

Pribetic on Service by Mail from New York

Antonin Pribetic (Steinberg Morton Hope & Israel LLP) has posted *The Postman Always Rings Twice: New York Appeals Court Validates Service of Process by Mail on Canadian Defendants on SSRN*.

The recent decision of the New York Appeals Division in New York State Thruway Auth. v Fenech represents an American revolution in conflict of laws with fundamental implications to cross-border litigation. The Fenech decision overturns prior precedent against foreign service of process by mail under Article 10(a) of the Hague Service Convention. If the Fenech decision stands, it will put many process servers out of work and render service through the official diplomatic channels of the Central Authority moot.

Canada should formally withdraw its Declaration under Article 10(a) of the Hague Service Convention that it does not object to service by postal channels. Otherwise, Canadian defendants in foreign proceedings are at a marked disadvantage, both in terms of challenging a foreign court's assertion of personal jurisdiction and subject-matter jurisdiction. Personal service should remain the cornerstone of jurisdiction, bounded by the pillars of comity, reciprocity, good faith and order and fairness.