

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES ACT

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Comment: The Uniform Enforcement of Canadian Judgments and Decrees Act ("UECJDA") embodies the notion of "full faith and credit" in the enforcement of judgments between the provinces and territories of Canada. It involves rejection of two themes which have, in the past, characterized the machinery for enforcing such judgments.

First it rejects the concept of reciprocity. Where the UECJDA has been adopted in province "X", a litigant who has taken judgment in province "Y" may enforce that judgment in province "X" under the legislation whether or not the UECJDA has been adopted in province "Y." This stands in contrast to the approach of the Uniform Reciprocal Enforcement of Judgments Act ("UREJA").

Second, the Act rejects a supervisory role for the courts of a province or territory where the enforcement of an out-of-province judgment ["Canadian judgment"] is sought.

The common law and the UREJA are preoccupied with the question of whether the court which gave the judgment had the jurisdiction to do so. If a Canadian judgment is flawed, because of some defect in the jurisdiction or process of the body which gave it, the approach of the UECJDA is to regard correction of the flaw as a matter to be dealt with in the place where it was made.

As a general rule, a creditor seeking to enforce a Canadian judgment in a province or territory which has enacted the UECJDA should face no substantive or procedural barriers except those which govern the enforcement of judgments of the local courts.

An important feature of UECJDA is that it provides a mechanism for the enforcement of non-money judgments. Apart from legislation that addresses particular types of orders, there is no statutory scheme or common law principle which permits the enforcement in one province of a non-money judgment made in a different province. This is in sharp contrast to the situation that prevails with respect to money judgments which have a long history of enforceability between provinces and states both under statute and at common law. With the increasing mobility of the population and the emergence of policies favouring the free flow of goods and services throughout Canada, this gap in the law has become highly inconvenient. UECJDA provides a rational statutory basis for the enforcement of non-money judgments between the Canadian provinces and territories.

It is important that judges and litigants be sensitive to the fact that non-money judgments are now capable of being enforced in other provinces and territories. There is a danger that they will not turn their minds to this question at the time the order is made. They should be encouraged to do that so, where it is appropriate, the court is given an opportunity to limit the geographic ambit of the judgment. Consideration might be given to formalizing this process in rules of court.

Definitions

1. In this Act:

“Canadian judgment” means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than *[enacting province or territory]*

- (a) requires a person to pay money, including**
 - (i) an order for the payment of money that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than *[enacting province or territory]* and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction in that province or territory, and**
 - (ii) an order made and entered under section 725 of the Criminal Code (Canada) in a court of a province or territory of Canada other than *[enacting province or territory]***
- (b) under which a person is required to do or not do an act or thing, or**
- (c) that declares rights, obligations or status in relation to a person or thing but does not include a judgment, decree or order that**
- (d) is for maintenance or support, including an order enforceable under the *[appropriate Act in the enacting province or territory]*,**
- (e) is for the payment of money as a penalty or fine for committing an offence.**
- (f) relates to the care, control or welfare of a minor;**

- (g) **is made by a tribunal of a province or territory of Canada other than [enacting province or territory] whether or not it is enforceable as an order of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, to the extent that it provides for relief other than the payment of money, or**
- (h) **relates to the granting of probate or letters of administration or the administration of the estate of a deceased person;]**

Comment: A central concept of UECJDA is the “Canadian judgment.” The term first receives an expansive definition in paragraphs (a) to (c) which is then narrowed by the exclusions that follow. The judgment must have been made in a “civil proceeding.”

Paragraph (a) brings in orders for the payment of money. These include certain kinds of “deemed judgments” -- claims which provincial statutes permit to be enforced as judgments although they have not been the subject of formal litigation in a court. Only orders of tribunals which exercise a judicial function qualify for enforcement as “Canadian judgments.” The definition does not extend to deemed judgments based on a certificate of an administrator stating that money is owed to an emanation of government. Other orders which are enforceable as Canadian judgments are those made, in the course of a criminal proceeding, in favour of a victim of crime. These orders are authorized by the Criminal Code and are enforceable as civil judgments.

Paragraph (b) embraces orders such as injunctions and those for specific performance. Paragraph (c) covers orders that operate to define certain rights or relationships. These might include things like adult guardianship orders. It will also include orders which are purely declaratory. Some kinds of declarations are recognized under current law, but that recognition may be subject to a jurisdictional challenge. Bringing them within the definition ensures that the full faith and credit principle applies to them.

Excluded from the definition are types of orders that are the subject of existing machinery for interprovincial enforcement. They include maintenance orders as well as those custody and access in relation to minors. Most Canadian jurisdictions have local

legislation respecting the recognition of foreign probates. The exclusion of probate orders therefore is optional and enacting jurisdictions may wish to examine their local legislation and decide whether they wish to rely on that or on UECJDA.

The exclusion of judgments for fines and penalties carries forward the current law. They are not presently enforceable either through an action on the judgment or under reciprocal enforcement of judgment legislation.

The exclusion of orders of tribunals, in respect of non-monetary relief ensures that the scheme is confined to true court orders. Non-money orders made by tribunals are often intensely local in the policies they advance and unsuitable for interprovincial enforcement.

Not all judgments which satisfy the definition of “Canadian judgment” may be registered or enforced under the UECJDA. Other limitations are imposed in sections 2 and 5.

“enforcement” includes requiring that a Canadian judgment be recognized by any person or authority whether or not further relief is sought;

“enforcing party” means a person entitled to enforce a Canadian judgment in the province or territory where the judgment was made;

“registered Canadian judgment” means a Canadian judgment that is registered under this Act.

Right to register Canadian judgment

2. (1) **Subject to subsection (2) a Canadian judgment, whether or not the judgment is final, may be registered under this Act for the purpose of enforcement.**

Comment: This act embraces interim as well as final orders for non-monetary relief. A condition at common law for the enforcement of a foreign judgment was that the judgment had to be final. This requirement of finality is continued in subsection (2) for money judgments. In the context of non-money judgments, other considerations arise.

There is a whole range of interlocutory injunctions that might be issued in the course of a proceeding. For example, orders may be given designed to preserve or protect the subject matter of the litigation or maintain the status quo. The court may issue a Mareva injunction to prevent the defendants disposing of specified assets. Orders such as these would not meet the test of “finality” but that seems an insufficient reason to deny their enforcement outside the place where the order was made.

Moreover, in many instances when an injunction is sought, although the pleadings are drafted to claim a final injunction, the real battle is over whether or not an interim injunction should be granted. When an interim injunction is granted, very often no further steps are taken. The legislation recognizes this reality.

- (2) A Canadian judgment that requires a person to pay money may not be registered under this Act for the purpose of enforcement unless it is a final judgment.**

- (3) A Canadian judgment that also contains provisions for relief that may not be enforced under this Act may be registered under this Act except in respect of those provisions.**

Comment: This ensures that a judgment that provides for other relief is enforceable as to the provisions that are within this Act. For example an order made in a matrimonial proceeding may provide for maintenance, custody of children of the marriage, and limit the contact one spouse may have with the other. The last of those provisions would be enforceable under this Act. The other provisions would be enforced under other schemes.

Procedure for registering Canadian judgment

3. (1) **A Canadian judgment is registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the [superior court of unlimited trial jurisdiction in the enacting province or territory]**
- (a) **a copy of the judgment, certified as true by a judge, registrar, clerk or other proper officer of the court that made the judgment, and**
 - (b) **the additional information or material required by regulation.**

Comment: Section 3 (1) sets out the mechanics of registering a judgment under UECJDA. If more detailed guidance is desirable this may be done by regulation. [See section 10.] Registering a Canadian judgment is a purely administrative act

- (2) **Law enforcement authorities acting in good faith may, without liability, rely on and enforce a purported Canadian judgment that**
- (a) **was made in a proceeding between spouses or domestic partners having a similar relationship, and**
 - (b) **enjoins, restrains, or limits the contact one party may have with the other for the purpose of preventing harassment or domestic violence**

whether or not the judgment has been registered in the [superior court of unlimited trial jurisdiction in the enacting province or territory] under subsection (1).

Comment: Protection orders require some special treatment. In this context, enforcement is not so much a matter of invoking the assistance of the local court as it is in getting local law enforcement authorities to respond to a request for assistance. When the police are called on to intervene in a situation of domestic harassment their response may well turn on whether a valid protection order exists. If the police are satisfied on this point they may be prepared to act in marginal situations. If they are forced to rely solely on powers derived from the Criminal Code they may be reluctant to intervene except in cases where the potential violence or breach of the peace is beyond doubt.

The strategy of subsection (2) is to insulate the police from civil liability where they, in good faith, act on what purports to be a valid protection order. Those jurisdictions which have created and maintain an up-to-date central registry of protection orders on which the police normally rely may wish to consider alternative strategies.

Effect of registration

4. **Subject to sections 5 and 6, a registered Canadian judgment may be enforced in [enacting province or territory] as if it were an order or judgment of, and entered in, the [superior court of unlimited trial jurisdiction in the enacting province or territory].**

Comment: Section 4 describes the effect of registration. It embodies the central policy of the UECJDA that Canadian judgments from outside the enacting province or territory should be enforceable as if made by a superior court of the enacting province or territory.

Time limit for registration and enforcement

5. **(1) A Canadian judgment that requires a person to pay money must not be registered or enforced under this Act**
 - (a) **after the time for enforcement has expired in the province or territory where the judgment was made; or**

- (b) **later than [xxx] years after the day on which the judgment became enforceable in the province or territory where it was made.**

Comment: The limitation laws of most provinces adopt different limitation period to govern the enforcement of “foreign” judgments than that which governs local judgments. “Foreign” judgments are usually subject to a shorter limitation period. Section 5 embodies the policy that Canadian judgments should be treated no less favourably than local judgments of the enacting province or territory. Thus Canadian judgments should not be subject to any shorter limitation period than local judgments.

In setting a limitation period for the enforcement of judgments under the UECJDA section 5 adopts a dual test. First, enforcement proceedings must be brought within the limitation period applicable to local judgments, with time running from when the judgment was made. Second, proceedings on the judgment must not have become statute barred through the operation of a limitation period in the place where it was made.

xxx refers to the number of years as for enforcement of money judgments of the superior court of unlimited trial jurisdiction in the enacting province or territory.

- (2) **Equitable doctrines and rules of law in relation to delay apply to the enforcement of a Canadian judgment, to the extent that it provides for relief other than the payment of money.**

Comment: Conduct such as delay in seeking enforcement might disentitle the enforcing party to relief.

Application for directions

6. (1) **A party to the proceeding in which a registered Canadian judgment was made may apply to the [superior court of unlimited trial jurisdiction**

in the enacting province or territory] for directions respecting its enforcement.

- (2) On an application under subsection (1), the court may
- (a) make an order that the judgment be modified as may be required to make it enforceable in conformity with local practice,
 - (b) make an order stipulating the procedure to be used in enforcing the judgment,

Comment: Non-money judgments are frequently framed with reference to the enforcement machinery available in the place where they are made. This may not always be compatible with the enforcement machinery and practice in a different province where enforcement is sought. Enforcement of an extra-provincial judgment, according to its exact tenor, may be impossible. Section 6 (1) provides that a party may apply for directions as to the way in which a judgment is to be enforced. Section 6 (2) gives the enforcing court a generous power to “fine-tune” the judgment so that it may be enforced according to its intent.

- (c) make an order staying or limiting the enforcement of the judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if
 - (i) such an order could be made in respect of an order or judgment of the *[superior court of unlimited trial jurisdiction in the enacting province or territory]* under *[the statutes and the rules of court] [any enactment of the enacting province or territory]* relating to legal remedies and the enforcement of orders and judgments,

Comment: The policy of assimilating the enforcement of Canadian judgments to that of local judgments requires that the party against whom enforcement is sought be entitled to take advantage of any limitations which the law of the enacting province or territory may impose with respect to the enforcement of local judgments. This might include, for example, a power in the local court to order payment by installments. Section 6 (1) (a) clarifies the power of the local court to make orders of this character which limit the enforcement of a Canadian judgment.

- (ii) **the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the Canadian judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,**
- (iii) **an order staying or limiting enforcement is in effect in the province or territory where the Canadian judgment was made, or**
- (iv) **is contrary to public policy in *[the enacting province or territory]*.**

Comment: An order made under section 6 (2) (c) staying or limiting enforcement may be made for a temporary period and subject to any terms which may be necessary to protect the enforcing party's position. If an order is made under paragraph (ii), terms might be imposed to ensure that the party against whom enforcement is sought proceeds expeditiously. The court may, for example, set time limits or require the posting of security.

- (3) **Notwithstanding subsection (2), the *[superior court of unlimited trial jurisdiction in the enacting province or territory]* shall not make an order staying or limiting the enforcement of a registered Canadian judgment solely on the grounds that**

- (a) **the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment, or over the party against whom enforcement is sought, under**
 - (i) **principles of private international law, or**
 - (ii) **the domestic law of the province or territory where the judgment was made,**
- (b) **the [superior court of unlimited trial jurisdiction in the enacting province or territory] would have come to a different decision on a finding of fact or law or on an exercise of discretion from the decision of the judge or court that made the judgment, or**
- (c) **a defect existed in the process or proceeding leading to the judgment.**

Comment: This provision gives specific effect to the full faith and credit policy of UECJDA. At common law, a local court whose assistance is sought in the enforcement of a foreign judgment may decline to give that assistance where it believes the foreign judgment is somehow flawed. In this context, a flaw might involve a lack of jurisdiction in the foreign court over the defendant or the dispute. It might, in some cases, involve the local court having a different view of the merits of the decision. A flaw might also include some defect in the process by which the foreign judgment was obtained such as a breach of natural justice or where there is a suggestion of fraud. Allowing the local court to inquire into such matters may be appropriate where the judgment emanates from a truly “foreign” place. It is quite inappropriate in Canada as it puts the courts of one province in the position of supervising the actions of the courts of another province. The Common law approach cannot co-exist with the full faith and credit concept.

UECJDA expressly abrogates the common law approach. Section 6 (3) stipulates that none of the “flaws” described above provide grounds for staying or limiting the enforcement of a Canadian judgment. The proper course of a judgment debtor who

alleges that the judgment is flawed is to seek relief in the place where the judgment was made, either through an appeal or a further application to the court or tribunal which made the judgment.

UECJDA does recognize that there are other circumstances which might justify staying or limiting the enforcement, such as where the judgment is truly flawed, and the judgment debtor is taking steps to obtain relief in the place it was made. This is provided for in section 6 (2) (c) (ii). The judgment debtor is likely to have a stronger claim for a stay if enforcement of the judgment has also been stayed in the place where it was made. [See section 6 (2) (c) (iii).]

- (4) **An application for directions must be made under subsection (1) before any measures are taken to enforce a registered Canadian judgment where**
- (a) **the enforceability of the judgment is, by its terms, subject to the satisfaction of a condition, or**
 - (b) **the judgment was obtained *ex parte* without notice to the persons bound by it.**

Comment: Subsection (4) sets out particular instances in which directions must be sought. The first is where a judgment stipulates that some condition precedent must be satisfied before the judgment is enforceable. Typically, a judgment might require that a person bound by it receive notice of it before any enforcement proceedings may be taken. Section 6 (4) requires that the enforcing party seek directions as to whether the condition has been satisfied for the purposes of enforcement within the enforcing province. The second instance is where the judgment sought to be enforced is an *ex parte* order.

Interest on registered judgment

7. (1) **To the extent that a registered Canadian judgment requires a person to pay money, interest is payable as if it were an order or judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory].**
- (2) **For the purpose of calculating interest payable under subsection (1), the amount owing on the registered Canadian judgment is the total of**
- (a) **the amount owing on that judgment on the date it is registered under this Act; and**
 - (b) **interest that has accrued to that date under the laws applicable to the calculation of interest on that judgment in the province or territory where it was made.**

Comment: Section 7 provides that a registered judgment will earn interest as if it were a local judgment. The principal amount of the judgment is calculated by including post judgment interest that has accrued before registration.

Recovery of registration costs

8. **An enforcing party is entitled to recover all costs, charges and disbursements**
- (a) **reasonably incurred in the registration of a Canadian judgment under this Act, and**
 - (b) **taxed, assessed or allowed by [the proper officer] of the [superior court of unlimited trial jurisdiction in the enacting province or territory].**

Comment: Costs and disbursements incurred in the registration of a Canadian judgment are recoverable.

Enforcing party's other rights not affected by registration

- 9. Neither registering a Canadian judgment nor taking other proceedings under this Act affects an enforcing party's right to bring an action on the original cause of action.**

Comment: An enforcing party is not required to elect irrevocably between options for enforcing a Canadian judgment. Section 9 preserves the right of the enforcing party to employ the UECJDA or to rely on whatever common law methods of vindicating rights are available. There is no reason to limit the enforcing party's options.

It is contemplated that some provinces and territories will retain legislation for the reciprocal enforcement of judgments. While this legislation will be overtaken by the UECJDA with respect to Canadian judgments it will still be necessary as a vehicle for the enforcement of judgments, on a reciprocal basis, with non-Canadian jurisdictions.

Power to make regulations

- 10. The Lieutenant Governor in Council may make regulations [rules of court]**
- (a) prescribing the fee payable for the registration of a Canadian judgment under this Act,**
 - (b) respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment under this Act,**
 - (c) respecting forms and their use under this Act, and**
 - (d) to do any matter or thing required to effect or assist the operation of this Act.**

Comment: The regulation-making power in section 10 is self-explanatory. The regulation-making power in section 10 is self-explanatory.

Application of Act

11. This Act applies to

- (a) a Canadian judgment made in a proceeding commenced after this Act comes into force, and
- (b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the party against whom enforcement is sought took part.

Comment: The application provision permits the retrospective application of the UECJDA to some judgments. It may be unfair to enforce, on a full faith and credit basis, a judgment made in a proceeding commenced before the UECJDA came into force. Unfairness could occur where a resident of the enacting province relied on well-founded legal advice to not respond to distant litigation since any resulting judgment would not (according to the law in force at the time) be enforceable outside the place where it was made. On the other hand, if that resident took part in the foreign proceeding there is little reason to deny the plaintiff the right to enforce the judgment under the UECJDA.