THE ENFORCER

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WHAT HAPPENS IF DADDY'S GONE TO CANADA?

Given the proximity of Detroit to Canada, family law practitioners may encounter the challenge of enforcing support orders in a foreign country. Presently, there are both federal and state statutes that allow for enforcement of support orders in Canada.

A. Federal Reciprocal Arrangements

At the federal level, 42 U.S.C. § 659A provides for the declaration of "foreign countries or their political subdivisions to be reciprocating countries for the purpose of enforcement of family support obligations, if the country has established or has undertaken to establish procedures for the establishment and enforcement of support for residents of the United States."

This includes procedures for:

- Establishing paternity
- Establishing support orders
- Enforcement of support orders
- Collection and distribution of payment under support orders
- Providing administrative and legal assistance where necessary without cost to the United States resident, and
- Establishing a "Central Authority" to facilitate implementation of support enforcement in cases involving residents of the U.S.

Presently the following Canadian provinces will recognize and enforce a support order from Michigan, as they have been designated "reciprocating countries": Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan, and Yukon.

Such a designation provides a basis on which to make demands of the foreign province, including registration of the Michigan support order, service of process and income withholding mechanisms. If the province is not a "foreign reciprocating country", the order will be treated as an application to establish an enforceable support obligation in that particular province or territory. In such a case, a support payee would need to hire local counsel to ensure the order is established and enforced.

Once a support order is obtained, the support payee should not continue to need local counsel, as enforcement is done by government funded enforcement programs.[1] These programs are similar to those conducted by the Friend of the Court, although delinquent support payees are rarely incarcerated.[2]

B. State Recognition

Absent from the federal list of "reciprocating countries" are Quebec and Prince Edward Island. However, Michigan does have a reciprocity arrangement with Prince Edward Island. Regarding Quebec, it has a civil law system, while the rest of Canada has a common law system, hence its non-participation. Accordingly, it may be best to hire local counsel and seek establishment of a support order. Once the order is established, the support payee would benefit from the free enforcement system in place in Quebec.[3]

C. Practice Tips

Given the requirement to have a passport or ID card to travel between the United States and Canada, a successful enforcement mechanism is to seek revocation of the delinquent support payor's passport.

Also, when seeking the establishment or recognition of a support order in Canada, ensure that it accounts for currency conversion. Practitioner's should note the date of calculation and the currency exchange rate on the support order to avoid subsequent disputes over the amount owed.

Endnotes

1. http://courts.michigan.gov/scao/resources/publications/focbnewsletters/feb2007pundit.pdf
2. http://www.canada.justice.gc.ca/eng/pi/suppen/enfexe/ovap.html#list
3. http://www.canada.justice.gc.ca/eng/pi/sup pen/enf exe/ov ap.html#list

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