

APPENDIX G

[See page 51]

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

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Canada

REPORT OF THE COORDINATOR

1. Overview of Activities

[1] The working group was asked by the ULCC last August to continue its work on enforcement of foreign judgments and to draft a uniform act based on the discussions of its 1997 Report and the resolutions of the Civil Section in that regard.

[2] The 1997-98 working group was composed of Joost Blom, Arthur Close, Isabelle Daoust, Russ Getz, Stephen Hartley, H. Scott Fairley, Peter Lown, John McEnvoy, Darcy McGovern, Tim Rattenbury, Frédérique Sabourin, Greg Steele, and Louise Lussier, as coordinator.

[3] The working group held eight conference-calls in total between December 1997 and June 1998. The main topics of the working group's agenda were punitive and excessive damages; enforcement machinery; as well as the drafting of a preliminary tentative draft uniform act on enforcement of foreign judgments.

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[4] Special mention should be made of the valuable contribution of Joost Blom, Darcy McGovern and Arthur Close for which they are thanked.

2. Results of This Year's Activities

[5] The working group was successful in drafting a preliminary tentative draft uniform act, a copy of which is attached, to be reviewed by the ULCC Civil Section at its annual meeting in Halifax in August 1998. However this preliminary tentative draft is not complete nor is it refined drafting. It is presented for further discussions and also to seek the guidance of the ULCC on a number of specific issues.

[6] Some policy choices with respect to enforcement of foreign judgments are reflected in the preliminary tentative draft as follows:

- A specific uniform act should apply to the enforcement of foreign judgments rendered in countries with which Canada has not concluded a treaty or convention on recognition and enforcement of judgments.
- The proposed uniform act indicates what kind of judgments it covers as well as to which judgments it will not apply.
- The proposed uniform act rejects the full faith and credit policy applicable to Canadian judgments under the *Uniform Enforcement of Canadian Judgments Act* (UECJA).
- The proposed uniform act identifies the conditions for the recognition and enforcement of foreign judgments in Canada. These conditions are largely based on well-accepted and long-established defences or exceptions to the recognition and enforcement of foreign judgments in Canada, subject to one

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recent development, the condition related to adjudicatory jurisdiction over the subject-matter of the original action.

- In the aftermath of *Morguard*, the proposed uniform act adopts as a condition for recognition and enforcement of a foreign judgment that the jurisdiction of the foreign court which has rendered the judgment was based on a real and substantial connection between the country of origin and the action against the defendant.
- The proposed uniform act does not create a new enforcement machinery and recognizes that the judgment creditor could opt between an action for enforcement at common law or registration of the foreign judgment for the purpose of its enforcement.
- The proposed act develops detailed provisions related to the registration of a foreign judgment and its possible confirmation. Additional requirements are imposed on the judgment creditor, notably the filing of a registration form, as well as limitations, for instance with respect to proceeds of an enforcement measure. Since registration is defeasible, the judgment debtor can request the confirmation of the registration by filing a confirmation request form to that end. The judgment creditor can then apply for the confirmation of the registration.

[7] Specific issues, on which the attention of the ULCC is especially called, are as follows:

- Should the act cover non-money foreign judgments? Should the act also cover provisional, i.e., non-final, orders? See comments under section 1.
- Should the list of examples of real and substantial connections be considered exhaustive and definitive? If so, is their drafting too narrow? Should these

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connections apply only in the cases of default foreign judgments? See comments under section 7.

- Should the judgment debtor be given the opportunity to challenge the jurisdiction of the foreign court at the time of enforcement proceedings in Canada? See comments under section 8.

- Should the enforcement procedure through registration set out under Part 3 of the proposed uniform act be autonomous and not related to the *Uniform Enforcement of Canadian Judgments Act*? See comments under section 9 and also sections 10(1), 13(6), and 15(2).

- Upon the request of the judgment debtor, should the judgment creditor be forced to apply for the confirmation of the registration of the foreign judgment? See comments under sections 12 and 13.

- Should forms be prescribed? See Forms in Schedule.

- Should delays be imposed? Could those delays be extended? See comments under sections 12 and 13.

- Who should bear the burden of proof with respect to the confirmation proceeding: the judgment creditor or debtor? What should then be the evidentiary weight of the form filed by the judgment creditor? See comments under section 13.

Note: A number of variants for the drafting of sections 9, 12, and 13 in particular are presented for further discussions.

3. Overview of the preliminary tentative draft uniform act: *Uniform Enforcement of Foreign Judgments Act*

[8] The proposed *Uniform Enforcement of Foreign Judgments Act* (UEFJA), which is attached, is divided in four parts.

[9] Part 1 deals with definitions (s. 1) and scope of application (s. 2).

[10] Part 2 refers to enforcement generally. It contains six provisions on various matters: conditions for enforcement (s. 3); the time limit period to seek enforcement (s. 4); the discretion of the enforcing courts to reduce foreign awards of non-compensatory and excessive damages (s. 5); jurisdiction of the foreign court based on voluntary submission, territorial competence, or a real and substantial connection (s. 6); examples of real and substantial connections (s. 7); Aescap clause; (s. 8).

[11] Part 3 deals with enforcement procedure in six related provisions: choice of enforcement through registration or action for enforcement (s. 9); registration requirements (s. 10); implementation of enforcement measures (s. 11); request for confirmation of registration (s. 12); application to confirm registration and decision (s. 13); consequences of default of request or confirmation (s. 14); and finally, other applications (s. 15).

[12] Part 4 mentions related issues that have yet to be considered by the working group, such as partial enforcement, effect of registration, etc, as well as final provisions such as power to adopt regulations, etc.

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UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (Tentative) DRAFT

PART I DEFINITIONS AND SCOPE OF APPLICATION

Definitions

1. In this Act,

“enforcing court” means [court of unlimited trial jurisdiction in the enacting province of territory];

“foreign judgment” means a [final] [money] judgment or order [or decree] made in a civil proceeding by a court other than a court of a province or territory of Canada;

“judgment creditor” means the person entitled to enforce a foreign judgment;

“judgment debtor” means the person liable under a foreign judgment;

“state of origin” means the country or a subdivision of a country where a foreign judgment was made.

Comments: As is customary the proposed uniform act on enforcement of foreign judgments should include a section on definitions. Most definitions above-provided are not controversial except the one on “foreign judgments”.

The working group seeks the wisdom of the ULCC on the possibility of broadening the meaning of “foreign judgments” so as to include all types of judicial orders in a civil

proceeding, including provisional, i.e., non final judgments, as well as non-money judgments, provided the subject-matter of those judgments falls under the scope of the proposed act as set out in section 2. For these reasons the words “final”, “money”, and “decree” are between brackets.

At present, at common law, enforcement of provisional foreign measures (Mareva injunctions) can be granted but this remains exceptional. However, rules on the matter continue to evolve. It is likely, although no formal decision has yet been made, that the Hague project of a multilateral convention on judgments will include provisional measures.

Also, at common law, in contrast to the civil law tradition, enforcement of non-money foreign judgments cannot be generally obtained. If it were to be allowed under the proposed uniform act, although this has raised some controversy, specific rules on the actual enforcement of such orders would have to be drafted. The Hague project will apply to non-money judgments.

Judgments to which this Act does not apply

2. The Act does not apply to foreign judgments:

- (a) for the recovery of taxes;**
- (b) arising out of bankruptcy and insolvency proceedings as defined in Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;**
- (c) rendered by administrative tribunals or court judgments given on appeal from judgments rendered by administrative tribunals;**
- (d) for maintenance or support, [or for the determination of the personal status or capacity of a person];**

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- (e) obtained in a third state;**
- (f) for the recovery of monetary fines or penalties.**

Comments: Section 2 determines the scope of application of the Act by specifying to which foreign judgments the Act does not apply; thus enforcement of these judgments will not be possible under the proposed act. However, judgments not mentioned in the list will be considered covered. The list accords with the traditional list of exceptions to enforcement of foreign judgments in Canada (taxes, administrative decisions, penalties), and also takes into account those judgments for which separate enforcement rules exist (maintenance, civil status).

PART 2 ENFORCEMENT GENERALLY

When enforcement cannot be granted

- 3. A foreign judgment cannot be enforced [in the enacting jurisdiction] if**
- (a) the foreign court lacked jurisdiction [territorial or subject-matter competence] over the judgment debtor or subject-matter as provided in sections 5 and 6;**
 - (b) the judgment has been satisfied;**
 - (c) the judgment is not enforceable or final in the country of origin; however, a registered foreign judgment is enforceable, but proceedings to enforce it may be stayed, if an appeal is pending or the judgment debtor is entitled to appeal or to apply for leave to appeal against the judgment in the country of origin;**

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- (d) in the case of a default judgment, the [judgment debtor] [defendant] was not lawfully served according to the law of the country of origin or did not receive notice of the commencement of the proceedings in sufficient time to present a defence;**
- (e) the judgment was obtained by fraud;**
- (f) the judgment was rendered contrary to the principles of [natural justice] [fundamental fairness];**
- (g) the judgment is contrary to the public policy in the territory of [the enacting jurisdiction];**
- (h) at the time registration of the judgment was sought or an action for enforcement commenced, proceedings between the same parties, based on the same facts and having the same purpose as in the state of origin:**
- (i) were pending before a court of [enacting jurisdiction] that was seized of the matter prior to it being brought before the court of the state of origin, or**
- (j) have resulted in a judgment rendered by a court of [enacting jurisdiction], or**
- (k) have resulted in a judgment rendered by a court of a third state that meets the conditions for its recognition and enforcement in [enacting jurisdiction].**

Comments: Section 3 lists in sub-par. (b) to (h) the traditional defences or exceptions which can be opposed to the enforcement of a foreign judgment in Canada. It includes notably the following circumstances: either the foreign judgment is not final, is against

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public policy, the proceedings that were conducted show a lack of respect for the rights of the defendant, or *lis pendens* or *res judicata* can be invoked. Unlike the policy governing the enforcement of Canadian judgments based on full faith and credit under the UECJA, enforcement of a foreign judgment could also be opposed for the foreign court's lack of jurisdiction as provided in sub-par. (a).

Time limit for registration and enforcement

4. A foreign judgment must not be enforced in [enacting jurisdiction] after the earlier of

(a) six years after the day on which the judgment became enforceable in the country of origin; or

(b) any time shorter provided for the enforcement of the judgment by the internal law of that country.

Comments: Such a rule accords with the average limitation period for enforcement proceedings set up in most provinces.

Power to reduce enforcement of non-compensatory and excessive compensatory damages

5. (1) Where upon application of the judgment debtor, the [enforcing court] determines that a foreign judgment includes an amount added to compensatory damages as punitive or multiple damages or for other non-compensatory purposes, and that amount exceeds the amount that the [enforcing court] would have added to compensatory damages under the internal law of [enforcing jurisdiction], the [enforcing court] may reduce the amount of the award by the amount of that excess.

(2) Where upon application of the judgment debtor, the [enforcing court] determines that a foreign judgment includes an amount of compensatory damages, and that amount greatly exceeds the amount that the [enforcing court] would have

awarded for compensatory damages under the internal law of [enforcing jurisdiction], the[enforcing court] may, where necessary to avoid injustice, reduce the amount of the award to the extent necessary to avoid injustice, but not by more than the amount found to be in excess according to this provision.

Comments: Foreign awards of punitive, multiple or excessive compensatory damages, otherwise considered enforceable under this Act, warrant that the enforcing Canadian court be empowered to reduce the amount of damages that would be in excess of similar damages that could be awarded in similar circumstances had the action been filed in Canada. It is recommended that a distinction be made between punitive and multiple damages which are not considered compensatory, on the one hand, and excessive compensatory damages on the other given the principles set forth by the S.C.C. in *Hill v. Church of Scientology*. In the case of excessive compensatory damages, an additional criteria would apply, i.e., the need to avoid injustice to the defendant. It is also recommended that the onus be placed on the defendant to submit evidence that the damages awarded by the foreign court are in excess of awards normally granted in Canada on the basis of the findings of the facts made by the foreign court.

JURISDICTION

Voluntary submission; Counter-claim; Ordinary residence; Choice of court

- 6. A court has jurisdiction in a proceeding that is brought against a person if**
 - (a) that person being the defendant submitted to the jurisdiction of that court by voluntarily appearing in the proceeding;**
 - (b) that person was a plaintiff in the proceeding or brought a counterclaim;**
 - (c) that person had, before the commencement of the proceeding, agreed expressly to submit to the jurisdiction of that court;**

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- (d) that person, being a physical person, at the time the proceeding was instituted, was [ordinarily] [habitually] resident in the country of origin;**

- (e) that person, being a body corporate or corporation, at the time the proceeding was instituted, had its [principal] place of business in the country of origin or had the control of its management exercised in that country; or**

- (f) there was a real and substantial connection between the country of origin and the facts on which the proceeding against that person was based.**

Comments: Section 6 provides a list of circumstances in which the foreign court is determined to have territorial jurisdiction over the defendant for the purpose of the enforcement of its judgment. These situations occur whenever the defendant submitted to the jurisdiction of the foreign court, including through a choice of court (sub-s. a, b, and c), or where the defendant either was residing in the country of origin (d) or being a corporation had its principal place of business or control of management there (e). In the case of corporations, some further thoughts could be given to the possibility of adopting alternative rules which could be modeled on the sections 7 to 9 of the UCJPTA dealing with the definition of “ordinary residence” for corporations, partnerships and unincorporated associations. Finally, the foreign court would be determined to have jurisdiction where there was a real and substantial connection between the action, the defendant and the original court (f). Subject to the latter, those rules have been long and well-established in Canadian laws.

The rule regarding jurisdiction based on a real and substantial connection has been more recently developed as a result of the Supreme Court decision in *Morguard*. Although formulated for intra-Canadian judgments, it has been extended to foreign judgments in a number of cases in most common law provinces, the leading case being the decision of the

B.C.C.A. in *Moses v. Shore Boat*, except in Saskatchewan and New Brunswick where statutory enforcement schemes have prevented such application. It was felt desirable that the real and substantial connection be recognized as one of the criteria to verify the jurisdiction of the foreign court.

Real and substantial connections

7. [In the case of a default judgment,] a real and substantial connection between the country of origin and the facts on which the proceeding is based exists only if :

(a) Branches

The judgment debtor, being a defendant in the original court, had an office or place of business in the territory of origin and the proceedings were in respect of a transaction effected through or at that office or place;

(b) Torts

In an action for damages in tort, quasi-delict or delict, the wrongful act occurred in the country of origin;

(c) Immovable

The claim was related to a dispute concerning title in an immovable property located in the State of origin;

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(d) Contracts

The contractual obligation that is the subject of the dispute was or should have been performed in the State of origin;

(e) Trusts

For any question related to the validity or administration of a trust established in the State of origin or to trust assets located in that State, the trustee, settler or beneficiary had his or her habitual residence or its principal place of business in the State of origin;

(f) Goods and services

The claim was related to a dispute concerning goods made or services provided by the judgment debtor and the goods or services

(1) were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the originating state; and

(2) were marketed through the normal channels of trade in the originating state.

Comments: It was felt necessary for policy reasons to provide a list of examples of real and substantial connections in order to establish the subject-matter competence of the foreign court. For the time being, special jurisdictional grounds are identified only for actions involving branches of corporate bodies (a); torts (b); immovables (c); contracts (d); trusts (e); consumer contracts and products liability (f). They would largely accord with those identified in the context of the enforcement of Canadian judgments (see s. 10 UCPTA).

The working group feels opportune to seek the wisdom of the ULCC on the following questions:

- Should it be made clear that the list of real and substantial connections only apply in the case of default judgments, the reference to which is between brackets, or should it cover all foreign judgments?
- Should the list be considered exhaustive and definitive? Should there be an open-ended residual clause to refer to additional bases that would be acceptable in the country of origin and by the enforcing court?
- Are the connections as drafted not too limitative? For instance, in the case of torts, what if the harmful act occurs in more than one place? What if the harm is felt in a different country?

Escape clause

8. A foreign judgment may not be enforced if the judgment debtor proves to the satisfaction of the enforcing court that there was no real and substantial connection between the country of origin and the facts on which the proceeding was based.

Comments: Section 8 provides the possibility for the judgment debtor to challenge at the enforcement stage the jurisdiction of the foreign court even though he or she may not have been successful in challenging jurisdiction or has not done so at the time of the initial proceeding. Such a rule may better protect a Canadian defendant in circumstances where the foreign court takes jurisdiction on tenuous grounds.

A useful reference can be made to s. 3164 of the *Civil Code of Québec* which reads as follows:

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“The jurisdiction of foreign authorities is established in accordance with the rules on jurisdiction applicable to Québec authorities under Title Three of this Book, to the extent that the dispute is substantially connected with the country whose authority is seised of the case.”

In August 1997, the ULCC rejected the idea of an “scape clause” given its possible contradiction with a presumption of jurisdiction under s. 7 of this Act. However, it felt that if needed the “scape clause” should be drafted along the lines presented above.

This year, the working group seeks further the wisdom of the ULCC on this question. Such the future uniform act include such an escape clause? If there were support for it, should the provision cover default judgments and any other judgments whether or not jurisdiction of the foreign court was disputed by the judgment debtor in the original proceedings?

PART 3 ENFORCEMENT PROCEDURE

Enforcement [under Uniform Enforcement of Canadian Judgments Act]

Variant A

9. (1) A foreign judgment may be enforced under the Uniform Enforcement of Canadian Judgments Act as provided in this part.

(2) Nothing in this part affects the right of a person to enforce a foreign judgment by bringing an action on the judgment.

Variant B

9. (1) A foreign judgment may be enforced as provided in this part.

(2) Nothing in this part affects the right of a person to enforce a foreign judgment by bringing an action on the judgment.

Comments: The working group felt appropriate to provide for an enforcement machinery in an uniform act dealing with foreign judgments although it did not consider advisable to create a new procedure. The policy proposed here in Section 9 is that the plaintiff or judgment creditor should have the choice of either following the registration procedure under Part 3 of the act or introduce an action at common law for enforcement.

The Working Group seeks the wisdom of the ULCC on whether the registration procedure for foreign judgments should be linked to the *Uniform Enforcement of Canadian Judgments Act* (UECJA) or whether it should be considered autonomous. In the latter case, there may be a need to provide for additional sections, such as on effect of registration (UEJCA, s. 5), interest on registered judgment (UECJA, s. 7): see comments at the end of this report. It should be noted that to a large extent the future UEFJA will provide for most of the rules applicable to the enforcement of foreign judgments exclusively.

For these reasons, two variants of s. 9 are proposed. Variant B differs from Variant A in that the reference to the UECJA has been deleted. References to the UECJA in other sections of Part 3 have been identified between brackets pending the resolution of the question on the link with the UECJA: see s. 10(1), 13(6), and 15(2).

Registration of a foreign judgment

10. (1) A foreign judgment may be registered [under the Uniform Enforcement of Canadian Judgments Act] by paying the fee prescribed by regulation and by filing in the registry of the enforcing court

(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,

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(b) a notice in Form 1 of the schedule to this Act, and

(c) the additional information or material required by regulation.

- (2) Where a foreign judgment is against two or more judgment debtors, on registering the judgment under subsection (1), the judgment creditor may elect to limit the registration to one, or some, of the judgment debtors and a reference in this part to the judgment debtor is a reference to the judgment debtor or debtors to whom the registration is limited.**
- (3) After registering a foreign judgment under subsection (1), the judgment creditor shall, without delay, serve on the judgment debtor a copy of the notice in Form 1 that was filed in the registry of the enforcing court.**

Comments: Section 10 mirrors s. 3 of the UECJA. However, the enforcement of foreign judgments policy embodied in the future UEFJA is intended to prevent the full faith and credit policy of the UECJA. For this reason, the registration procedure is both conditional to the plaintiff filing a form containing with particulars of the judgment (s. 10.1 (b)) and defeasible by serving notice to the defendant (s. 10.3). The proposed Form 1 is attached to this report for discussion. The reference to the UECJA is between brackets given the comments made under s.9.

Enforcement measures

11. On registration under section 9, the judgment creditor may, to realize on the foreign judgment, initiate any enforcement measure available under the laws of [enacting province or territory], but the judgment creditor is not entitled to receive or claim the proceeds of any enforcement measures except where the registration of the judgment has been confirmed as provided in section 13.

Comments: This section indicates that the plaintiff/judgment creditor is entitled to initiate enforcement measures immediately upon registration, except that the proceeds of such measures cannot be given to him or her until confirmation of the original judgment has been obtained (see s. 13) as a result of the judgment debtor's request (s. 12). See also s. 15.

Judgment debtor may require confirmation

Variant A

12. (1) Where a foreign judgment has been registered under section 10, the judgment debtor may require that the judgment creditor apply to the enforcing court for an order confirming the registration of the judgment by filing in the registry of the enforcing court of a notice in Form 2 of the schedule.

(2) A copy of the notice in form 2 filed under subsection (1) must be served on the judgment creditor without delay.

(3) On application, the enforcing court may extend the time for delivery of a notice in form 2 if the enforcing court is satisfied that the judgment debtor intended to deliver a notice in form 2 within the time limited to do so and that his or her failure to do so was inadvertent.

Variant B

12. (1) Where a foreign judgment has been registered under section 10, the judgment debtor may require that the judgment creditor apply to the enforcing court for an order confirming the registration of the judgment by filing in the registry of the enforcing court of a notice in Form 2 of the schedule.

(2) A copy of the notice in form 2 filed under subsection (1) must be served on the judgment creditor without delay.

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(3) If the judgment debtor does not file a notice in form 2 as provided in subsection (1) no within ____ days after being served under section 10(3), registration of the foreign judgment is confirmed [becomes definitive] and section 13(6) applies.

(4) On application, the enforcing court may extend the time for delivery of a notice in form 2 if the enforcing court is satisfied that judgment debtor required to deliver a notice in form 2 intended to deliver a notice in Form 2 within the time limited to do so and that his or her failure to do so was inadvertent.

Comments: Under section 12, the judgment debtor after having been served with notice of the registration procedure can decide to oppose registration by requiring the judgment creditor, on a form provided to that end, to seek confirmation of the judgment before the appropriate enforcing court of the enacting jurisdiction. The proposed Form 2 is attached to this report for further discussion.

Two variants are proposed for s. 12. In variant B, the rules remain the same as in variant A subject to the addition of sub-section 3 to deal with the judgment debtor's default instead of it being referred to separately in s. 14.

In addition to seeking the preference of the ULCC for one or the other variant on this point, the working group wishes to ask the views of the ULCC on the need to provide some flexibility when the judgment debtor has not filed the notice within the time limited to do so: see sub-par. 3 in variant A and sub-par. 4 in variant B. The same question also applies to the filing of an application to obtain confirmation by the judgment creditor: see section 13 (3).

Application to confirm registration

Variant A

13. (1) A judgment creditor may apply to the enforcing court for an order confirming the registration of the judgment and the court may order that registration is confirmed in whole or in part or that the application is dismissed.

(2) An application under subsection (1) may be made no later than ____ days after service of the notice in Form 2 under section 12(2).

(3) On application, the enforcing court may extend the time for making an application to confirm the registration of the foreign judgment if the enforcing court is satisfied that the judgment creditor intended to make an application to confirm the foreign judgment within the time limited to do so and his or her failure to do so was inadvertent.

(4) An application under subsection (1) must be dismissed if

- (a) the judgment creditor fails to prove that the foreign judgment can be enforced notwithstanding section 2, or**
- (b) the judgment debtor proves that the foreign judgment cannot be enforced under section 3 or section 4.**

(5) In an application made under subsection (1), a judgment debtor may apply for the relief provided in section 5.

(6) If the enforcing court confirms registration of the foreign judgment, in whole or in part, the judgment creditor is entitled to

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- (a) continue or, subject to [creditors' relief legislation] claim the proceeds of, any enforcement measures previously taken under the foreign judgment;
- (b) initiate further enforcement measures as required; and
- (c) the costs of the application.

(7) If the enforcing court orders that an application under subsection (1) is dismissed, the judgment debtor is entitled to an order

- (a) that registration of the foreign judgment [under the Uniform Enforcement of Canadian Judgments Act] be canceled;
- (b) that no further or new application or proceedings be made for registration or enforcement of the same judgment;
- (c) releasing any property or asset seized or bound pursuant to an enforcement measure taken under the foreign judgment;
- (d) an order for compensation for any loss arising out of an enforcement measure taken; and
- (e) for costs.

Variant B

13. (1) A judgment creditor may apply to the enforcing court for an order confirming the registration of the judgment.

(2) An application under subsection (1) may be made no later than ____ days after service of the notice in form 2 under section 12(2).

(3) If the judgment creditor is served under section 12(2) and an application to confirm the registration of the foreign judgment is not made within ____ days of that service, an application to confirm the registration is deemed to have been made to, and dismissed by, the enforcing court and the judgment debtor is entitled to apply for an order for the relief set out in section 13(7).

(4) On application, the enforcing court may extend the time for making an application to confirm the registration of the foreign judgment if the enforcing court is satisfied that the judgment creditor intended to make an application to confirm the foreign judgment within the time limited to do so and his or her failure to do so was inadvertent

Decision on application

13.1. (1) Upon an application under section 13(1), the enforcing court may order that registration is confirmed in whole or in part or that the application is dismissed.

(2) An application under section 13(1) must be dismissed if the judgment debtor proves that the foreign judgment cannot be enforced under section 3 or section 4.

(3) If the enforcing court orders that an application under section 13 (1) is dismissed, the judgment debtor is entitled to an order

- a) that registration of the foreign judgment [under the Uniform Enforcement of Canadian Judgments Act] be canceled;**
- (b) that no further or new application or proceedings be made for registration or enforcement of the same judgment;**
- (c) releasing any property or asset seized or bound pursuant to an enforcement measure taken under the foreign judgment;**
- (d) an order for compensation for any loss arising out of an enforcement measure taken; and**
- (e) for costs.**

(4) If the application is dismissed, a judgment debtor [is also entitled] [may apply] for the relief provided in section 5.

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(5) If the enforcing court confirms registration of the foreign judgment, in whole or in part, the judgment creditor is entitled to

- (a) continue or, subject to [creditors' relief legislation] claim the proceeds of, any enforcement measures previously taken under the foreign judgment;**
- (b) initiate further enforcement measures as required; and**
- (c) the costs of the application.**

Comments: The above provisions deal with different aspects of the confirmation application in the case where the judgment creditor acted upon the judgment debtor's formal request that registration of the foreign judgment be confirmed. Two variants are proposed.

Variant A corresponds to section 13 with many sub-sections. Subsection 1 indicates that confirmation may be obtained by an application of the judgment creditor. Subsection 2 provides for a delay for such proceeding. Subsection 3 enables the enforcing court to extend the delay. Subsection 4 identifies on what ground can an application for confirmation be dismissed: note that the burden of proof can either be on the judgment creditor or the judgment debtor depending on which exception is raised. Subsection 5 refers to the possibility for the judgment debtor to have the foreign non-compensatory or excessive damages award reduced in accordance with section 5 in Part I of the Act. Subsection 6 deals with the outcome of the confirmation proceeding if favorable to the judgment creditor. Subsection 7 has the same purpose but in the reverse situation if the confirmation is dismissed. The reference to the UECJA is between brackets given the comments under s. 9.

In the alternative, it is proposed in variant B for sake of clarity to divide section 13 of variant A in two sections, s. 13 and s. 13.1. Section 13 of variant B deals in subsection 1 with the judgment creditor's confirmation application, in subsection 2 with the delay for filing such application, in subsection 3 with the consequences of the judgment creditor's

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default, and in sub-section 4 with the extension of the delay to submit an application. Section 13.1 specifies the type of decisions that can be rendered by the enforcing court upon an application for confirmation. It corresponds to sub-sections 4 to 7 of section 13 in variant A with some changes, notably with respect to the burden of proof as s. 13.1 (2) only refers to the judgment debtor.

The working group seeks the views of the ULCC as to which variant A or B is preferable. Also, it calls for a discussion on the burden of proof that should be borne by either the judgment creditor or debtor. This would suggest that the evidentiary weight of the form to be filed by the judgment creditor, in accordance with the model form #1, be also reviewed.

[Consequences of default

14. (1) If the judgment debtor does not file a notice in form 2 as provided in section 12(1) no within ____ days after being served under section 10(3), registration of the foreign judgment is confirmed [becomes definitive] and section 13(6) applies.

(2) If the judgment creditor is served under section 12(2) and an application to confirm the registration of the foreign judgment is not made within ____ days of that service, an application to confirm the registration is deemed to have been made to, and dismissed by, the enforcing court and the judgment debtor is entitled to apply for an order for the relief set out in section 13(7).

(3) On application, the enforcing court may extend the time provided for in subsection (1) or(2) if it is satisfied that failure to comply was inadvertent.]

Comments: Section 14 complements the rules set out in section 11 in the absence of further action either on the part of the judgment debtor (subsection 1) or the judgment creditor (subsection 2) within some time limits. It also provides for the enforcing court's discretion to extend those time limits (subsection 3). Those rules are incorporated in variants B of sections 12 and 13. Thus section 14 which is between brackets would not be necessary.

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Other applications

15. (1) Where a foreign judgment has been registered under section 9 and enforcement measures have been initiated, either the judgment creditor or judgment debtor may apply to the enforcing court for an order respecting property that may have been seized or bound and the court may order the property returned or released to the judgment debtor or that it remain bound pending the outcome of the application on such terms and conditions as the court considers just.

(2) The judgment debtor is entitled to apply to the court for an order [to stay or limit enforcement, subject to any terms and for any period the court considers appropriate in the circumstances] [under section 6(1) of the Uniform Enforcement of Canadian Judgments Act but subsection 6(2) of that Act does not apply to such an application].

(3) An application under subsection (1) or subsection (2) may be made in the course of, or prior to, an application under section 12.

Comments: Section 15 provides for other types of application that either the judgment creditor or debtor can make with respect to property (subsection 1) or that the judgment debtor can make in various circumstances (subsection 2). It also indicates when such applications can be made (subsection 3). In the case of 15 (2), two drafting options between brackets are proposed: the first one mentions in general terms any application the judgment debtor can present to the enforcing court to get a stay of enforcement; the second one simply refers to s. 6 of the UECJA. This incorporation by reference might create some disturbance with respect to the proposed UEFJA given the rules it sets with respect to the enforcement of foreign judgments. See comments under s. 9.

PART 4

RELATED ISSUES

16. Several issues related to enforcement of foreign judgments have yet to be dealt with by the working group before it is in a position to report back to the ULCC on the matter. Without limiting the number of questions to be considered, the following examples can be given: - foreign settlements and authentic acts considered as judgments;- partial enforcement; - currency conversion rates; - pre-judgment interest; - translation requirements; - no review of merits by the enforcing court and findings of facts binding on that court; - effect of a registered foreign judgment, etc. In addition, the proposed act should include provisions on the power to make regulations, coming into force, etc.

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Schedule:

FORM 1

In the [enforcing court]

Uniform Enforcement of Foreign Judgments Act

[Uniform Enforcement of Canadian Judgments Act]

Between

_____ Judgment Creditor

and

_____ Judgment Debtor

Particulars of the foreign judgment to be registered under part 3 of the *Uniform Enforcement of Canadian Judgments Act*.

1. The state of origin of the foreign judgment is _____.
2. The name of the foreign court that made the judgment is _____.
3. The foreign judgment was made on _____ [date].
4. The time for appealing the foreign judgment is expired and no proceeding to appeal, set aside or otherwise modify the foreign judgment is pending.

Yes No

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5. The foreign judgment was taken in default of appearance.
Yes No
6. The foreign judgment is for damages and includes an amount added to compensatory damages as punitive or multiple damages or for other non-compensatory purposes.
Yes No
7. The basis of the foreign court's territorial competence in the proceeding was: [mark one or more of these boxes]
- The judgment debtor submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceeding.
 - The judgment debtor was a plaintiff in another proceeding in the foreign court to which the proceeding in question was a counter claim.
 - The judgment debtor had, before the commencement of the proceeding, agreed expressly to submit to the jurisdiction of the foreign court.
 - The judgment debtor was, at the time the proceeding was instituted, ordinarily resident in the state of origin.
 - There is a real and substantial connection between the state of origin and the facts on which the proceeding against the judgment debtor are based.
8. Where a real and substantial connection between the state of origin and the facts on which the proceeding against the judgment debtor are based is claimed as a basis of the foreign court's territorial competence, that real and substantial connection exists because [mark one or more of these boxes]

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- The judgment debtor had an office or place of business in the state of origin and the proceeding was in respect of a transaction effected through that office of place.
- The proceeding was a claim for damages in tort, quasi-delict or delict and a wrongful act occurred in the state of origin.
- The proceeding was a claim based on a contractual obligation that was or should have been performed in the state of origin.
- The claim was related to a dispute concerning title in an immovable property located in the State of origin.
- The proceeding was related to any question related to the validity or administration of a trust established in the State of origin or to trust assets located in that State, the trustee, settlor or beneficiary had his or her habitual residence or its principal place of business in the State of origin.
- The proceeding was a claim related to a dispute concerning goods made or services provided by the judgment debtor that
 - (i) were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident from the state of origin, and
 - (ii) were marketed through the normal channels of trade in the state of origin.

Other basis [specify [specify]

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The address for service of the judgment debtor is:

This notice was filed by :

(Judgment creditor, Solicitor or Agent)

Address:

Telephone : _____

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

FORM 2

In the [enforcing court]

Uniform Enforcement of Foreign Judgments Act

[Uniform Enforcement of Canadian Judgments Act]

Between

_____ judgment creditor

and

_____ judgment debtor

To the Judgment Creditor:

Take notice that the judgment debtor _____ requires that you apply to the enforcing court for an order confirming the registration of this foreign judgment.

And take further notice that if no application to confirm the registration of the foreign judgment is made within _____ days of the service of this notice on you, an application to confirm the registration will be deemed to have been made and dismissed by the enforcing court and the judgment debtor will be entitled to apply for an order for relief as set out in section 13(7) of the *Uniform Enforcement of Foreign Judgments Act*.

The address for service of the judgment creditor is:

UNIFORM LAW CONFERENCE OF CANADA

This notice was filed by :

(Judgment debtor, Solicitor or Agent)

Address:

Telephone : _____