

A milestone for the Apostille Convention: today it enters into force for Canada

On 11 January 2024, the Apostille Convention entered into force for **Canada**. The accession of Canada to the Apostille Convention on 12 May 2023 was a milestone for the Apostille Convention and it is perhaps a development that has gone under the radar.

Considering that the Apostille Convention was adopted in 1961 (EIF: 24-I-1965), one may wonder why Canada took so long to join the Apostille Convention. This is primarily because there is no statutory requirement for the legalisation of *incoming* public documents in Canada. In its response to the 2021 Questionnaire, Canada indicated:

“There is no Canadian statutory requirement to legalise foreign public documents. In some cases, Canadian public authorities have the discretion to determine the applicable authentication requirements. These authorities could require these documents to be legalised.

“In Québec, Article 2822 of the Civil Code of Québec (CCQ) exempts foreign public documents from legalisation by providing that neither the quality nor the signature of a foreign officer issuing a document need [to] be proved. The presumption of authenticity provided by article 2822 CCQ is rebuttable as prescribed by article 2825 CCQ.

“Private-sector organisations and individuals may require legalised foreign public documents, as no law prevents them from doing so. While not a requirement under Canadian law, Canadian embassies and consulates legalise foreign public documents when requested to do so.”

Nevertheless, Canadian – and other – citizens needed to overcome the obstacle of getting Canadian public documents legalised (*e.g.* by Global Affairs Canada,

Authentication Services Section in Ottawa, plus a foreign mission in Canada). What in the lingo is referred to as “*outgoing* public documents”. This system will continue to operate when the receiving State is not a Contracting Party to the Apostille Convention or in the - rare - case that the public document falls outside the scope of the Apostille Convention *e.g.* documents executed by diplomatic and consular agents (Art. 1(3)(a) of the Apostille Convention).

No declarations were filed by Canada (apart from the designated Competent Authorities). As expected, no Contracting Party objected to the accession of Canada.

I take the opportunity to also make reference to another milestone for the Apostille Convention: the recent accession of the **People’s Republic of China**. The People’s Republic of China acceded to the Convention on 8 March 2023 and entered into force on 7 November 2023.

The Apostille Convention has continued to apply to both the Special Administrative Regions of Hong Kong and Macao given the declarations of the People’s Republic of China. The Apostille Convention first applied to Hong Kong (EIF-1965) and Macao (EIF-1969) when they were both under the international responsibility of the United Kingdom and Portugal, respectively.

As indicated in its declaration, the Apostille Convention will not be applicable between the People’s Republic of China and those Contracting States that China does not recognize as sovereign states (*i.e.* no bilateral application) and understandably, no list was provided. India objected to the accession of the People’s Republic of China in accordance with Article 12 of the Apostille Convention, and as a result, the Convention will not apply between these two States.

With the accession of both Canada and the People’s Republic of China, the Apostille Convention applies in -an additional- area of approximately 19 million square kilometers. These developments and the existence of the e-APP (electronic Apostille Programme) show that the Apostille Convention remains relevant and continues to grow from strength to strength.