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## **North America**

# Canada (Québec)

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## 1. UNIFORMITY OF LAW AND REGULATIONS

Québec, as opposed to the other Canadian provinces, is a civil law jurisdiction. Matters of private law are regulated by the *Civil Code of Québec* CQLR, c. CCQ-1991 (hereafter the '*Civil Code of Québec*'). Broadly, the principles and rules regarding the recognition and enforcement of foreign judgments codified in the *Civil Code of Québec* aim to promote the development of Québec's international relationships, particularly in commercial matters, by facilitating the procedure for recognizing and enforcing foreign judgments.

The principles and rules regarding the recognition and enforcement of foreign judgments are governed by the *Civil Code of Québec* and the *Code of Civil Procedure*, CQLR, c. 25.01 (hereafter the '*Civil Code of Procedure*').

## 2. JUDGMENTS

### 2.1. Definition

In the context of the recognition and enforcement of foreign judgments, the *Civil Code of Québec* affords a broad scope to the concept of 'judgment', specifically employing the term 'foreign decision' in the Book *Ten of the Civil Code of Québec*, which outlines the rules governing private international law.

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This term encompasses any decision of a tribunal, legally constituted by a foreign state, with regard to an action submitted to its jurisdiction, whether it be concerning a lawsuit, an incidental aspect thereof or a means of execution. The term also includes such legal acts as the naming of a tutor or *curator*, the probation of a will, as well as provisional and conservatory measures. All judgments rendered outside Québec (except those rendered by Canadian courts applying Canadian federal laws) are considered foreign.

### 2.2. Categories

Except as otherwise provided, foreign decisions can be enforced or recognized in Québec. The procedure to be followed is an application for recognition and enforcement made either by an originating application or an incidental application in the course of a proceeding by any of the parties.

Monetary or patrimonial judgments require enforcement by way of a formal enforcement order. Personal status judgments need only be recognized and do not require enforcement. This distinction has, however, no consequences with respect to the procedural method to be used when enforcement or recognition must be made by a local court:

- (a) Monetary judgments are enforceable.
- (b) Judgments ordering specific performance are enforceable.
- (c) Only permanent injunctions are enforceable.
- (d) Arbitration awards are recognized and executed if the matter in dispute is one that may be settled by arbitration in Québec and if its recognition and execution are not contrary to public order. It is of note that the *Code of Civil Procedure* provides specific procedural dispositions governing the recognition and execution of foreign arbitration awards (unrelated to the provisions governing the exequatur procedure).
- (e) Personal status judgments do not have to be enforced by local courts. Although the procedure to be followed is the same, these judgments only must be recognized. Whereas the difference between enforcement and recognition is not relevant before the courts, it becomes important when the judgment must be considered by a Québec authority which is not a court of law. A foreign judgment in matters relating to personal status could thus be recognized by a local authority without following the formal procedure. The judgment would then benefit from an informal recognition within the local forum.
- (f) A foreign certified adoption under the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* is not subject to exequatur proceedings (see also the *Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, CQLR, c. M-35.1.3).
- (g) An award for multiple/punitive damages is enforced or recognized under the *Civil Code of Québec* unless the local courts consider such remedy to be contrary to public order.

- (h) A judgment which is in itself a recognition of a previous judgment will, in principle, not be recognized and enforced.
- (i) Foreign interim orders are generally not enforceable as they are considered to be subject to potential review or reappraisal.

The principle, however, does not apply when interim orders are for the payment of support (maintenance). Such a decision can be enforced as payments become due. It is also of note that maintenance order judgments rendered in foreign jurisdictions designated in the regulations of the *Act Respecting Reciprocal Enforcement of Maintenance Orders*, CQLR, c. E-19, may be enforced in Québec and do not require exequatur proceedings.
- (j) A foreign judgment against the province of Québec (i.e., the Attorney General), or one of its state bodies will be enforced only when it has been validly rendered by a foreign court exercising jurisdiction as defined by Québec law. A foreign judgment against the province of Québec concerning a non-commercial or public matter will not be enforced.
- (k) Judgments enforcing obligations arising from laws of taxation will neither be enforced nor recognized by local courts unless reciprocity is granted by the foreign courts. This prohibition can be extended to all foreign judgments applying foreign public laws.

### 2.3. Reciprocity

Reciprocity is not essential for enforcement by the local courts, except in the case of judgments enforcing obligations arising from tax laws.

## 3. CURRENCY REGULATIONS AND RESTRICTIONS

- (a, b) There are no restrictions per se on the transfer of funds received by virtue of an enforced or recognized foreign judgment. It is possible, however, that depending on the circumstances and the nature of the suit, Canadian and Québec fiscal authorities might require the payment of customs duties on amounts awarded.
- (c) Awards granting payments in foreign currency must be converted into Canadian currency at the exchange rate prevailing on the day the judgment became enforceable in the foreign state where it was rendered.

## 4. DOCUMENTARY REQUIREMENTS

- (a) The original or a certified copy of the foreign judgment must be provided, together with a certificate from a competent foreign public official stating

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that the decision is no longer appealable in the state in which it was rendered or that it is final or enforceable. When the parties do not oppose the authenticity, finality or enforceability or when the issuing authority does not provide the certificate, the certificate is not necessary.

Where a party wishes to request the enforcement of a default judgment, proof of service to the defaulting party according to the laws of the place where the decision was rendered must also be provided. Mention of service in the foreign default judgment will not, however, in itself constitute proof of service. As such, a default judgment will only be recognized in Québec if an additional certified document, showing that the originating application was properly notified to the defaulting party, is appended to the application.

If, however, the person making the application for recognition and enforcement of the foreign judgment is required to identify themselves as duly mandated to do so, the following rules apply.

The relationship between a company and a person authorized to represent it in a judicial proceeding is regulated either by company law when the person representing the company is one of its directors or by the law of agency when that person is an outsider.

In the first case, the governing law is the one under which the company was constituted, subject to the law of the place where its activities are carried on. Under Québec law, directors do not need special authorization to act in the name of the company.

In the second case, the relation between the company as principal and the agent will be governed by the law of the state where the agent resides or by the law expressly chosen to apply to the agency contract. Under Québec law, directors can generally conclude any contracts which they may lawfully enter into.

A special authorization could be imposed on the company's by-laws.

- (b) The party demanding recognition or enforcement of the foreign judgment must provide a certificate from the competent foreign official to prove that the judgment can no longer be appealed or reviewed and that it is final and enforceable.
- (c) Faxed or notarized copies of a document are considered reproductions. Such reproductions may legally stand in lieu of the reproduced document, provided they are documented in accordance with sections 17, 18 and 20 of the *Act to Establish a Legal Framework for Information Technology, CQLR, c. C-1.1*. Documentation shows that the reproduced document contains the same information as the source document and that its integrity is ensured.

The reproduction of emails is governed by the *Act to Establish a Legal Framework for Information Technology, CQLR, c. C-1.1*. The reproduction of these emails proceeds in a similar manner. It proceeds by means of a comparison process that verifies that the information in the copy is identical to the information in the source document.

## 5. CONVENTIONS

Canada ratified the *Hague Convention on the Civil Aspects of International Child Abduction*.<sup>1</sup> Québec has signed this Convention and has integrated the *Hague Convention on the Civil Aspects of International Child Abduction*<sup>2</sup> in its laws via the *Act Respecting the Civil Aspects of International Child Abduction*, CQLR, c. A-23.01.

With respect to the *Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters*,<sup>3</sup> although the Convention was ratified by both Canada and Québec, neither jurisdiction appears to have formally integrated the provisions thereof in their legislation by way of adoption of a specific statute. However, the provisions of the *Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters*<sup>4</sup> may be followed, and both the Canadian and Québec jurisdictions have established a mechanism to facilitate the use of the Convention. For instance, Québec has established a mechanism for international notification pursuant to the *Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters*.<sup>5</sup>

## 6. AUTHENTICATION OF DOCUMENTS

A foreign judgment is considered a semi-authentic act and will, if issued by a competent foreign officer, be proof of its content against all persons. Neither the quality nor the signature of the officer needs to be proved. A copy of a document in the custody of a foreign public officer is proof of its conformity to the original against all persons and replaces the original if it purports to be issued by the officer. If this judgment is contested as to its validity, the person invoking its validity has the burden of proving that it is authentic. A copy of the judgment can be authenticated by the foreign court.

A power of attorney clause in private writing made outside Québec is proof against all persons if it is certified by a competent public officer who has verified the identity and signature of the mandator. Any act, copy thereof or power of attorney may be deposited with a notary who may then issue copies of same. The said copy is proof of its conformity to the deposited document and replaces it. Where an act or copy issued by a foreign public officer or a power of attorney certified by a foreign public officer has been contested, the person invoking it has the burden of proving its authenticity.

No consular authentication is required.

1. The Hague, 25 Oct. 1980, *United Nations Treaty Series*, vol. 1343, no. 22514, p. 89, <https://treaties.un.org/doc/Publication/UNTS/Volume%201343/v1343.pdf>.

2. *Id.*

3. The Hague, 15 Nov. 1965, *United Nations Treaty Series*, vol. 658, no. 9432, p. 163, <https://treaties.un.org/doc/Publication/UNTS/Volume%20658/v658.pdf>.

4. *Id.*

5. *Id.*

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### 7. TRANSLATION OF DOCUMENTS

- (a) Documents in English or French do not have to be translated. Notwithstanding the foregoing, on 24 May 2022, the National Assembly of Quebec adopted Bill 96, a reform of Quebec's language laws, which provides, among other provisions, that all pleadings in legal proceedings must either be drafted in French or be accompanied by a certified translation, which provision was set to come into force September 1, 2022. Although this provision should not have a bearing on the foreign decision itself, the application and scope of the specific provisions of Bill 96 remain to be clarified. As of July 2022, the constitutionality of Bill 96 as it pertains to the language of legal proceedings was challenged before the courts and the matter is currently pending before Quebec tribunals.
- (b) Documents in other languages must be accompanied by a certified translation. This translation must be authenticated in Québec. There is no legal provision as to the procedure whereby a translation becomes authenticated. Usually, the translation will be verified by a professional translator who will swear to its conformity before a commissioner of oaths who, in turn, affixes his or her seal on the translation.

### 8. REOPENING OR REVIEW OF JUDGMENTS

(a, b) Reopening or review of foreign judgments is strictly forbidden. However, adoption judgments will be examined to ensure they comply with local rules on consent and eligibility. Similar powers of examination are also afforded to Québec courts in certain circumstances with respect to judgments regarding support payments and custody.

(c) The *Civil Code of Québec* does not expressly state that the respondent can raise an allegation of fraud against the person benefiting from the judgment. However, some scholars have suggested that some provisions of the *Civil Code of Québec*, such as sections 3079, 3099 and 3117, implicitly protect persons implicated in foreign judgments from evasion of the law. Evasion of the law refers to instances where a person benefiting from the foreign judgment has changed the location of a connecting factor used by Québec's conflict of law rules in order to evade a prohibition resulting from the law which normally applies.

### 9. PENDING PROCEEDINGS

- (a) On the application of a party, a Québec authority may stay its ruling with respect to an action brought before it if another action between the same parties, based on the same facts and having the same subject, is pending before a foreign authority, provided that the latter action may result in a decision which may be recognized in Québec. In all cases



where the foreign authority was seized of a case last, recognition and enforcement will not be granted even though its judgment is rendered before the local court renders its own. When the foreign court was seized of a case first, its judgment will be recognized or enforced only if it preceded the local court's decision.

- (b) A pending appeal would render the foreign judgment unenforceable since it would not be final in this case.

## 10. DEFENCES

In Québec, recognizing or enforcing a foreign judgment is the rule and refusal to recognize or enforce it is the exception. A respondent can oppose the application of recognition and enforcement based on six exceptions to this presumption, as found under section 3155 of the *Civil Code of Québec*.

Pursuant to section 3155 of the *Civil Code of Québec*, the local court will recognize or declare enforceable any decision rendered outside Québec, except in the following cases:

1. The authority of the state where the decision was rendered had no jurisdiction under the rules of private international law as applied by Québec courts.
2. The decision is subject either to an appeal or some other remedy at law within the foreign system or it is not final or enforceable at the place where it was rendered.
3. The decision was rendered in contravention of the fundamental principles of procedure (the court will consider the adequacy of notification of the action and all types of fraud perpetrated in the foreign proceeding). *See also* 11(e)i hereunder.
4. A dispute between the same parties, based on the same facts and having the same subject, has given rise to a decision rendered in Québec, whether or not it has become final is pending before a Québec authority, first seized of the dispute, or has been decided in another foreign state and the decision meets the conditions necessary for it to be recognized in Québec.
5. The outcome of a foreign decision is manifestly inconsistent with public order as understood in international relations.
6. The decision enforces obligations arising from the laws of taxation of a foreign state (unless reciprocity has been granted by the foreign courts).

## 11. JURISDICTION

- (a) The local court will only accept the foreign court's jurisdiction if it meets certain requirements set forth in the *Civil Code of Québec* as described in (c).
- (b) Jurisdiction is established under Québec law.

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- (c) The jurisdiction of foreign courts is established according to the rules on jurisdiction applicable to Québec courts, to the extent that the dispute in question is substantially connected with the foreign court. All conditions of jurisdiction having to be met by Québec courts must also be met by foreign courts whose judgments are to be recognized or enforced unless otherwise provided. These conditions vary according to the type of action that originated the judgment. Québec law recognizes personal actions, *in rem* or *quasi in rem*, as well as mixed actions. Personal actions are divided into two categories: personal actions of a patrimonial nature and personal actions of an extra-patrimonial and family nature. Actions of an extra-patrimonial nature overwhelmingly concern personal status. Actions of a patrimonial nature mostly concern monetary judgments and specific performance.

Conditions for valid jurisdiction can be summarized as follows. We will examine them by dividing the topic into five points:

- (1) A foreign court has jurisdiction to hear the personal actions of an extra-patrimonial and family nature when one of the persons concerned is domiciled in the forum. Foreign courts have jurisdiction to rule on the custody of a child provided he or she is domiciled in the forum and on separation from bed and board when one of the spouses has his or her domicile or residence in the forum at the time of the institution of the proceedings. Foreign courts also have jurisdiction in support matters when one of the parties has his or her domicile or residence in the forum and in matters concerning the nullity of marriage when one of the spouses has his or her domicile or residence in the forum or when the marriage was solemnized there. Foreign courts also have jurisdiction with respect to matters relating to marriage or civil union, particularly effects which are binding on all spouses, regardless of their matrimonial regime, when one of the spouses has his or her domicile or residence in the forum. 'Effects' refers to the legal status imposed on married people or those bound by civil union, regardless of their matrimonial regime. This includes the rights and duties of spouses, the status of the family residence, the status of properties in the family patrimony whose distribution after a divorce is of public order and the compensatory allowance which some spouses may claim after a divorce as compensation for his or her contribution to the enrichment of the former spouse.

Jurisdiction of foreign courts will also be recognized in matters of filiation where the child or either of his or her parents is domiciled in the forum or is a national thereof and in actions relating to divorce if one spouse had his or her domicile in the state where the decision was rendered or had his or her residence in that state for at least one year before the institution of the proceedings, or if the spouses are nationals of that state or if the decision would be recognized in that state. Foreign courts also have jurisdiction with respect to matters relating to the dissolution or nullity of a civil union, only if the state provides for that institution; if a state does so, the jurisdiction of a

foreign court will also be recognized on the same conditions as for divorce.

- (2) A foreign court has jurisdiction to hear personal actions of a patrimonial nature only if at least one of the following conditions is met:
  - (a) the defendant was domiciled in the state where the decision was rendered;
  - (b) the defendant possessed an establishment in the state where the decision was rendered and the dispute related to its activities in that state;
  - (c) the injury was suffered in the state where the decision was rendered and it resulted from a fault which was committed in that state or from an injurious act or omission which occurred there;
  - (d) the obligations arising from a contract were to be performed in that state;
  - (e) the parties have submitted to the foreign authorities the present or future disputes between themselves arising out of a specific legal relationship; however, renunciation by a consumer or a waiver of the jurisdiction of the authority of his or her place of domicile may not be set up against him or her;
  - (f) the defendant has submitted to the jurisdiction of the foreign authorities.

Notwithstanding the last condition, the foreign court has no jurisdiction where the parties have chosen by agreement to submit the present or future dispute relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the foreign court.

Additionally, a foreign court has jurisdiction to hear an action based on a consumer contract or a contract of employment if the consumer or worker has their domicile or residence in the state – waiver of such jurisdiction by the consumer cannot be set up against them. The same principle applies to actions based on a contract of insurance where either the holder, the insured or the beneficiary of the contract is domiciled in the state, the contract covers an insurable interest situated in the state, or the loss occurred in the state.

- (3) A foreign court has jurisdiction with respect to a real action (*action in rem*) if the property in dispute is situated in that state. In matters relating to successions, if the succession opens in the foreign state, the foreign court has jurisdiction where the defendant or one of the defendants is domiciled in the state or the deceased had decided that the law of that state should govern his or her succession as well as any property of the deceased situated in that state and a ruling is required as to the devolution or transmission of the property.

A foreign authority has jurisdiction in matters of matrimonial and civil union regimes in the following cases: (1) the regime is dissolved by the death of one of the spouses and the foreign court has jurisdiction with respect to the succession of that spouse; (2) the

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object of the proceedings relates only to property situated in that state. In other cases, a foreign court only has jurisdiction if one of the spouses has his or her domicile or residence in that state on the date of institution of the proceedings:

- (4) The jurisdiction of the foreign court will not be recognized in the following cases: (1) where by reason of the subject matter or an agreement between the parties, Québec law grants exclusive jurisdiction to the authorities to hear the action which gave rise to the foreign decision (this will be the case in all decisions to be rendered in matters relating to civil liability, when damages were suffered in or outside Québec as a result of exposure to, or use of, processed or unprocessed raw materials which originate in Québec); (2) where by reason of the subject matter or an agreement between the parties, Québec law recognizes the exclusive jurisdiction of another foreign state; or (3) when Québec law recognizes an agreement by which exclusive jurisdiction has been conferred upon an arbitrator.
- (5) Since Québec law recognizes the doctrine of *forum non conveniens*, a Québec court can refuse to recognize a foreign court's jurisdiction based on *forum non conveniens* even though jurisdiction is regularly established. It is important to note, however, that the jurisdictional analysis must be limited to determining whether the foreign authority has jurisdiction under the Québec rules rather than its own rules, not whether it should have declined jurisdiction under this doctrine.

Recognition or enforcement may not be refused on the sole ground that the foreign court applied a law different from the one that would be applicable under the Québec conflict of law rules.

- (d) Entering an appearance or answering a summons to defend oneself in a foreign court may be considered submission or attornment to that court's jurisdiction. The result is the same for a defendant who presents substantive arguments that, if accepted, could resolve all or part of the matter on its merits, while also claiming the foreign court does not have jurisdiction. In this case, a Québec court may consider that the defendant submitted to that court's jurisdiction.

However, entering an appearance simply to challenge the jurisdiction of the court is not considered a submission to that court's jurisdiction. Unless specified, even an application for details may be considered submission to the jurisdiction.

- (e) (1) A default judgment is treated differently since Québec law attaches to its enforceability a condition pertaining to the fundamental principles of procedure. The party applying for recognition and enforcement of the foreign judgment rendered by default must prove that the action was validly served on the defaulting defendant. Service must be valid according to the law of the state where the judgment was rendered even when the person served is domiciled in Québec.
- (2) The defaulting defendant can nonetheless prove that the method of service was insufficient for them to gain knowledge of the action or that the delay to prepare their defence was too short.

- (f) A grant of exclusive jurisdiction to the foreign court will not be subject to review by the local court unless such exclusive jurisdiction was expressly granted to the Québec courts by Québec law.
- (g) The respondent does not have to be a citizen, resident or own assets or carry on business in the local state.

## 12. CONTRACTUAL WAIVER

- (a) The validity of a prior contractual waiver of service or notice is to be determined exclusively by the foreign court according to its own laws.
- (b) Québec law recognizes that procedural matters are governed by the law of the court which is seized with the dispute. Unless the waiver is considered to be contrary to the fundamental principles of procedure, it will be held valid.

## 13. SERVICE REQUIREMENTS

The *Civil Code of Québec* contains no specific provisions concerning the method of service of an action, but it does ask local courts to evaluate whether the method actually used is in conformity with the essential principles of procedure.

According to certain decisions, it can generally be said that personal service in the state where the decision is rendered is a fundamental principle of procedure and all other methods are invalid.

However, in its provisions governing default judgments, the *Civil Code of Québec* seems to ease the requirement of personal service and instead envisages a sufficient method of service to guarantee that the defendant will learn of the lawsuit which has been instituted.

The onus of proof with respect to service falls on the party requesting the enforcement of the judgment. Since this requires evidence that the proceedings were served in conformity with the law of the jurisdiction in which the judgment was rendered, this first entails establishing the foreign law in evidence. It is of note that even where a party has submitted satisfactory evidence of service, the opposing party may bar the application if it can establish that it was unable to take cognizance of the introductory proceedings or that it was not afforded a sufficient delay to present its defence.

## 14. ASSIGNMENT

- (a) A judgment as such cannot be assigned. However, the rights recognized or constituted by a foreign judgment can be transferred or assigned.
- (b) To the extent that the assignee has no more rights than the assignor, such an assignment cannot confer any advantages in the proceedings before the local court.

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### 15. INTERIM RELIEF

- (a) The beneficiary of a foreign judgment, who makes an application for recognition or enforcement, will not be treated differently from any other party to a local proceeding. If the beneficiary demonstrates that there is reason to fear that, without provisional measures, the collection of their debt may be jeopardized, a seizure before judgment will be granted.
- (b) Québec courts will generally order a foreign plaintiff to provide security for costs if the defendant requests such security by way of an application. The amount will vary according to the amount at issue in the lawsuit (*see* Section 18).

### 16. INTEREST

- (i) Until conversion, the determination of the legal interest payable pursuant to a foreign decision is governed by the law of the court that rendered the decision. The law of the foreign court will determine if legal interest is due, the date at which interest will accrue and the applicable rate. Foreign law controls the determination of the amount due in foreign currency until such amount is converted into Canadian currency.
- (ii) The conversion to Canadian dollars will be based on the exchange rate on the day the foreign judgment became enforceable in the foreign state where it was rendered. An additional indemnity may also be added to the legal interest and the amount of damages awarded for any reason.

The local court may also condemn the defendant to pay additional interest as of the date it enforced or recognized the foreign judgment, according to Québec law.

### 17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

- (a) (i) If the application for recognition and enforcement is unopposed, the period from the date of the filing until the decision is rendered is approximately three months. However, this period is subject to administrative and processing delays at any given time.
- (ii) If the application is opposed, a longer delay can be expected before recognition or enforcement is granted.
- (b) (b) Foreign judgments will be enforced by a local court like any other decision rendered locally:
  - (i) The primary means of enforcement is the seizure of both moveable and immovable properties.
  - (ii) Civil imprisonment is not recognized in Québec with respect to civil and commercial matters.

- (iii) In the event the defendant is insolvent, bankruptcy and liquidation can be requested in an application by the beneficiary of the foreign judgment.
- (iv) Restrictions on leaving the state are not recognized with respect to civil and commercial matters.

## 18. LEGAL COSTS AND SECURITY FOR COSTS

(a, d) According to the laws presently in force, the losing party generally owes legal costs to the successful party, unless the local court decides otherwise, the foreign decision involves a family or a personal status matter or one of the parties applies to be exempted from paying such costs. Legal costs are court costs and fees, which can include fees related to the physical preparation of appeal briefs and memorandums, the service or notification of pleadings and documents, witnesses, experts, interpreters and land registration.

(b) Attorneys' fees are strictly calculated on an attorney–client basis. Fees are charged either on an hourly basis or according to the amount at issue depending on the agreement entered into between the attorney and his or her client.

(c) An attorney is permitted to enter into a contingency fee agreement.

(e) At the defendant's request, a plaintiff who does not reside in Québec may be required to provide security for the costs which may be incurred in consequence of their suit in order to provide a bond or guarantee as security for the opposing party's costs in the event the suit is dismissed or unsuccessful. The amount of such security is determined based on the amounts at issue, the extent of deposition required and the costs of potential expert reports expected to form part of the record.

## 19. BANKRUPTCY/LIQUIDATION

(a) In the event of bankruptcy, the foreign creditor will be treated like any local creditor.

(b) In Canada, bankruptcy law is under the jurisdiction of the federal government and is governed by the *Bankruptcy and Insolvency Act*. A trustee may apply to a local court to recognize a foreign judgment in bankruptcy or insolvency.

Once the foreign judgment is recognized, the debtor shall not sell or otherwise dispose of any property they own in Canada, if they are an individual. Similarly, a debtor who carries on a business shall not sell or otherwise dispose of any of their property in Canada that relates to their business and shall not sell or otherwise dispose of any other of their property in Canada outside the ordinary course of their business. At the

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request of the foreign trustee, the local court may make any order it considers appropriate for the protection of the debtor's property or the interests of creditors.

### 20. LAWYERS (WHO CAN APPEAR?)

Any member of the Québec Bar can represent any person before any court in the province of Québec. A foreign lawyer may appear before the Québec courts only with special authorization from the Québec Bar for a specific court file for a maximum renewable period of twelve (12) months. Similarly lawyers licensed in other Canadian provinces can apply for specific permits after they complete annual registration form from the Québec Bar.

### 21. INTERNATIONAL TREATIES

Québec and France are bound by an agreement containing specific provisions for recognition and enforcement of judgments relating to civil, commercial and administrative matters, which include matters on the status and capacity of persons and more particularly, the custody of children and maintenance obligations. This agreement is called *L'Entente entre la France et le Québec sur l'entraide judiciaire en matière civile, commerciale et administrative*. The provisions in this agreement are applicable regardless of any general law. The provisions in the *Civil Code of Québec* with respect to these issues are more liberal than those in this agreement.

For instance, for a French decision on the status and capacity of a person, custody of children and maintenance obligation to be recognized in Québec, the following conditions must be met:

- the decision must be rendered by a competent jurisdiction according to the rules regarding jurisdiction in force in the state where that decision is to be recognized;
- the decision must have applied the laws applicable to the dispute under the conflict of law rules in force in the state where the decision is to be recognized;
- the decision must be final according to the laws of the foreign state where the decision was rendered;
- the parties must have been summoned, represented or be declared in default;
- the decision must not be contrary to public order as it is understood by the state where the decision is to be recognized;
- a dispute between the same parties, based on the same facts and having the same subject, must not be pending before a jurisdiction of the petitioned authority, must not have given rise to a decision rendered by a jurisdiction of the petitioned authority and must not have given rise to a



decision rendered in a third-party state which meets the conditions necessary in the territory of the petitioned authority.

22. CROSS-EXAMINATION OF *AFFIDAVIT*'S DEPONENT

- (a) Supporting *affidavit* is not required. However, the defendant may examine the plaintiff.
- (b) There are no grounds for opposing such examination.
- (c) The defendant is required to pay the travelling expenses of the plaintiff.

23. REQUIRED *AFFIDAVIT*

An *affidavit* is not required.

24. NEW ACTION INSTEAD OF ENFORCEMENT

A new action can be instituted instead of an application for recognition and enforcement of a foreign judgment. The beneficiary of such a foreign judgment can institute new proceedings since the judgment has no effect whatsoever in the forum if it has not been previously recognized or enforced.

25. STATUTORY LIMITATION

Pursuant to section 3131 of the *Civil Code of Québec*, the statutory limitation period – otherwise known as the prescription period – for instituting proceedings in recognition and enforcement of foreign judgments is governed by the law applicable to the merits of the dispute. The law applicable is that of the foreign state. Therefore, the local courts must follow the prescription period as established by the foreign state.

Pursuant to section 2809 of the *Civil Code of Québec*, the prescription period for executing the foreign judgment is determined differently. This prescription period is governed by the applicable law of the foreign state, solely if the applicant can successfully plead this law or establish its contents. If the applicant fails in doing so, the law on the prescription of the local court applies.

26. STATES/CANTONS

Not applicable.

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