

U.S./CANADA CROSS-BORDER FAMILY LAW

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Given the close economic and cultural ties between Canada and the U.S., it should not be surprising that marital relationships often develop that cross the Canada/U.S. border. Moreover, given how frequently marital relationships break down nowadays, more and more Canadian courts are being asked to resolve cross-border family disputes. However, because the U.S. legal system is much different from the Canadian system in many key respects, handling a cross-border family dispute can be very tricky.

Consider the following example: A Canadian woman moves to Texas to attend university. After graduation, she marries a U.S. citizen. They find jobs and buy a house in Texas, have savings accounts in local banks, and have all of their other property located in Texas. A few years later, the marriage breaks down, so the woman returns to Ontario and moves in with her parents. The woman then decides to file an action for divorce in Ontario.

The Canada Divorce Act provides that Ontario has jurisdiction to hear a divorce proceeding as long as either spouse has been resident in the province for more than one year. As such, once the woman has been resident in Ontario for at least a year, she could sue for divorce in Ontario, terminate the marriage and obtain a judgment with respect to the ownership of the couple's property.

After the Ontario court issues the judgment, assuming the assets subject to the judgment are in Texas, the woman would then have to take steps to enforce the judgment in Texas. However, if the husband chooses not to submit to the jurisdiction of the Ontario court and refuses to participate in the Ontario proceeding, would the husband be bound by the Ontario court's judgment?

In the U.S., courts can only assert jurisdiction over a case if the defendant has sufficient ties to the state where the action is brought. In other words, for a U.S. court to have proper authority to enter a judgment against a defendant, the defendant must be subject to the jurisdiction of the state where the court is located. Generally speaking, a defendant is subject to a state's jurisdiction where the defendant has maintained sufficient contacts with the state such that exercising jurisdiction over the defendant would be reasonable in light of the defendant's constitutional right to due process.

Accordingly, whether a U.S. court has jurisdiction over the parties is determined based on the *defendant's* contacts with the forum – not the *plaintiff's*. Statutes in Texas that govern the enforcement of foreign

judgments specifically provide that the foreign judgment cannot be enforced if the court that issued the judgment lacked jurisdiction over the defendant. Consequently, if the husband in our example could show he lacked sufficient contacts with Ontario such that an Ontario court's exercise of jurisdiction over him would violate his constitutional right to due process, a Texas court almost certainly would not enforce the Ontario court's judgment.

In addition, because each U.S. state is considered an autonomous jurisdictional entity, property located in one state (particularly real property) is considered beyond the jurisdictional reach of any other state. Therefore, under Texas law, generally speaking, courts outside Texas do not have authority to adjudicate rights with respect to property located within Texas. In this regard, a judgment from a foreign court relating to property located in Texas would not be recognized by a Texas court on the basis that the foreign court lacked jurisdiction over the subject matter of the dispute. As such, in our example, an order from an Ontario court concerning the ownership of the couple's home in Texas most likely would not be recognized by a Texas court.

Accordingly, because of the profound difference between U.S. and Canadian law with respect to the authority of courts to resolve disputes, before filing suit in a cross-border domestic dispute, great consideration should be given to the likelihood of enforcing the court's judgment in the U.S., in the event that becomes necessary. If the court's assertion of jurisdiction over the defendant does not meet the U.S. standard, the judgment issued by the Canadian court likely would not be enforceable in the U.S., which would result in a tremendous amount of time, energy, and legal expenses wasted by the plaintiff.