



April 19, 2006

Justice Canada
International Private Law Section
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Attention: Kathryn Sabo, General Counsel

Dear Ms. Sabo:

Re: *Hague Convention Abolishing the Requirement of Legalisation*

I write on behalf of the International Law Section of the Canadian Bar Association (CBA Section) regarding the *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, 5 October, 1961 (the Hague Convention). The CBA Section urges the Canadian government to sign the Hague Convention without further delay.

The Hague Convention eliminates the need for parties to go through lengthy and complex formalities to have public documents legalized for use in foreign countries. This process is replaced by the issuance of an “apostille” by designated domestic authorities authenticating the signature of the person who signed the document, the capacity in which the person signed, and explaining any seal or stamp on the document. Becoming a party to the Hague Convention is in the best interest of Canada. It will result in savings of time and money, and also permit legal counsel and Canadian companies to develop a consistent approach to the legalization and certification of documents.

Complexity of the Current Process

For Canadian companies that conduct business outside the country, legalization of documents becomes an issue when:

- filing tenders;
- making formal submissions or requests to foreign governments;
- issuing powers of attorney;
- making intellectual property assignments;

and even in the most routine business transactions. Individuals also require legalized documents to issue powers of attorney or transact other personal business.

Such transactions often require legalization of a multitude of documents, in particular incorporation and rules of origin documents, in order to be able to provide such documents to foreign governments, their corresponding registries and courts, as well as to their commercial counterparties.

The current process that Canadians must go through to obtain legalization of documents varies by the country for which the legalization is required, and by the institution making the request. Typically, a chain of authentications is required, starting with a Canadian notarial certification and culminating in the seal of a consular official of the country in which the documents are to be used. No matter what country is involved, obtaining legalization usually requires no fewer than three steps to complete.

For example, some countries (such as Argentina, Mexico, Venezuela, Columbia, Ecuador, Spain, Ukraine and Russia) require documents to be notarized by legal counsel, authenticated by the relevant provincial authority such as a department of justice or the Management Board for the relevant province, and then legalized by the relevant country's Consulate or Embassy in Canada (or in some cases, the United States).

Some countries, such as Romania, accept the parallel procedure of authentication by the Department of Foreign Affairs in Ottawa prior to legalization by their consulate or embassies. However, this does not make the process more efficient for Canadian companies, as it is just as time consuming to send documents to Ottawa (sometimes twice) for authentication.

Still other countries, such as Syria and Qatar (who are not signatories to the Hague Convention), require the documents to: (a) be notarized by legal counsel; (b) certified by another agency - in the case of Syria, the Canadian Chamber of Commerce, and in the case of Qatar, the United Nations Mission in New York; (c) certified by Foreign Affairs Canada; and then (d) legalized by their embassies responsible for Canada. If certification by the Canadian Chamber of Commerce is required, the company must take the additional step of incurring the expense to become a member.

Each of these steps involves excessive time and money. Legal counsel has to determine the procedure to be followed on a case-by-case basis, and then obtain the required notarizations, authentications, certifications and legalizations. If the company is not in a major center such as

Toronto, Ottawa, Montreal or Vancouver, the money and time spent is compounded, in that the relevant province may not have consulate or Chamber offices in that location.

In all cases documents have to be prepared, couriered, retrieved and then sent out an additional one or two times. Due to the time restraints involved, companies sometimes have to send human couriers to complete the steps in a timely manner at exorbitant costs, especially if multiple flights are required.

Our members further report that some consular staff are not quick to respond to requests for legalization, nor are they themselves even knowledgeable about their own country's requirements. The consulates may not be open regular business hours. This leads to a significant level of uncertainty and frustration for Canadian businesses and individuals trying to transact in those countries, as well as for legal counsel. Canadian companies have missed deadlines for requests for proposals and lose deals through no fault of the companies or their counsel, but rather through an inability to control the time involved in obtaining consular, governmental or Chamber of Commerce certifications.

Foreign companies based in one of the eighty-seven states that have ratified or acceded to the Hague Convention, be they parties on the other side of a transaction, affiliates of Canadian companies working through such procedures or merely foreign companies requiring documents from Canada, have expressed to us their concern and disbelief that Canadians still cannot use an apostille. This serves as an irritant and possible barrier to trade.

Conclusion

The current system for the legalisation of Canadian documents is in dire need of correction. A more streamlined approach is desirable, and could be effected on a cost recovery basis. Canada's ratification of the Hague Convention would remove this trade irritant with respect to those eighty- seven states that have ratified or acceded to the Convention.

For the last 20 years, the Canadian Bar Association has supported Canada becoming a signatory to the Hague Convention.¹ The time has come for Canada to act. Justice Canada's assistance in facilitating this change, and implementing a streamlined process for the legalization of documents, would be most appreciated.

Yours truly,

(Original signed by Mary Cornish)

Mary Cornish
Chair, National International Law Section

¹ CBA Resolution 86-07-A.