

Cross-border Litigation – Enforcing Foreign Judgments and Letters Rogatory in Canada

Koskie Minsky LLP has developed an expertise in cross-border litigation, specifically, with respect to enforcing foreign judgments and letters rogatory in Canada.

American courts (both Federal and State Courts) have no jurisdiction over Canadian residents or companies in Canada. In order for a US judgment or letter rogatory to have effect over a Canadian resident or company, an application must be made to the relevant Canadian court to approve the order.

The Canadian courts will only approve a foreign judgment or letter rogatory in limited and particular circumstances. Before granting approval, the Canadian court will engage in a detailed assessment to determine if the foreign judgment (or letter rogatory) offends Canadian public policy. Additionally, the Canadian court will need to be convinced that the Canadian defendant was not denied natural justice when the foreign judgment or letter rogatory was obtained.

The assessment often involves the interplay and interpretation of the *Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965, C.T.S.*; the *Personal Information and Protection and Electronic Documents Act*, and the *Business Records Protection Act*. It is therefore necessary for any non-Canadian resident seeking to enforce a foreign judgment or letter rogatory in Canada to retain expert counsel.

Our expertise can assist in navigating through any of the stages involved with enforcing a foreign judgment or letter rogatory, including:

1. drafting the judgment or letter rogatory itself to ensure conformity with Canadian judicial standards;
2. bringing an application to the Canadian courts to enforce the order from the foreign jurisdiction; and
3. spearheading collection and enforcement of the foreign judgment after the Canadian courts have approved the order;

Koskie Minsky has an extensive network of professionals available to identify and locate assets throughout Canada that can be used to satisfy an outstanding judgment. Asset searches, judgment searches and investigative reports can be obtained for Canadian residents and companies before initiating an application to determine whether it is worth pursuing the intended defendant and commencing proceedings. Moreover, after the Canadian court approves the foreign judgment or letter rogatory, we are equipped to follow through with all enforcement procedures, including judgment debtor examinations,

filing writs, motions for contempt and commencing garnishment proceeding against the Canadian defendant to ensure compliance.