

Foreign Judgments - Common Law Discussion Paper Summary 1996

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Civil Section Documents - Foreign Judgments - Common Law DISCUSSION PAPER SUMMARY

This discussion paper has been prepared for the meeting of the Uniform Law Conference of Canada to be held in Ottawa in August 1996. Its purpose is to focus debate on the possible content and direction of a uniform act dealing with the enforcement of judgments from courts of foreign countries in the context of the common law provinces.

Background

At their May 1996 meeting, the Ministers of Justice urged the ULCC to embark on the drafting of a uniform act dealing with the recognition and enforcement of foreign judgments. The request was founded on three main considerations: 1- the present law on the matter is not uniform across the country; 2- the law is perceived to be uncertain; and 3- existing rules may be disadvantageous to Canadian defendants in comparison to defendants from other countries.

This resolution was based on the findings of a study undertaken in 1995 by the federal Department of Justice on possible law reform on recognition and enforcement of foreign judgments in Canada. The Department's report highlighted the uncertainty that *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 had created with respect to the enforcement of judgments, especially those from outside Canada.

The project on foreign judgments may be seen as a follow-up to the work of the ULCC in the area of enforcement of judgments and the drafting of the Uniform Enforcement of Canadian Judgments Act (UECJA) in 1991 and that of the Uniform Court Jurisdiction and Proceedings Transfer Act (UCJPTA) in 1994.

Nature of the problem

The problem stands from the fact that Canadian rules on the enforcement of foreign judgments are both uncertain and diverse depending on whether statutory or common law rules apply. There is also a lack of uniformity in the application of either such rules.

Preferred course of action

The paper explores briefly a number of possible alternatives, such as bilateral treaties, a multilateral convention, federal legislation, caselaw, and legislative action at the provincial

and territorial levels. The latter appears to be the preferred course of action in the actual context.

A number of issues related to the drafting of a uniform act on the enforcement of judgments are then reviewed as follows: the scope of the act (money or non-money judgments, civil or commercial matters, family matters, and others), the conditions for recognition and enforcement (criteria for the foreign court's jurisdiction, fair process, public policy exception and its impact on punitive damages), mechanisms for enforcement (registration or otherwise), and subsidiary considerations (effect of the judgment, limitation period, conversion rate and interest).

A preliminary draft uniform act, which is appended to the paper, contains proposals to address these issues for discussion.

Impact

Those that will be most impacted are Canadian defendants appearing, willingly or not, before foreign courts and against whom the enforcement of judgments rendered by those courts is sought in Canada. A Uniform Act on enforcement of foreign judgments would clarify and uniform rules to be applied in common law jurisdictions in Canada and provide stability and predictability to Canadian individuals and corporations involved in foreign proceedings.