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Civil Section Documents - Uniform Reciprocal Enforcement of Judgments Act

A. The Uniform Act and Its Adoption

Uniform legislation providing for the reciprocal enforcement of judgments has been a preoccupation of the Uniform Law Conference almost from its inception. The first *Uniform Reciprocal Enforcement of Judgments Act* (UREJA) was promulgated in 1924 and a revised version appeared in 1958. The 1924 version was widely adopted throughout Canada following its promulgation. The 1958 version was enacted in 7 jurisdictions and the 1924 act remains in force in 4 jurisdictions.[1] Neither version has been enacted in Quebec.

UREJA provides a mechanism under which a judgment from a reciprocating jurisdiction may be enforced as if it were a local judgment. A reciprocating jurisdiction is a place (which need not be Canadian) that has enacted similar legislation and which had been designated by the government of the enacting province or territory to be a reciprocating jurisdiction. The judgment must be registered under UREJA in the place where enforcement is sought and certain threshold requirements must be met before registration is permitted. UREJA was intended to create a summary method of bringing the judgment to the attention of local courts and provide a quicker and less expensive alternative to enforcing the judgment by action.

While most provinces and territories that have enacted UREJA have designated most or all of the other enacting provinces to be reciprocating jurisdictions, the designation of non-Canadian countries or states has been uneven. An enacting province or territory may have designated reciprocating jurisdictions in some, all, or none of the U.S.A.., Australia and Europe. A geographical summary, in tabular form, of designations under the Act is set out at the end of this paper. It may be significant to note that 5 of the 11 enacting provinces and territories have limited their designations to Canadian jurisdictions.[2]

B. UREJA and the *Uniform Enforcement of Canadian Judgments Act*

A principal concern of the Uniform Law Conference in developing UREJA was to facilitate the enforcement of judgments between Canadian provinces and territories. This goal remains valid but it is now served by a newer Uniform Act. The *Uniform Enforcement of Canadian Judgments Act* (UECJA) was promulgated in 1991. In those provinces that adopt it, judgments from other Canadian jurisdictions will be much more easily enforced than under UREJA. To date UECJA has been adopted in one province.[3]

C. The UREJA Jurisdictional Rules and the *Morguard* Case

1. Section 2(6)

The threshold requirements which must be met before an out-of-province judgment is eligible for registration under UREJA are spelled out in detail in section 2(6) of the 1958 version:[4]

2. (6) No order for registration shall be made if the court to which application for registration is made is satisfied that

(a) the original court acted either

(i) without jurisdiction under the conflict of laws rules of the court to which application is made; or

(ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor;

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on

business in the state of that court or had agreed to submit to the jurisdiction of that court;

(d) the judgment was obtained by fraud;

(e) an appeal is pending or the time in which an appeal may be taken has not expired;

(f) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or

(g) the judgment debtor would have a good defence if an action were brought on the judgment.

Paragraphs (a), (b) and (c) go to the competence of the original court to entertain the action, while the remainder of subsection (6) sets out other matters that will render a judgment unregistrable even if the original court had jurisdiction.

Paragraphs (a), (b) and (c) correspond, roughly, to the rules of the common law (as it stood about five years ago) to determine when a foreign court has properly exercised jurisdiction over a defendant or the subject matter of a proceeding. So far as the enforcement of judgments between Canadian provinces and territories is concerned, those rules have been significantly altered by the *Morguard* case.[5]

2. The *Morguard* Case

In *Morguard*, the Supreme Court of Canada rejected the common law tests in relation to jurisdiction. What emerged was a principle that the court of one province should enforce a judgment emanating from another province where the defendant or the subject matter of the dispute has a real and substantial connection with the forum in which the judgment is granted. This is a much wider basis of jurisdiction than the common law tests.

The *Morguard* case was not a proceeding brought under reciprocal enforcement of judgments legislation. Rather, enforcement was sought by

bringing an action on the judgment itself. *Morguard* did not purport to alter the jurisdiction tests set out in section 2(6).

Attempts have been made to argue that *Morguard* has expanded the range of judgments that are enforceable under UREJA.. In an Ontario case *Acme Video* v. *Hedges*,6 the trial judge drew an inference from *Morguard* that a judgment from another province should be registered despite the fact that the jurisdiction requirements set out by the Ontario *Reciprocal Enforcement of Judgments Act*[7] were not satisfied. The purpose of the Act was to simplify the procedure for enforcing extra-provincial judgments. It did not purport to alter or restrict the rules for enforcement of such judgments, established in the jurisprudence, but merely to codify them. Because *Morguard* enlarged the rules on which the Act was based, Kovacs J. drew an inference that similar additions may also be made to the procedural grounds for registration of judgments under the act.[8]

This reasoning was not accepted by the Ontario Court of Appeal which, in a one paragraph judgment, reversed the trial court decision.[9] The Court of Appeal stressed the distinction between an application for registration and an action on the foreign judgment. The statutory requirements for registration were not met and the judgment could not be registered. The test developed in *Morguard* did not expand the scope of the Ontario statute.[10]

Thus we seem to be left with the result that a wider range of out-of-province judgments can be enforced by action than can be enforced under UREJA.. This is clearly anomalous since section 2(6) of UREJA was intended merely to “restate” what the law was then thought to be as a convenience to the users of the legislation.

3. Consequences of the Divergence of Section 2(6) and *Morguard*

(a) Canadian Judgments

Whether the divergence between the jurisdictional principles set out in *Morguard* and those found in 2(6) of UREJA is serious in a purely Canadian context will likely depend on how rapidly the Canadian

provinces and territories adopt the UECJA. If that adoption is rapid and widespread, the problem should be minimal. The UECJA is very much in the spirit of *Morguard* and does not conflict with it.

If, on the other hand, adoption of UECJA is slower to take hold, some impact will be felt. In particular, it is predictable that there would be some shift away from using UREJA in favour of commencing an action on judgment as the method of choice to enforcing an out-of-province judgment.

(b) Non-Canadian Judgments

For provinces that have designated non-Canadian countries and states as reciprocating jurisdictions, the extent of the divergence and its implications are not yet clear. The facts in *Morguard* concerned only the enforcement of a judgment between two Canadian provinces and much of the court's reasoning was based on policy reasons why the older rules are inappropriate in a federation and an economic union like Canada. Other aspects of the judgment, however, are applicable to the enforcement of judgments from outside Canada.

The extent to which *Morguard* changes the rules concerning the recognition of non-Canadian judgments is still being worked through. Only in British Columbia has the caselaw matured to the point where one can say with confidence that *Morguard* does apply to the recognition and enforcement of non-Canadian judgments.[11] Until some kind of national consensus emerges or we have a ruling from the Supreme Court of Canada, it is arguable at least that the jurisdictional rules in section 2(6) retain some validity with respect to non-Canadian judgments.

D. Possible Responses

1. Do Nothing

There are a number of ways in which the Uniform Law Conference might respond to the divergence that has developed between UREJA and the *Morguard* case. One possible response is simply to do nothing. This might be justified on the basis that the problem is one which will correct

itself as more jurisdictions adopt the UECJA. The obsolescence of UREJA might, in fact, be a stimulus to the adoption of the new legislation.

2. Withdraw UREJA

The Conference might also wish to consider totally withdrawing UREJA. This course has been followed in the past when an older Uniform Act has been overtaken by newer legislation with a new approach. The repeal of the old Uniform legislation on bills of sale and chattel mortgages in the wake of the adoption of the *Uniform Personal Property Security Act* is an example.

The only reason why a jurisdiction might want to both enact UECJA and retain UREJA is where the latter is used as a vehicle for reciprocal arrangements with non-Canadian jurisdictions. Here the need for uniform legislation is less obvious.

3. Delete Section 2(6)

Another alternative is to delete section 2(6) entirely. This is not an attractive option. So far as Canadian judgments are concerned, it would move the Act in the direction of UECJA but create a kind of unsatisfactory halfway house. So far as judgments from non-Canadian reciprocating jurisdictions are concerned, those provinces that do not yet recognize the application of *Morguard* principles in this context might regard the deletion of section 2(6) as depriving Canadian defendants of an important safeguard.

4. Provide an Alternative to Section 2(6)

When this issue was considered by the British Columbia Law Reform Commission in its 1991 *Interim Report on Enforcing Judgments from Outside the Province* it offered the following suggestion: Leave the jurisdictional paragraphs of subsection (6) intact but add a proviso that they should not bar registration where the judgment might be enforced by action. In particular, the Commission recommended that a subsection comparable to the following be added:

(9) Notwithstanding subsection (6), an order for registration shall not be refused under paragraphs (a), (b) or (c) where the judgment could have been enforced in British Columbia by bringing an action on it.

Adding a new subsection (9) brings the legislation into line with the principles approved by the Supreme Court of Canada in *Morguard*, reinforcing the procedural nature of the legislation. It also accommodates the possibility of varying views on the extent to which the rules respecting the enforcement of judgments from non-Canadian reciprocating jurisdictions have been affected by *Morguard*.

E. Questions

The approach to be adopted may turn on the answers to the following questions:

Should UREJA continue to be viewed as a vehicle for the enforcement of Canadian judgments (on the basis that some jurisdictions will not adopt UECJA either immediately, or at all)?

Is it important that any judgment from a reciprocating jurisdiction that might be enforced by action should also be enforceable under UREJA?

How important does the concept of reciprocity continue to be? Is it a concern that a change to UREJA in response to *Morguard* might result in a judgment from, say, Idaho, being enforceable under the Act in Alberta while an Alberta judgment obtained in similar circumstances could not be enforced under the corresponding legislation in Idaho?

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Appendix

Designation of Reciprocating Jurisdictions

Adopted	Canada	U.S.A.	Australia	Europe	Version of Act
Alta.	10	2	2	0	1958
B.C.	10	6	11	3	1958

Man.	10;	2	7	0	1958
N.B.	8	0	0	0	1924
Nfld.	10	0	13	1	1958
N.S.	10	0	0	0	1958
Ont.	10	0	0	0	1924
P.E.I.	10	1	0	0	1958
Sask.	10	0	0	0	1924
N.W.T.	9	0	0	0	1924
Yukon	8	0	2	0	1958
Que.	0	0	0	0	N/A

APPENDIX L

MEMORANDUM
Uniform Foreign Judgments Act

A. Existing Uniform Legislation

1. The 1933 Uniform Act

The movement to create a *Uniform Foreign Judgments Act* started in the early 1920's and was an outgrowth of the work of the Uniform Law Conference in relation to the reciprocal enforcement of judgments. Then, as now, it was a feature of the reciprocal enforcement legislation that a judgment would not be eligible for registration under the scheme where "the judgment debtor would have a good defense if an action were brought on the judgment."

The uniform law commissioners of the day were concerned that this formulation left a large measure of uncertainty. With that, a project on "defenses to actions on foreign judgments" was added to the Conference agenda and a committee struck to study and report back. Two separate reports were received in 1924 and 1925. These reports were somewhat unfocussed but they did highlight the defects in court jurisdiction and the

patchwork of Canadian provisions which allowed foreign judgments to be reopened and defended on the merits of the underlying cause of action (these provisions seem gradually to have disappeared[12]).

Evolving out of this examination and the debate that surrounded it was the goal of a Model Act respecting defenses to foreign judgments that would not only specify the defenses available, but provide guidance on when foreign courts have jurisdiction. To this would be added "such incidental rules of international law as seem necessary to make the measure, so far as it goes, a code." A Uniform Act was finally promulgated in 1933. This version of the Act was adopted in Saskatchewan and New Brunswick.

Several features of the Act were controversial. First, the statement of the circumstances in which a foreign court has jurisdiction was delimited by the word "only." That was added in a very deliberate attempt to forestall the growth of the common law in this area and has prevented those provinces that have adopted the 1933 Act from embracing the changes brought by the *Morguard* decision.[13]

Equally controversial was a provision that stipulated that a foreign court had no jurisdiction in an action for damages for an injury in respect of immovable property situated in the enacting province. The framers thought this limitation reflected the common law. Others argued that while this view may have merit where title to the immovable property is called into issue, there are many cases where title is not in issue. For example, if a truck owned and operated by a British Columbian went out of control in Saskatoon and demolished a building, a judgment of a B.C. court made against the driver would not be recognized in Saskatchewan even though the B.C. court would ordinarily have *in personam*jurisdiction.

2. The 1964 Uniform Act

In the early 1960's there was a reawakening of interest in the *Uniform Foreign Judgments Act*. The immediate stimulus appeared to be work being undertaken by the American Uniform Law body and a *Draft Model Bilateral Convention and Model Act* on this topic that was being considered by the International Law Association. As a result of these developments a new

Uniform Act was promulgated in 1964. The 1964 version of the Act has not been adopted in any Canadian province.

The 1964 Act differs from the 1933 version in several respects. In part these differences reflect the criticism that had been directed to the 1933 Act, but achieving uniformity with the American Uniform Act which was also being developed in the early 1960's was also a motivating factor. In structure, the 1964 Act remains similar to its predecessor. It stated the circumstances in which foreign courts are deemed to have jurisdiction. It does not expressly stipulate that this list is exhaustive although such a result might flow as a matter of interpretation.

The actual list of jurisdictional bases is somewhat broader than that of the 1933 version. For example, it recognizes the damage flowing from the operation of a motor vehicle or aircraft in the foreign state as a basis of jurisdiction as well as carrying on business in a foreign state other than the Canadian province.[14] A further provision set out a list of circumstances in which the foreign judgment would not be enforceable which do not turn on a lack of jurisdiction.

B. Recent Developments

1. Judgments from Canadian Courts as "Foreign Judgments"

The 1933 and 1964 uniform foreign judgments acts have been overtaken by a number of developments both in the courts and the work of the Uniform Law Conference itself. Both Uniform Acts were an attempt to codify the common law rules surrounding the recognition and enforcement of foreign judgments. In this context "foreign judgment" included a judgment emanating from a court of a Canadian province other than the enacting province. So far as judgments from other Canadian provinces and territories are concerned there have been two major developments.

In *Morguard* v. *De Savoy*[15] the Supreme Court of Canada redefined the nexus that must exist between the proceeding and the place where judgment is given as a "real and substantial connection." This is an open-ended concept which probably embraces most of the list found in the

Uniform Acts but also a good deal more. Clearly, the lists of jurisdictional rules in the Uniform Acts no longer codify the Canadian position.[16]

It is also important to note a central policy of the *Uniform Enforcement of Canadian Judgments Act* adopted by the Conference in 1991. This central policy is that where a judgment emanating from a court of another province or territory is sought to be enforced in the enacting jurisdiction, there should be no inquiry whether that original court acted within its jurisdiction. Disputes over that issue are to be resolved wholly within the province or territory where the judgment was made. This is the version of "full faith and credit" built into the Act. Since there is to be no inquiry in the enforcing jurisdiction, it is not necessary to stipulate a body of rules to be considered.

Finally, it is important to note the Conference's uniform legislation on court jurisdiction and transfer of proceedings which will likely be finalized in 1994. The legislation defines the principles and circumstances that govern when a court in a Canadian province or territory takes jurisdiction in a proceeding. The legislation also adopts the real and substantial connection test as a pivotal concept and so is prepared to endorse Canadian courts taking jurisdiction in a wider range of circumstances than appears in the list set out in the Uniform foreign judgments legislation.

2. Judgments from non-Canadian Courts

So far as non-Canadian judgments are concerned, the current law is in flux. The *Morguard* case dealt only with a Canadian judgment, but it might also be seen as laying down wider principles. In British Columbia there have been a number of trial level decisions and, most recently, a decision of the Court of Appeal[17] which have applied the *Morguard* concept of real and substantial connection to the recognition and enforcement of judgments from outside Canada.

C. An Appropriate Response

What, in the light of these developments, should the response of the Uniform Law Conference be? Some options are explored below.

1. Do Nothing

The Conference need not take any steps at all. While this would continue the apparent conflict and inconsistency between a Uniform Act and other Uniform Acts and the current Canadian law, it might be argued that the inconsistency is not in an area where the credibility of the Conference is likely to be significantly affected.

2. Withdraw the Uniform Act

The Conference might wish to consider withdrawing the Uniform Act. The most recent (1964 version) has not been adopted in any Canadian jurisdiction and its predecessor, the 1933 version, was adopted only in two jurisdictions.[18] The majority of Canadian provinces seem to have survived quite nicely without uniform legislation on this topic. Given the paucity of demand for the product, simply withdrawing the Uniform Act may be appropriate.

3. Revise the Uniform Foreign Judgments Legislation

It may be argued that there is still a role for Uniform legislation on this topic and that an attempt should be made to revise the Act. What form such a revision might take would depend on decisions in respect of:

is it desirable and try to restate *Morguard* for the benefit of provinces and territories that do not adopt that UECJA?

should a revised act attempt to state rules as to jurisdiction in relation to non-Canadian judgments and, if so, what should the content of those rules be?

No doubt a variety of additional questions would arise in an attempt to update this uniform legislation.

D. Conclusion

My personal view is that the Conference should withdraw the *Foreign Judgments Act* as a Uniform Act. In the early '60s the Conference devoted much energy to updating this legislation and in the ensuing 30 years, not a single Canadian province or territory has adopted the revised version. There is no reason to believe that yet a further revised version would fare any better in the legislative market place. I believe that any attempt to

repair or revise this Act would simply consume a lot of the ULC's energy and resources and result in very little tangible return.

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