

The Sedona Canada Commentary on Enforcing Letters Rogatory Issued by an American Court in Canada: Best Practices and Key Points to Consider (June 2011)

Due to the close economic and cultural ties between Canada and the United States, it is quite common for legal disputes that occur in the American court system to spill over into Canada. A common example of this spillover occurs when there are documents or witnesses to an American action in Canada. In many cases, the evidence is provided on consent, however, where the witness in Canada will not, or is not in a position to, provide the evidence voluntarily, the litigants must look to courts in Canada for assistance.

Assistance from a Canadian court is required because an American court or procedural law has no jurisdiction or application in Canada. The mechanism used to request assistance from courts in Canada is through the issuance of letters rogatory, also referred to as letters of request.

While the Canadian and American legal systems are similar, there are significant differences in procedural and substantive laws. These differences often cause confusion and misunderstanding for all involved when evidence located in Canada is sought by American counsel. This *Commentary* is intended to provide judges and lawyers with some key points and best practices to consider with respect to the enforcement of letters rogatory in Canada. It may be a useful primer for American counsel who often are troubled by the fact that they cannot readily obtain evidence from a Canadian resident even after a formal request has been ordered by the American court. Further, American judges and counsel may review the *Commentary* to gain an understanding of what a Canadian court will consider in the analysis of whether to grant a request.

The *Commentary* begins with 10 recommended best practices and issues to be considered by the parties, then reviews the key differences in the legal systems regarding discovery, and finally provides an overview of the applicable Canadian legal principles and legal tests that will be considered by a Canadian court.

The full text of *The Sedona Canada Commentary on Enforcing Letters Rogatory Issued by an American Court in Canada: Best Practices and Key Points to Consider* is available free for individual download from The Sedona Conference website at

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