

FAR-FLUNG FAMILIES: FAMILY LAW ACROSS BORDERS

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I. INTRODUCTION

Canadian family law is a hodge podge of federal legislation and provincial legislation generously leavened with the common law, diverse rules of court procedure, and localized customs assiduously nurtured by recalcitrant registry staff. Although the division of powers set out in ss. 91 and 92 of the *Constitution Act, 1867*¹ has allowed the provinces to independently develop the law on family property, unmarried relationships and the care of children, its common descent (Quebec of course excepted) from the pre-confederation *Divorce and Matrimonial Causes Act*² has at least given us a common language and common conceptual framework. Matters become a bit more complex when the legislation and judicial systems of other nations must be addressed.

A healthy body of law has developed on the subject of jurisdictional entanglements. The doctrine of comity requires the courts of one country to give an abundant respect to the courts of another country and discourage a multiplicity of proceedings whenever possible.³ The common law on the conflict of laws, surprisingly dominated by matrimonial concerns, offers guidance on parsing competing jurisdictional claims.⁴ Treaties between nations have codified certain species of conflict and issues of comity in a patchwork of international legislation establishing reciprocal enforcement obligations often, with common legal mechanisms and processes.⁵

This paper will briefly review the more common interjurisdictional problems faced by intact, separating and separated families.

II. INTACT FAMILIES

In general, the principles and powers of family law are not invoked while a relationship subsists, nor even upon separation, but usually upon the emergence of conflict, or, to put it in a less adversarial way, upon the recognition that legal differences exist between a couple which require resolution. Until that moment arises, the *Divorce Act*⁶ and the various other foreign and domestic laws governing family breakdown are mere curiosities, and the primary impact of the law involves testamentary concerns and certain premortem entitlements, such as medical insurance coverage, decision-making for the legally disabled, government benefits and tax credits, and so forth.

The two exceptions to this happy rule involve the domestic validity of foreign marriages and parents' ability to separately travel with the children. The first exception is a matter resolved through the conflict of laws; the second is a question of the policy of foreign governments and the discretion of those tasked with policing their borders.

A. MARRIAGE

The essential rule on the subject of marriage is straightforward: the formal validity of a foreign marriage is determined under the *lex loci celebrationis* while the capacity of the parties to marry is determined by the *lex domicilii*.

In English, the form of marriage (domestically, the “solemnization” of marriage referenced in s. 92 of the *Constitution Act, 1867*) is governed by the law of the place in which the marriage was performed, without reference to the law of the parties’ ante-nuptial domiciles.⁷ If in Uruguay marriages may be performed by a mechanic holding a squirrel, an Uruguayan marriage performed by a mechanic holding a squirrel will be valid in Canada.

The capacity of the parties to marry, on the other hand, is determined by the legislation and common law prevailing in the parties’ domiciles before their marriage,⁸ and marriage otherwise valid at foreign law will be invalid if it fails to meet the domestic requirements for capacity.⁹ In Canada, the proscribed degrees of consanguinity are set out in the *Marriage (Prohibited Degrees) Act*,¹⁰ gender is dealt with by the *Civil Marriage Act*¹¹ and age is addressed by the various provincial *Marriage Acts*.¹² The mental capacity to marry and contractual issues related to marriage are generally dealt with by the common law.

- **Ensure that the marriage satisfies the local requirements for formal validity.**
- **Verify that the celebrants have the legal capacity to marry both locally and domestically.**

B. TRAVEL

Subject to the note of caution described below, intact families generally only need to worry about satisfying the entry and exit requirements of foreign countries and proving the other parent’s consent in order to travel with children. Although the requirements for entry will vary from country to country, Foreign Affairs and International Trade Canada requires all Canadians travelling abroad to have a passport, including children.¹³ Additional documents may be required for children, including: birth certificates showing the parents’ names; consent letters¹⁴ or a death certificate where only one parent is travelling with the children; and, status letters from Citizenship and Immigration Canada.

Some states with repressive attitudes toward women will not let women leave the country with children deemed to be nationals. This is especially problematic in states which do not recognize dual nationality such as Libya and Iran. Other countries may not allow married women to leave the country without permission from the male head of household such as Saudi Arabia. Always check the Foreign Affairs and International Trade Canada digest for all destination countries before traveling abroad.¹⁵

- **When traveling separately, travel with witnessed authorizations for the children’s travel.**
- **Whether traveling separately or together, ensure documents proving parentage are at hand.**

- **Always check the entry and exit requirements for all destination countries.**
- **Beware of traveling in countries with misogynist laws restricting women's ability to travel, especially if there is any hint of marital discord.**

III. SEPARATING FAMILIES

Separating families may encounter problems where people and assets are located in different jurisdictions in terms of the local court's extraterritorial competence. Assuming that the end of a relationship requires the commencement of proceedings – indeed, litigation seems much more likely to ensue where people or property span jurisdictions – a spouse's first and most important decision will be to select the jurisdiction from which process will issue. Relevant factors will include:

- a) the value of movable assets and the *situs* and value of immovable assets;
- b) the jurisdictional connections of the spouses, the children and the other subject matter of the dispute;
- c) the territorial and subject matter competence of the available courts;
- d) the ready availability of evidence of foreign laws;
- e) the ease, or lack thereof, of post-judgment enforcement;
- f) the nature of the legislation prevailing in the available jurisdictions, and the existence of any advantageous legal presumptions;¹⁶ and,
- g) the relative cost of litigation processes.

A. COMMENCING PROCEEDINGS

The preferred choice of jurisdiction for any litigation will usually be blindingly obvious. It will be where the family mostly lived during the marriage, the matrimonial domicile, and where most of the family continues to live; it will be the jurisdiction with which the family has the greatest connection and where the most evidence will be found; it will be the jurisdiction whose laws the parties expected would govern their relationship and its dissolution.

In other cases, the while preference as to jurisdiction will be obvious, it may be necessary to proceed in another jurisdiction, either in substitution for a domestic action or contemporaneously with a domestic action, because:

- a) a marriage agreement or another contract stipulates that the law or courts of a specific jurisdiction will prevail;

- b) a person is located in a non-reciprocating jurisdiction for the purposes of support enforcement or the Hague Convention on the Civil Aspects of International Child Abduction;¹⁷ or,
- c) immovable assets of significant value are located in another jurisdiction.

The general conflicts of law rules on jurisdiction are these. The court has jurisdiction *in personam* if the defendant lives in the jurisdiction,¹⁸ the defendant attorns to the jurisdiction,¹⁹ or jurisdiction is enabled by statute.²⁰ The court will lack jurisdiction *in rem* if the property is immovable and located in another country,²¹ the court may assume jurisdiction if the property is movable and it has jurisdiction *in personam*,²² and the status of a thing as immovable or movable will be determined by the *lex situs*.²³

British Columbia, the basic conflicts of law principles governing jurisdiction are codified by the *Court Jurisdiction and Proceedings Transfer Act*, s. 10 of which provides in part as follows:

Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

(a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,

(c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to

(i) property in British Columbia that is immovable or movable property, or

(ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,

(e) concerns contractual obligations, and

(i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,

(ii) by its express terms, the contract is governed by the law of British Columbia, or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(g) concerns a tort committed in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in British Columbia, or

(ii) in relation to property in British Columbia that is immovable or movable property,

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,

(k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia

Special provisions granting jurisdiction are common in connection to children. Ontario's *Children's Law Reform Act*, for example, provides as follows, at s. 22(1):

A court shall only exercise its jurisdiction to make an order for custody of or access to a child where,

(a) the child is habitually resident in Ontario at the commencement of the application for the order;

(b) although the child is not habitually resident in Ontario, the court is satisfied,

(i) that the child is physically present in Ontario at the commencement of the application for the order,

(ii) that substantial evidence concerning the best interests of the child is available in Ontario,

(iii) that no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,

(iv) that no extra-provincial order in respect of custody of or access to the child has been recognized by a court in Ontario,

(v) that the child has a real and substantial connection with Ontario, and

(vi) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario.

British Columbia's *Family Relations Act* contains a near-identical test at s. 44(1):

A court must exercise its jurisdiction to make an order for custody of or access to a child only if

(a) the child is habitually resident in British Columbia at the commencement of the application for the order, or

(b) although the child is not habitually resident in British Columbia, the court is satisfied that

- (i) the child is physically present in British Columbia at the commencement of the application for the order,
- (ii) substantial evidence concerning the best interests of the child is available in British Columbia,
- (iii) no application for custody of or access to the child is pending before an extraprovincial tribunal in another place where the child is habitually resident,
- (iv) no extraprovincial order in respect of custody of or access to the child has been recognized by a court in British Columbia,
- (v) the child has a real and substantial connection with British Columbia, and
- (vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in British Columbia.

As the consequences of litigating in the wrong jurisdiction can be profound,²⁴ not to mention expensive, it is of paramount importance to assess the choice of forum immediately upon the need for proceedings becoming obvious, taking care to canvass the prevailing local legislation.

- **Consult with local counsel on all jurisdictional questions and obtain opinions in writing.**
- **Commence proceedings to secure a presumption of jurisdiction when domestic laws are favourable or the management of litigation in other forum will be impractical or prohibitively expensive.**
- **Always check for statutory provisions governing jurisdiction and remember that such provisions may be specific to the subject matter.**
- **Bear in mind the distinction between the court's powers *in rem* and *in personam* and the conflicts rules about moveable and immovable assets.**

B. PRE-JUDGMENT ISSUES

Typical prejudgment litigation issues concern the protection of persons and property and conduct of the steps leading to trial or settlement.

1. Securing People

No-contact orders obtained under provincial family law legislation²⁵ will not be effective or enforceable outside the province in which the order was obtained. Peace officer enforcement clauses are only binding on officers within the court's territorial jurisdiction, including members of the RCMP.

Where there is a risk of unwanted contact outside the jurisdiction, a new no-contact order must be obtained in each new jurisdiction, often at the cost of commencing separate proceedings. Remedies may be available under the *Criminal Code*²⁶ as an alternative, subject however to the willing cooperation of extraprovincial police, either as a separate source of protection orders²⁷ or

as a means of enforcing of civil orders. Section 127(1) of the *Code* makes it an offence to disobey a court order:

Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction

This provision is presently used to enforce protection orders issued under Alberta's *Protection Against Family Violence Act*²⁸ and Manitoba's *Domestic Violence and Stalking Act*.²⁹ Orders made under the *Criminal Code* have effect throughout Canada.

2. Securing Property

Domestic asset freezing orders obtained under provincial family law legislation will only be effective outside the province if the restrained party has attorned to the jurisdiction, as a result of the court's consequential authority *in personam*.³⁰ As a broader alternative, although one often more difficult to obtain, *Mareva* injunctions,³¹ founded on the court's inherent jurisdiction, may be obtained to freeze assets located outside the province, including movable and immovable assets.³² The test to obtain such an injunction usually requires the applicant to:³³

- a) show a strong *prima facie* case in the underlying action;
- b) show a real and substantial risk that the assets will be dissipated or hidden; and,
- c) undertake to make good any damages suffered by the respondent as a result of the injunction.

3. Valuation of Assets

The local values of assets will remain more or less consistent over short periods of time, barring regional economic trauma. The domestic value of those assets, that is the value of those assets in the jurisdiction in which the litigation is proceeding, will fluctuate with the currency exchange rate prevailing between jurisdictions, sometimes with significant effect as evidenced by the relationship between the US and Canadian dollars over the past two years. As a result, fresh values will need to be obtained from time to time depending on domestic practice as to valuation date.

The Bank of Canada maintains an extremely useful historical record of daily, monthly and yearly conversion rates for most currencies against the Canadian dollar on its website at www.bankofcanada.ca/en/rates/exchange.html.

Appraisers licensed in the appropriate jurisdiction will be required to value foreign real property holdings. Do not expect that foreign property markets will behave in the same manner as the local property market. Fresh appraisals will need to be obtained depending on domestic practice as to valuation date.

- **Consider securing the children’s passports upon separation; consider obtaining a non-removal order.**
- **Always obtain a domestic no-contact order whenever a foreign no-contact order may be required to demonstrate the domestic court’s support for the sanction.**
- **Retain local counsel to secure real property by lien; be aware of when intervention is required through local court.**
- **Consider obtaining a *Mareva* injunction to freeze foreign assets; a domestic restraining order may suffice only to freeze movable property.**
- **Obtain appraisals of foreign holdings upon retainer and at valuation date.**

C. POST-JUDGMENT ISSUES

Once judgment has been obtained, it must be carried into effect. Apart from enforcement matters, which will be discussed shortly, the only matters resulting from judgment which cross jurisdictions are the relocation of children and the payment of support.

Where children are relocating outside the country, the moving parent should travel with a court-certified copy of the final order, the children’s passports and proof of parentage, such as the children’s birth certificates. Written permission to travel should not be required from the other parent with the certified copy of the order.

Divorce Act orders for support have effect throughout Canada,³⁴ but must usually be filed or registered under the local rules of court or the local *Interjurisdictional Support Orders Act* for monitoring and enforcement purposes.³⁵ The *Interjurisdictional Support Orders Acts* also allow support orders to be filed for monitoring and enforcement with the courts of certain reciprocating states, namely South Africa, Zimbabwe, Austria, the Czech Republic, Germany, Gibraltar, Norway, the Slovak Republic, the United Kingdom, the United States of America and its protectorates, the Special Administrative Region of Hong Kong, Singapore, Australia, Fiji, Papua New Guinea, New Zealand, and Barbados and its dependencies, through a wholly bureaucratic process.³⁶ Neither the permission nor the cooperation of the payor is required for the registration of support orders in other jurisdictions.

- **When relocating with children, travel with a court-certified copy of the authorizing order and proof of the children’s parentage.**
- **When the payor is ordinarily resident in another jurisdiction, file support orders in the local court whenever possible under local law.**

IV. SEPARATED FAMILIES

Where a spouse is or becomes resident in a foreign jurisdiction, problems with respect to compliance and enforcement issues may arise following the resolution of a family law case.

A. CHILD SUPPORT AND SPOUSAL SUPPORT

The *Interjurisdictional Support Orders Acts* allows the support orders of reciprocating states to be registered for enforcement purposes. Upon registration, the order is enforceable as if it were a native order of that jurisdiction, including by the local government support enforcement agency, such as British Columbia's Family Maintenance Enforcement Program or Ontario's Family Responsibility Office. Once registered, the foreign agency will track arrears paid and owed and address enforcement issues as may be permitted by the local enabling legislation, usually with no further involvement on the part of the recipient.

Although the *ISOAs* laudably provide for the efficient registration and enforcement of support orders, they do not address issues about currency exchange. Normally a single conversion calculation will be made at the time of registration without an ongoing adjustment. This has caused problems for payors who find themselves accused of having fallen into significant arrears as a result of long-term trends in exchange rates.³⁷ Payors wishing to keep themselves out of inadvertent arrears may wish to pursue variation applications through the *ISOAs* from time to time to keep the exchange rate current.

Within Canada, a recipient may also avail him- or herself of the federal *Family Orders and Agreements Enforcement Assistance Act*³⁸ which provides a variety of mechanisms to enforce orders or agreements for support, including the garnishment of federal funds due to the payor and the denial of federally-issues licences, and an unique provision allowing "any person ... entitled to have a family provision enforced" to apply for the release of federal information concerning the payor's address and the name and address of the payor's employer.³⁹

Where a payor has relocated to a non-reciprocating state, the recipient may have to commence a new proceeding in that jurisdiction to obtain a locally enforceable order as domestic orders for ongoing support payments will not be enforceable as a judgment debt.⁴⁰ Principles of comity should assist the new court in making a new support order on the terms of the old, except where the domestic support order contains terms that are unusual, exceptionally high for local practice, or are otherwise peculiar.

- **Domestic orders for ongoing support payments will only be enforced where local legislation so provides**
- **Where local law allows support orders to be registered for enforcement, do so!**
- **Arrears in a crystallized amount may be enforced abroad as a judgment debt.**

B. CHILDREN

Most families need only concern themselves with travel authorizations after separation. Where an authorization is not forthcoming voluntarily, the traveling parent may be required to obtain a suitable order. A court-certified copy of the original order will be usually be required for travel.

Orders for custody may be enforceable under local foreign law, after registration or filing, through local court processes as an order of the local court, such as is provided by s. 48 of British Columbia's *Family Relations Act*.⁴¹

(1) On application by any person in whose favour an order for the custody of or access to a child has been made by an extraprovincial tribunal, a court must recognize the order unless the court is satisfied that

(a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made,

(b) the respondent was not given an opportunity to be heard by the extraprovincial tribunal before the order was made,

(c) the law of the place in which the order was made did not require the extraprovincial tribunal to have regard for the best interests of the child,

(d) the order of the extraprovincial tribunal is contrary to public policy in British Columbia, or

(e) the extraprovincial tribunal would not have jurisdiction under section 44 if it were a court in British Columbia.

(2) An order that is made by an extraprovincial tribunal and that is recognized by a court is deemed to be an order of the court and enforceable as such.

(3) A court presented with conflicting orders made by extraprovincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsections (1) and (2), must recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

(4) A court that has recognized an extraprovincial order may make any further orders under this Act that the court considers necessary to give effect to the order.

Where local foreign law makes no such provision or as an alternative to proceeding under local law, resort may be had to the Hague Convention on the Civil Aspects of International Child Abduction which allows a parent in one jurisdiction to enforce a "right of custody"⁴² against a parenting in another jurisdiction through a quasi-bureaucratic, quasi-judicial arrangement that can result in the child being seized and returned to the original jurisdiction.

However, not all countries are signatories to the Hague Convention, and even among the signatories, not all have agreed to observe the convention in respect of Canada.⁴³ Where children have been removed to a non-signatory country, proceedings will have to be commenced in that jurisdiction to enforce the domestic order; however if the local court will not enforce the domestic order, the claim will proceed *de novo* without any presumption as to the correctness of the domestic order, forcing the custody battle to be fought from the beginning.

- **Always check a country's status under the Hague Convention when considering a mobility claim or a request to travel abroad.**

C. PROPERTY

As has already been discussed, foreign orders purporting to address the domestic ownership of immovables are unenforceable.⁴⁴ The reciprocal assumption must be extended to foreign courts considering domestic orders on local immovables, and domestic courts will likely refuse to make orders concerning foreign immovables as a result.⁴⁵

The enforcement of money judgments between spouses will be handled in the same manner as any other civil judgment involving moveable assets. In Canada, the recognition of enforcement of foreign judgments may proceed under domestic legislation, such as British Columbia's *Enforcement of Canadian Judgments and Decrees Act*⁴⁶ or Ontario's *Enforcement of Judgments Conventions Act*,⁴⁷ or as a common law cause of action. The latter will be governed by the test in *Morguard Investments Ltd. v. De Savoye*:⁴⁸ the judgment must be final and conclusive; the local court must have had jurisdiction over the defendant as a result of the defendant's attornment, the court's territorial competence, or a "real and substantial connection" between the local court and the action.

- **Check for local legislation providing for the enforcement of foreign judgments before commencing an action on the domestic judgment.**
- **Where it is likely that an action will be required, ensure that the domestic complies with the rule in *Morguard Investments*.**

¹ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3.

² *An Act to amend the law relating to Divorce and Matrimonial Causes in England*, 20 & 21 Vict. 1857, c. 85.

³ *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 and *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897 remain the leading cases on the doctrine of comity.

⁴ See any recent edition of the classic text *Dicey and Morris on the Conflict of Laws* for a thorough survey of this area of the law. For a domestic perspective, see J.-G. Castel's *Canadian Conflict of Laws*.

⁵ For example, the Hague Convention on the Civil Aspects of International Child Abduction or any of the provincial *Interjurisdictional Support Orders Acts*.

⁶ *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) ("DA").

⁷ *Sangra v. Canada (Citizenship and Immigration)*, 2002 CanLII 47174 (I.R.B.).

⁸ *Martinez v. Basail*, 2010 ONSC 2038.

⁹ As is the case for the domestic marriages of same-sex couples living in jurisdictions where married spouses must be of opposing genders.

¹⁰ *Marriage (Prohibited Degrees) Act*, R.S.C. 1990, c. 46.

¹¹ *Civil Marriage Act*, S.C. 2005, c. 33.

¹² In BC, the *Marriage Act*, R.S.B.C. 1996, c. 282. Under s. 29, no one under the age of 16 may marry without a court order authorizing the marriage. Under s. 30, however, failure to obtain the court's authorization will not invalidate an underage marriage, leaving the ultimate bar to the common law, namely the legal age of puberty, 14 for boys and 12 for girls. See P.M. Bromley, *Family Law*, 5th ed. (London: Butterworths, 1976) at p. 30.

¹³ See Passport Canada's website at <http://www.pptc.gc.ca/cdn/16-.aspx>.

¹⁴ Foreign Affairs and International Trade Canada has a helpful template for such letters at www.voyage.gc.ca/preparation_information/consent-letter_lettre-consentement-eng.asp.

¹⁵ Foreign Affairs and International Trade Canada maintains a travel reports and warnings digest at www.voyage.gc.ca/countries_pays/menu-eng.asp. Be sure to read the "Laws and Customs" information for each destination country.

- ¹⁶ For a domestic example, one need only think of the relative advantages of Part 5 of British Columbia's *Family Relations Act*, R.S.B.C. 1996, c. 128 versus the property provisions of Ontario's *Family Law Act*, R.S.O. 1990, c. F.3 or Alberta's *Matrimonial Property Act*, R.S.A. 2000, c. M-8.
- ¹⁷ Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII.
- ¹⁸ *Dicey and Morris*, Rule 20.
- ¹⁹ *Dicey and Morris*, Rule 21.
- ²⁰ See for example, *DA* ss. 3, 4 and 5, Supreme Court Family Rules, B.C. Reg. 169/2010, R. 6-5(1), or *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s. 22(1).
- ²¹ *Dicey and Morris*, Rule 79. See also *Tezcan v. Tezcan* (1987), 11 R.F.L. (3d) 113 (B.C.C.A.).
- ²² See *Boyd v. Boyd*, 2001 BCCA 535 (no relation).
- ²³ *Dicey and Morris*, Rule 77.
- ²⁴ See *Virani v Virani*, 2006 BCCA 63.
- ²⁵ Restraining orders are not available under the *DA*. *Quarae*, however, the potential effect of s. 16(6) in respect of children, bearing in mind the provinces' exclusive constitutional jurisdiction over civil rights.
- ²⁶ *Criminal Code*, R.S.C. 1985, c. C-46.
- ²⁷ Such as the peace bond available under s. 810.
- ²⁸ *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27.
- ²⁹ *Domestic Violence and Stalking Act*, C.C.S.M., c. D93 (S.M. 1998, c. 41).
- ³⁰ See *Boyd v. Boyd*, *supra* and *Alavinejad v. Farimani*, [1991] B.C.J. No. 3936 (B.C.S.C.).
- ³¹ *From Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1980] 1 All E.R. 213 (C.A.).
- ³² See for example *Wong v. Gray* (1998), 39 R.F.L. (4th) 444 (B.C.S.C.) in which a worldwide injunction as granted.
- ³³ *Mooney v. Orr* (1994), 33 C.P.C. (3d) 13 (B.C.S.C.).
- ³⁴ *DA*, s. 20(2).
- ³⁵ Alberta, S.A. 2002, c. I-3.5; British Columbia, S.B.C. 2002, c. 29; Manitoba, S.M. 2002, c. I60; Newfoundland, S.N.L. 2002, c. I-9.2; New Brunswick, S.N.B. 2002, c. I-12.05; Nova Scotia, S.N.S. 2002, c. 9; Nunavut, S.Nu. 2002, c. 26; Ontario, S.O. 2002, c. 13; Prince Edward Island, S.P.E.I. 2002, c. I-4.2; Saskatchewan, S.S. 2002, I-10.03; Yukon, S.Y. 2001, c. 19
- ³⁶ See Interjurisdictional Support Orders Regulation, B.C. Reg. 15/2003, s. 6.
- ³⁷ See for example *Gordon-Tennant v. Gordon-Tennant*, 1997 CarswellOnt 3154 (O.C.J.).
- ³⁸ *Family Orders and Agreements Enforcement Assistance Act*, R.S.C. 1985, c. 4 (2nd Supp.) ("FOAEAA").
- ³⁹ *FOEAA*, ss. 13-16.
- ⁴⁰ Ongoing child support generally cannot be enforced as a judgment debt as the amount owing is not a fixed and final amount, see *Harrop v. Harrop* [1920] 3 K.B. 386; see *Dicey and Morris*, Rule 54 for a general discussion of the topic. In addition, local reciprocal enforcement legislation may not apply to support orders, see for example *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s. 28(1) and *Reciprocal Enforcement of Judgments Act*, R.S.A. 2000, c. R-6, s. 1(1).
- ⁴¹ Provisions to the same effect appear in most provincial legislation, such as *The Children's Law Act*, S.S. 1997, c. C-8.2, s. 17, *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s.41, *The Child Custody Enforcement Act*, C.C.S.M., c. C360, s. 3 or *Family Services Act*, S.N.B. 1980, c. F-2.2, s. 130.2.
- ⁴² Defined at art. 5 as including "rights relating to the person of the child and ... the right to determine the child's place of residence." Rights of custody may arise by operation of domestic law or agreement, as well as by court order, see *Thomson v. Thomson*, [1994] 3 S.C.R. 551 and *Thorne v. Dryden-Hall* (1985), 18 R.F.L. (4th) 15 (B.C.S.C.).
- ⁴³ The status table for the convention is available at the website of the Hague Conference on Private International Law at hcch.e-vision.nl/index_en.php?act=conventions.status&cid=24.
- ⁴⁴ See *Duke v. Andler*, [1932] 4 D.L.R. 529 (S.C.C.).
- ⁴⁵ See for example *Mitrovic v. Mitrovic*, 2007 ABQB 44, *Lee v. Li*, 2002 BCCA 209 and *Palmer v. Palmer*, [1980] 2 W.W.R. 557 (S.C.A.).
- ⁴⁶ *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29.
- ⁴⁷ *Enforcement of Judgments Conventions Act*, S.O. 1999, c. 12.
- ⁴⁸ *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077.