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PRESERVING WEALTH FOR PEOPLE AND PRIVATE COMPANIES

INVESTING VS. SPECULATING

By Jeff Wagman, Portfolio Manager, Brook Wagman Private Wealth Management

We have all heard this phrase from people we know, “I stopped investing in the market because I have never made money.” The fact is these people are more accurate than they think. Most people think they are investing their hard-earned money, but in reality, most of the time they are speculating — taking on much more risk than they knew, intended or could afford. Please don’t get me wrong here; I am not saying that speculation is a bad thing. Far from it. Our economy and our capital markets need speculation. Without speculation there would not be any growth in our economy. Every company out there has started at zero at some point, and without speculation, they would not have turned into the Royal Banks, Bell Canadas, Apples or Googles of this world. However, it is crucial that we are aware of the differences between speculating and investing.

Most of us get our information from the media (newspaper, business reports, radio, TV, evening market reports and social media). The mainstream media has but one job to do and this is to get people to read, watch, hear and listen to what they are

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THE APOSTILLE CONVENTION AND PROCESS OF AUTHENTICATION SERVICES IN CANADA

By Sanaya Mistry, Associate, Weir Foulds LLP

What is the Apostille Convention?

The Apostille Convention is the *Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents* which facilitates the use of public documents abroad. The purpose of the Apostille Convention is to abolish the traditional requirements of legalization which can often be long and costly and replace it with the issuance of a single apostille certificate by a competent authority in the place where the document originates.¹

In other words, an apostille is meant to facilitate the circulation of public documents internationally with other jurisdictions that are signatories of the Apostille Convention by authenticating the origin of the public document for use abroad.² Article 1 of the Apostille Convention provides a list of documents deemed to be public documents,³ some of which include:

- documents emanating from an authority or an official connected with the courts or

¹ Hague Conference on Private International Law – Conférence de La Haye de droit international privé (HCCH), Apostille Section: <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>.

² Outline, HCCH 1961 Apostille Convention, Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents: <https://assets.hcch.net/docs/80d0e86f-7da8-46f8-8164-df046285bcdd.pdf>.

³ Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, Article 1: <https://assets.hcch.net/docs/b12ad529-5f75-411b-b523-8eebe86613c0.pdf>.

tribunals of the jurisdiction, including those emanating from a public prosecutor, a clerk of a court or a process-server;

- administrative documents; and
- notarial acts.

As noted in Article 2 of the Apostille Convention, an apostille certifies the authenticity of the signature, the capacity in which the person signing the document has acted and the identity of the seal or stamp which the document bears (if applicable).⁴ An apostille does not authenticate the contents of the underlying public document.⁵

What does this mean for Canada?

The Apostille Convention came into effect in Canada on January 11, 2024.⁶ As a result, the steps required to have documents accepted in other countries where the Apostille Convention is in effect were eliminated, simplifying the process to have Canadian public documents accepted in these other countries.⁷ In Canada, the documents that have been authenticated will include a standard

⁴ *Ibid.*, at Article 2.

⁵ *Supra*, note 2.

⁶ The statement regarding Canada joining the Apostille Convention can be found here:

<https://www.canada.ca/en/global-affairs/news/2023/05/canada-joins-apostille-convention-to-facilitate-use-of-public-documents-abroad.html>.

⁷ A list of the countries that are party to the Apostille Convention (also known as “Contracting Parties”) can be found on the HCCH website, here:

<https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>.

certificate called an apostille.⁸

Until January 10, 2024, documents would need to be authenticated and legalized (often referred to as “super legalization”) to be used in certain countries, which required the following process:

- Global Affairs Canada would issue and authenticate certificates for documents issued or notarized anywhere in Canada; and
- the embassy or consulate of the destination country would go through their processes to stamp and sign the documents to legalize the documents for use in the destination country.

It should be noted that to use documents in countries that are not a party to the Apostille Convention, once an apostille has been issued for the documents that have been authenticated in Canada, it may still be necessary to submit the documents to the embassy or consulate of the destination country to be legalized.

Who can issue an Apostille in Canada?

As of January 11, 2024, Global Affairs Canada is responsible for issuing apostilles for documents issued by the Government of Canada and for documents issued or notarized in the following provinces or territories:

- Manitoba;
- New Brunswick;
- Newfoundland and Labrador;
- the Northwest Territories;
- Nova Scotia;
- Nunavut;
- Prince Edward Island; and

- Yukon.

If the document was notarized in any of the above-noted provinces or territories, it should be sent to Global Affairs Canada regardless of where it was originally issued.⁹

As of January 11, 2024, competent authorities in the following provinces will be responsible for issuing apostilles for documents issued or notarized in these provinces:

- Alberta;
- British Columbia;
- Ontario;
- Quebec; and
- Saskatchewan.

Generally speaking, the document should be sent to the competent authority in the province it was issued.

That said, if the document was notarized in one of these provinces, the document should be sent to that province’s competent authority, regardless of where the document was originally issued.¹⁰

It is noteworthy that Canadian competent authorities will issue apostilles in print form only, though Global Affairs Canada expects to offer electronic apostilles in the future. Further, competent authorities in Canada will not issue apostilles for foreign documents, even if they are notarized by a Canadian notary or notary public.¹¹

The Government of Canada website has a chart outlining where to send notarized documents for authentication, which has been duplicated below for ease of reference:¹²

⁸ Government of Canada, *Changes to Authentication Services In Canada*:

https://www.international.gc.ca/gac-amc/about-a_propos/services/authentication-authentication/apostille-convention.aspx?lang=eng.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.* The HCCH has provided additional information on the designated competent authorities in Canada here:

<https://www.hcch.net/en/states/authorities/details3/?aid=1199>.

Document Issued By	Notarized In	Send To
<ul style="list-style-type: none"> The Government of Canada Manitoba New Brunswick Newfoundland and Labrador Northwest Territories Nova Scotia Nunavut Prince Edward Island Yukon 	Alberta	Ministry of Justice of Alberta
	Ontario	Ministry of Public and Business Service Delivery of Ontario
	Saskatchewan	Ministry of Justice and Attorney General of Saskatchewan
<ul style="list-style-type: none"> Alberta British Columbia Ontario Saskatchewan 	<ul style="list-style-type: none"> Manitoba New Brunswick Newfoundland and Labrador Northwest Territories Nova Scotia Nunavut Prince Edward Island Yukon 	Global Affairs Canada
	Alberta	Ministry of Justice of Alberta
	Ontario	Ministry of Public and Business Service Delivery of Ontario
	Saskatchewan	Ministry of Justice and Attorney General of Saskatchewan

The Process in Ontario

In Ontario, Official Document Services¹³ authenticates documents by checking the signature and seal or stamp on the documents against the information on file from the notary public or the signing authority.

As noted on the Government of Ontario website, authentication will only proceed if:

- all parts of the signature and seal of the notary public or signing authority are clearly displayed on the same page of the document — if not, the document has to be re-notarized or re-issued;
- the name and seal are identical to those on file at Official Documents Services; and
- a hard copy of the document is provided.
Note: Soft copy (electronic) documents will not be authenticated.¹⁴

In order to submit a request for authentication, the following steps must be taken:

- verify the requirements by contacting the relevant consulate, embassy or end destination recipient;
- check the eligibility of the documents through the document authentication portal;
- find a notary public, if needed;
- prepare the documents (for documents more than 1/4 inch thick, there must be two holes punched in the upper-left-hand corner where the authentication certificate can be attached); and
- submit the service request online, in person or by mail.¹⁵

An in-person authentication service appointment can be booked.

The cost of authenticating a document varies depending on the document and can range from \$16.00 - \$32.00.

Other Relevant Information

It is important to note that if a document was authenticated prior to the Apostille Convention coming into effect in Canada, the document may not be issued an apostille (even if resubmitted). As a result, documents authenticated without an apostille may need to be legalized even if the country of destination is a signatory to the Apostille Convention.¹⁶

In order to verify the issuance of an apostille with a certificate number starting with CA-, AB-, SK-, or -59-, an email can be sent to apostille@international.gc.ca. Include the certificate number and the date of issuance in the email. In order to verify the issuance of an apostille with a certificate number starting with ON-, an online service on the Official Documents Services website can be used.¹⁷ In order to verify the issuance of an apostille issued by Competent Authority of Quebec, an online service on the Registre des apostilles can be employed.¹⁸

How does this impact Trusts and Estates Practitioners in Canada?

As a result of Canada becoming a signatory to the Apostille Convention, the process of authenticating and using Canadian documents in a country that is a signatory to the Apostille Convention has been much simplified. For those practising in the trusts

¹³ Official Document Services: <https://www.officialdocuments.mgcs.gov.on.ca/en-US/>.

¹⁴ Government of Ontario, *Authenticate a document for use outside Canada*: <https://www.ontario.ca/page/authenticate-document-use-outside-canada>.

¹⁵ *Ibid.*

¹⁶ *Supra*, note 8.

¹⁷ Government of Ontario, *Apostille Verification*: <https://www.officialdocuments.mgcs.gov.on.ca/en-US/validity-check/>.

¹⁸ Québec, *Registre des apostilles*: <https://registreapostilles.gouv.qc.ca/>.

and estates area in Canada, the impact of the Apostille Convention in Canada can be significant where Canadian public documents (such as birth certificates, marriage certificates, death certificates, court documents, etc.) need to be used in other countries that require these documents to be authenticated prior to being used in that country. Such documents are often required when dealing with trusts and estates where there is an international element.

Where can more information be found?

It is important to remember that the Apostille Convention has only taken effect in Canada this year. As a consequence, the information available to the public appears to be updated with some frequency.

The text of the Apostille Convention can be found here: <https://assets.hcch.net/docs/b12ad529-5f75-411b-b523-8eebe86613c0.pdf>

There is an Apostille Handbook which provides guidance on the practical implementation and operation of the Apostille Convention, which can be found here:

<https://www.hcch.net/en/publications-and-studies/details4/?pid=5888>

General information about changes to authentication services in Canada can be found here: https://www.international.gc.ca/gac-amc/about-a_propos/services/authentication-authentication/apostille-convention.aspx?lang=eng

General information about authentication services at Global Affairs Canada can be found here: https://www.international.gc.ca/gac-amc/about-a_propos/services/authentication-authentication/step-etape-1.aspx?lang=eng

General information about authentication process in Ontario can be found here: <https://www.ontario.ca/page/authenticate-document-use-outside-canada>

For additional questions, an email can be sent to Global Affairs Canada's Authentication Services at apostille@international.gc.ca. To sign up for the mailing list, send an email with the word "Subscribe" in the subject line.

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