OSGOODE HALL LAW SCHOOL

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CASES AND MATERIALS

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CASES AND MATERIALS
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INTRODUCTION

How important is it for practitioners to understand the basic principles of the conflict of laws? If so, are these principles just a matter of common sense or are they obscure and difficult? Read the following excerpt from a recent decision of the Ontario Court (Gen Div) and see if you can discern the appropriate standard.

Beals v Saldanha
(1998) 42 OR (3d) 127 (Gen Div)
[rev'd on other grounds (2001) 54 OR (3d) 641(CA), leave to appeal granted]

[This is the portion of the judgment relating to the Third Party negligence claim against the Ontario solicitor who advised the judgment debtors that the Florida judgment would not be enforceable against them in Ontario.]

JENNINGS J.: The plaintiffs seek to enforce in Ontario a judgment obtained by default in the Circuit Court of Sarasota County, Florida. In the event that the plaintiffs succeed, the defendants Saldanha by third party claim seek indemnity from an Ontario solicitor consulted by them with respect to the Florida judgment. What follows are the facts as I find them to be.

The Florida judgment, signed December 13, 1991, was mailed to the Saldanhas on December 16, 1991. On December 31, 1991, they went to their solicitor for his advice as to what they should do. The solicitor was a sole practitioner in Simcoe, Ontario. He testified, and I found him to be both forthcoming and frank. Except in one or two particulars, his evidence did not contradict that of the Saldanhas.

The interview took about 50 minutes. The solicitor took no notes. I find he reviewed the claim, the other documents received by the Saldanhas, and the judgment for damages, although the solicitor himself did not recollect seeing the judgment. He consulted the Canadian Encyclopaedic Digest in his office and advised the Saldanhas that he didn't think the Florida judgment was enforceable in Ontario because they had not attorned to the jurisdiction. At the Saldanhas' request, he said he would speak to another lawyer about it. He went to the County Law Library in Simcoe to see if it had a text on conflict of laws. He found none. He then discussed the problem with a colleague over lunch. The colleague confirmed the solicitor's belief that the issue was one of attornment. The solicitor did not check with a Florida attorney as to remedies available to the Saldanhas nor did he advise them to do that. He undertook no further research.

On January 8, 1992, the solicitor called Mr. Saldanha and in a two to three minute conversation, advised him that he had found nothing new to add to what he had previously said on December 31 in his office.

The Saldanhas were left with a clear impression that the judgment could not be enforced in Ontario.

I accept their testimony that had they known that the judgment might be enforceable in Ontario, and that there was a good chance it could be set aside in Florida, they would have taken legal advice as to the relative degrees of risk, and followed the less risky path.

[The Florida action related to a sale of land for approximately $8000 from the defendant to the plaintiff. At the time of this enforcement action, there was approximately $800,000 owing on the judgment. The full report of the facts can be found in the excerpt from this judgment in Part II on Judgments.]

The Third Party Action
Both the defendants and the third party tendered expert opinion evidence as to the standard of care required of an Ontario solicitor retained in the circumstances, and for the purposes, of this case. Dennis O'Connor, Esq. Q.C. testified for the defendants. He is an experienced counsel...