the Contracting States may make a contrary declaration to the extent allowed under these instruments.
3. The provisions of this Convention do not affect in any manner the application of the Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction.

### **Article 18**

When a judgment is rendered by a court of one Contracting State for the payment of money:

- (a) The conversion of the sum payable into the currency of the other Contracting State shall be done at the exchange rate on the day the judgment is declared enforceable or registered for the purpose of its enforcement;
- (b) The determination of the interest payable at the time of conversion shall be governed by the law of the State of origin if not otherwise provided for in the judgment.

### **Article 19**

1. Where a judgment has been rendered by a court of one Contracting State, any interested party may apply, in accordance with this Convention, to have the judgment declared enforceable or registered for the purpose of enforcement in the other Contracting State at any time within six years after the date of the judgment.

2. However, this limitation period shall not apply to judgments in maintenance matters and in matters of custody of and access to children.

#### **Article 20**

In relation to Canada:

(a) Any reference to the law of the State of origin or the requested State means the law in force in the relevant territorial unit;

(b) Any reference to the court of the State of origin, the requested State, or one Contracting State means the Federal Court or the court designated pursuant to Article 25;

(c) Any reference to habitual residence in the State of origin means habitual residence in the relevant territorial unit; however, for maintenance matters, any such reference means habitual residence in Canada.

#### **Article 21**

No legalization or similar formality may be required for the purposes of this Convention.

### **CHAPTER VI - FINAL PROVISIONS**

#### **Article 22**

Any difficulties arising from the application of this Convention shall be settled through diplomatic channels.

#### **Article 23**

Each Contracting State shall notify the other of the completion of the procedures required by its domestic law for the coming into force of this Convention, which shall take effect on the first day of the month following the expiration of a period of three months after the date of the last of these notifications.

#### **Article 24**

1. At the time of its notification, Canada may declare that this Convention shall extend to all of its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.



2. Any such declaration shall take effect on the first day of the month following the expiration of a period of three months after the date on which it is made.

#### **Article 25**

At any time, Canada may, by declaration, designate the courts of the provinces and territories to which an application may be made for the registration of a judgment rendered by a French court for the purpose of its enforcement.

#### **Article 26**

France and the provinces and territories of Canada may enter into arrangements concerning any matter dealt with in this Convention that is within provincial or territorial jurisdiction, to the extent that such arrangements are not inconsistent with the provisions of this Convention.

#### **Article 27**

1. This Convention shall be in force for an indefinite period.
2. Each Contracting State may, at any time, denounce this Convention by written notification transmitted through diplomatic channels. The denunciation may be limited to certain of the territorial units to which this Convention applies in accordance with the declaration made by Canada pursuant to Article 24.
3. The denunciation shall take effect six months after the date on which notice of denunciation is received by the other Contracting State.

**IN WITNESS WHEREOF** the undersigned, being duly authorized by their respective Governments, have signed this Convention.

**DONE** at Ottawa, this 10th day of June 1996, in duplicate, in the English and French languages, both texts being equally authentic.

*Allan Rock*

**FOR THE GOVERNMENT OF CANADA**

*Ambassador Siefert-Gaillardin*

**FOR THE GOVERNMENT OF THE FRENCH REPUBLIC**