

## APPENDIX E

[ See page 53 ]

### UNIFORM ENFORCEMENT OF JUDGMENTS CONVENTIONS ACT

**Comment:** The title of the act is general to cover as many conventions on enforcement of judgments as possible. In so doing it would remove the need to pass a separate implementing act each time a convention has to be implemented. Measures to be adopted would include amending the list of designated countries, and making a regulation which would set out the added convention.

The first expected purpose of this uniform act is to assist in the implementation of the *Convention between Canada and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Assistance in Maintenance*.

#### *Definition*

1. In this Act, "convention" means a convention existing with a country designated by [regulation] [order] and to which this Act gives force of law.

**Comment:** The definition indicates to which conventions the act applies. This section is drafted generally without mentioning any specific convention so as to refer to any conventions that might be concluded by Canada in the area of recognition and enforcement of judgments, in practice upon consultation with the provinces and territories. It would be sufficient for the enacting jurisdiction to list the names of countries with which such conventions will exist, as in the case of the Canada-France, by designating them either by way of a regulation or ministerial order depending on the choice of each jurisdiction.

There is no reference here to the text of a convention being added in a schedule to the uniform act. However, subsection 6(2) provides that the text should be published in the regulation bringing it into force. In practice each jurisdiction will decide on the need to publish the text of the Canada-France Convention and other such conventions. It may also select alternatives to the publication of conventions as part of their statutes or regulations, including the use of a web site, such as that of the Department of Foreign Affairs and International Trade or of the Uniform Law Conference of Canada.

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### *Designation of jurisdiction and court*

2. **The [responsible minister] shall,**
  - (a) **request that the Government of Canada designate [enacting jurisdiction] as a territorial unit to which the convention extends;**
  - (b) **determine the courts in [enacting jurisdiction] to which application for [registration or declaration of enforceability] of a judgment rendered by a court of a country with which a convention has been concluded may be made and request the Government of Canada to designate those courts for the purpose of the convention.**

**Comment:** Section 2 contains standard paragraphs: see the implementing legislation for the Canada-UK Convention. They correspond to articles 24.1 and 25 of the Canada-France Convention.

This section does not designate an authority responsible for the recovery of maintenance which would be necessary in order to meet the requirement of article 10.3 of the Canada-France Convention. The Conference was of the view that such a designation could best be done in the complementary arrangement to be concluded by the jurisdiction with France under article 26 of the Convention.

### *Convention in force and given force of law*

3. **From the date a convention enters into force in respect of [enacting jurisdiction] as determined by the convention, the convention is in force in [enacting jurisdiction] and its provisions are law in [enacting jurisdiction].**

**Comment:** This is a standard and fundamental provision for the purpose of the implementation of a convention (see the Canada-UK Convention implementing legislation). It should be noted that the Canada-France Convention will apply to judgments rendered on maintenance matters, status of natural persons, and custody and access to children even if they were rendered before the Convention came into force for the jurisdiction. See article 2 of that Convention.

### *Publication*

4. **The [responsible minister] shall cause to be published in the [named publication]**

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- (a) **the courts to which applications for [registration or declaration of enforceability] of a judgment rendered by a court of a country with which a convention has been concluded may be made [; and**
- (b) **the arrangements that may be completed in application of such convention.]**

**Comment:** Paragraph (a) is standard (see the Canada-U.K. Convention uniform implementing legislation). Paragraph (b) is added to account for article 26 of the Canada-France Convention, likely to be reproduced in other similar treaties, which enables the enacting jurisdiction and the treaty country to conclude arrangements to assist in particular in the application of the maintenance recovery scheme. It would appear appropriate that such arrangements be published to inform judgment creditors and debtors of the complementary requirements concerning recognition and enforcement of orders. The text of paragraph (b) is presented between brackets as it will be up to each enacting jurisdiction to decide whether to include it.

**NOTE:** The information in both paragraphs may be published in a regulation made under section 6.

### *Prevalence of this act*

**5. Where there is a conflict between this Act and any other act on recognition and enforcement of foreign judgments, this Act prevails [.] [subject to the following exceptions:].**

**Comment:** This is a standard and fundamental implementing provision (see the Canada-UK Convention uniform implementing legislation). It is aimed at harmonizing the responsibilities of the implementing jurisdiction under this act with those under provisions of other acts or rules on matters similar to those covered by the convention.

In the past, this section was drafted in very broad terms so as to refer to "any act or regulation". This time, in order to avoid unnecessary confusion, it was felt necessary to narrow the application of the prevalence clause to "other act on recognition and enforcement of foreign judgments". In addition, as suggested by the phrase in brackets, each implementing jurisdiction may wish for sake of clarity to identify in this section domestic rules of a "public policy or public order" nature that will prevail over the rules of the convention. It is conceivable that even

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though they may conflict with the treaty rules, such domestic rules could remain applicable as in the case of blocking provisions against the enforcement of foreign asbestos judgments which have been adopted in some jurisdictions.

It is a well-accepted principle in the area of conflict of laws as well as in private international law conventions, like the Canada-France Convention in articles 4 (d) and 16 (d), to refer to "ordre public/public order" in exceptional circumstances, as determined by local laws, to justify a refusal to recognize or enforce a foreign judgment. However, this defence has very seldom been invoked and it has been construed narrowly (Castel, Canadian Conflict of Laws, p. 164, as quoted in *United States of America v. Ivey*, (1995), 26 OR 533; 130 DLR (4th) 674 (Ont. Gen. Div.; upheld on appeal, (1996) 30 O.R. (3d) 370 (Ont. C.A.) ; leave to appeal to the S.C.C. denied on May 29, 1997), partly reproduced and discussed in Baer, Blom, Edinger, Rafferty, Saumier, Walsh, Private International Law in Common Law Canada, pp. 55-64).

The meaning of "ordre public/public order" has been debated for centuries and may vary according to different legal systems. Thus it has been difficult to come up with a suitable definition in the context of conventions. As mentioned in Castel, *supra*, "[I]n the absence of legislation establishing the stringency of public policy, it is for the courts to define its precise limits according to their judgment and good conscience."

Castel, *supra*, p. 163, also writes: "evidence of public policy can be found in the total body of the constitutional and statute law as well as the case law of the forum, since it will reflect the local sense of justice and public welfare". However, "public policy must connote more than local policy as regards internal affairs"; "[P]ublic policy is relative and in conflicts cases represents a national policy operating on the international level" (id.). "If foreign law (or judgment) is to be refused any effect on public policy grounds, it must at least violate some fundamental principle of justice, some prevalent conception of good morals, or some deep-rooted tradition of the forum", (id. pp. 163-164). (Emphasis added).

In the context of its implementing legislation, the enacting jurisdiction could therefore identify the rules that would constitute exceptions to the prevalence of the treaty rules on the basis of the above-mentioned principles. It should however be understood that in doing so the rules of the convention cannot

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not be modified, limited or otherwise thwarted by the prevalence of domestic rules in a way that would put Canada in breach of its international obligations.

### *Regulations*

- 6.(1) The [Lieutenant Governor in Council] may make regulations to:**
- (a) prescribe the proceedings necessary for maintenance recovery;**
  - (b) designate the competent authority to certify copies of judgments to be enforced abroad;**
  - (c) designate the countries with which a convention has been concluded ; or**
  - (d) otherwise carry out the intent and purpose of this Act.**
- 6.(2) The [Lieutenant Governor in Council] shall**
- (a) specify by regulation when a new convention comes into force in [enacting jurisdiction], and**
  - (b) set out the convention in the regulation.**

**Comment:** The first paragraph of section 6 on regulations is a standard provision which is usually drafted in very broad terms: See the Canada-UK Convention uniform implementing statute. A number of possible subject matters of regulation has been listed here as general guidance.

The second paragraph combines in a new format standard implementing provisions which deal on the one hand with the date of the coming into force of the convention as designated in accordance with section 1 and on the other with the publication of the text of the convention. This should be done through regulation.

**NOTE:** Special attention should be drawn early in the implementation process to the need for changes to the Rules of Court. Some measure of uniformity would appear desirable between various rules of court applicable to enforcement proceedings.

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### *Proclamation*

#### 7. (Proclamation section)

**Comment:** Some jurisdictions have legislation implementing a convention come into force on Royal Assent, with the understanding that the law has no effect until the convention comes into force for that jurisdiction according to the terms of the convention itself. Other jurisdictions prefer to wait and proclaim the legislation in force the day the convention comes into force. Each enacting jurisdiction may choose some variant of section 6(2) and 7 to do so.

[ The text of the Canada-France Convention appears at the Uniform Law Conference of Canada's web site at:  
<http://www.law.ualberta.ca/alri/ulc/97pro/ecfcon.htm> ]