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PROPOSAL BY CANADA RELATING TO THE E-VERSION OF THE SERVICE HANDBOOK

Proposal to Make the Service Convention Handbook More Accessible

I. Introduction

- 1 Canada proposes that the e-Book version of the HCCH *Practical Handbook on the Operation of the Service Convention* be made available for free on the HCCH website to enhance access to justice and promote the uniform interpretation and application of the Service Convention.
- 2 The Permanent Bureau sells the paper version and the e-Book version of the fourth edition of the Handbook on its website for the price of €165 (ex. VAT) each. With the upcoming publication of the fifth edition of the Handbook, the time is right for the Counsel on General Affairs and Policy (CGAP) to consider Canada's proposal.

II. Considerations

A. Importance and usefulness of Handbook

- 3 At the Special Commission (SC) on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions held from July 2-5, 2024, "[t]he SC welcomed the updated Service and Evidence Handbooks, prepared by the PB and considered by the Working Groups. The SC acknowledged the importance and usefulness of these Handbooks".¹

B. Low rate of sale of Handbook

- 4 Canada recognises the significance and practical value of the Service Handbook and is concerned by the fact that the Permanent Bureau sells an average of only 76 Handbooks per year (both paper and electronic versions).² Given there are 84 Contracting States to the Convention, one might have expected a much higher number of sales. The small number of sales compared to the number of Contracting States and the number of service requests annually (over 40,000)³ suggests that the price of the Handbook prevents Convention users from accessing it. It would be interesting to know the geographical distribution of buyers, but unfortunately the Permanent Bureau was unable to provide this data.

C. Uniform interpretation and application of Convention

- 5 It is in the HCCH's best interests to offer the e-Book free of charge, as greater access to the Handbook would help to enhance the uniform interpretation and application of the Convention. This is entirely consistent with the HCCH's stated purpose, as outlined in Article 1 of its Status, which is to work towards the progressive unification of the rules of private international law.
- 6 Offering the e-Book for free would be consistent with the approach taken with respect to most of the other HCCH publications and indeed by HCCH's sister organisations, UNCITRAL and UNIDROIT, which offer electronic publications online for free to help promote uniform interpretation and application of their instruments.

¹ C&R No 130 of the 2024 SC.

² According to data obtained from the Permanent Bureau, a total of 683 Handbooks (paper and e-Book versions) were sold between January 2016 and December 2024. This amounts to average yearly sales of 76 Handbooks.

³ See Prel. Doc. No 2 REV of June 2024 presented to the SC of 2024.

D. Access to Justice

- 7 During past discussions on the issue of free access to the e-Book, those in favour of selling both paper and electronic versions of the publication have expressed the view that the HCCH should not subsidise law firms involved in high-value litigation by offering the e-Book to them free of charge.
- 8 In Canada's experience, many cases requiring service abroad do not involve high-value litigation but rather family law matters. We understand that legal practitioners in those cases may not purchase the Handbook because they would not be able to pass on the cost to their clients, who often have limited funds, yet the lack of access to the valuable information contained in the Handbook has costly effects downstream when there is litigation on the Convention's application. Free access to the e-Book would help to promote access to justice for those with limited resources and could also reduce costly litigation.
- 9 Very few sole practitioners, law libraries and individuals interested by the Convention are purchasing the Handbook: according to the Permanent Bureau, 70% of the Handbook purchasers are professionals, such as law firms and companies.
- 10 Canada recognises that the e-Book is made available free of charge by the HCCH to government officials; this, however, is not sufficient to ensure access to justice because in Canada and in a number of other Contracting States, members of the legal profession working in the private sector act as forwarding authorities and forward requests for service under the Convention and they do not receive the free copy. It is estimated that over 40,000 requests for service are sent yearly by forwarding authorities. With an average of only 76 Handbooks sold per year, it is evident that almost no forwarding authorities are purchasing the Handbook.

E. E-Book treated differently from other HCCH electronic publications

- 11 It is also worth noting that other HCCH publications specifically aimed at private sector legal professionals, such as the *Practitioners' Tool – Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*, are available electronically free of charge. Many free HCCH publications in fact acknowledge in their introduction that they are aimed at a variety of users of HCCH Conventions, including practitioners. The same considerations apply to the Service e-Book and there is no apparent justification for its different treatment.

F. Small impact of free e-Book on HCCH budget

- 12 While some HCCH Members have expressed concerns that offering the e-Book free of charge may result in revenue loss for HCCH, we believe that the potential negligible loss of revenue from offering the e-Book free of charge is far outweighed by the many benefits of doing so. The fourth edition was published in 2016, and, according to data provided by the Permanent Bureau, the revenue from sales of the Service e-Book from January 2016 to December 2024 was €39,990.00 with 362 e-Books sold.⁴ This amounts to an average yearly revenue of €4,433.33 or 40 e-Books sold per year. HCCH Draft Budget 1 forecasts €5,562,200.00 in expenses for the fiscal year 2025-2026. A €4,433.33 revenue generated from sales of the Service e-Book in fiscal year 2025-2026 would cover 0.071% of these expenses.
- 13 Offering the e-Book free of charge would not necessarily result in a loss of revenue. It could even result in an increase in sales of the paper version as users having consulted the e-Book

⁴ According to data obtained from the Permanent Bureau, the revenue from sales of the paper version of the Service Handbook from January 2016 to December 2024 was €52,008 with 321 units sold or an average of 36 units sold per year.

would have the opportunity to make an informed decision before purchasing the paper version.

G. Addressing possible revenue losses

- 14 A number of solutions are available to address any loss from the revenue that could have been generated by the sale of the e-Book.
- 15 During past discussions on the Handbook, the Secretary General stated that some of the Handbook purchasers have said that they would have been willing to pay more than the €165 sales price. An option worth considering would therefore be to increase the price of the paper version of the Handbook to the price purchasers are willing to pay.
- 16 Another possible solution would be to increase the value of each of HCCH's 640.5 budgetary units proportionally to cover the estimated yearly loss of revenue of €4,433.33. To achieve this, the value of each unit would have to be increased by a mere €6.92. This amounts to an increase of 0.09% per unit based on the current unit value of €7,690.27, which is far less than the 9.3% increase per unit sought by the Permanent Bureau for fiscal year 2025-2026 in Draft Budget 1. From Canada's perspective, even with our zero nominal growth policy, improving access to the publication would more than justify a 0.09% per unit increase.
- 17 Yet another option would be for the Permanent Bureau to find savings in its expenses, for instance by reducing its missions abroad (projected at €72,000.00 for fiscal year 2025-2026 in Draft Budget 1).

III. A note on the Practical Handbook on the Operation of the Evidence Convention

- 18 Canada's proposal to CGAP does not include making the Evidence e-Book available online free of charge because Canada is not party to the Evidence Convention and is therefore not aware of access issues with respect to Evidence e-Book. Canada would, however, not be opposed to a proposal from a Contracting State to the Evidence Convention to make the Evidence e-Book available free of charge should Contracting States consider this to be advisable.
- 19 According to data provided by the Permanent Bureau, the revenue from sales of the Evidence e-Books from January 2016 to December 2024 was €25,185.00 with 229 e-Books sold.⁵ This amounts to an average yearly revenue of €2,798.33 or 25 e-Books sold per year. Draft Budget 1 forecasts €5,562,200.00 in expenses for the fiscal year 2025-2026. A €2,798.33 revenue generated from the Evidence e-Book in fiscal year 2025-2026 would cover 0.05% of these expenses.

IV. Proposal for CGAP

- 20 In light of the above, Canada puts forward the following proposal for CGAP's consideration:
 - CGAP acknowledges the significance and practical value of the *Practical Handbook on the Operation of the Service Convention* and recognises that it is in the best interests of the HCCH and its members for the Handbook to be more easily accessible.
 - CGAP agrees that the complete e-Book version of the fifth edition of the Service Handbook will be made available on HCCH's website at no cost.

⁵ According to data obtained from the Permanent Bureau, the revenue from sales of the paper version of the Evidence Handbook from January 2016 to December 2024 was €36,960.00 with 248 units sold or an average of 26 units sold per year.