

# APPENDIX E

[see page 42]

## *UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT*

(Preliminary Draft)

### **1 Overview of Activities**

[1] The Working Group was asked by the ULCC at its August 1999 meeting to continue its work on enforcement of foreign judgments and to draft a Uniform Enforcement of Foreign Judgments Act (UEFJA) based on the discussions of its 1999 Report and the resolutions of the Civil Section in that regard.

[2] The 1999-2000 Working Group was composed of Joost Blom, Russell Getz, Peter Lown, H. Scott Fairley, Greg Steele, Darcy McGovern, Jacques Papy, Frédérique Sabourin, John McEvoy and Tim Rattenbury with Kathryn Sabo as co-ordinator.

[3] The Working Group held only one conference call over the year, principally owing to the state of negotiations on the Hague Conference's draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. The main topic of discussion, taking into account the uncertain future of the Hague Conference project following its October 1999 Special Commission, was whether the Working Group should proceed to complete the draft Uniform Act or continue to follow developments at the Hague Conference on Private International Law before completing the UEFJA.

### **2 Results of this year's activities**

[4] The preliminary draft UEFJA has not been modified for this year, with the exception of draft provisions for Part III on Enforcement which have been recovered and reinserted to form the basis for discussion in the Working Group. A copy of the draft is attached.

[5] Certain policy choices with respect to enforcement of foreign judgments continue to be reflected in the preliminary draft. They are 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 applies to money judgments as well as to those ordering something to be done or not to be done.
- The proposed uniform Act applies to provisional orders as well as to final judgments.

## ENFORCEMENT OF FOREIGN JUDGMENTS

- The proposed uniform act rejects the “full faith and credit” policy applicable to Canadian judgments under the Uniform Enforcement of Canadian Judgments (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.
- Following on the heels 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.

### **3 Relation of the UEFJA to the Hague Conference draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters**

[6] The Working Group seeks the collective guidance of the Conference with respect to the extent to which progress on the Hague Conference project and the draft UEFJA should be linked. There are a number of considerations, including those set out in the following paragraphs.

[7] Preparation of the UEFJA has been driven in part on the basis that the decision of the Supreme Court in *Morguard* and the decisions which followed and expanded its effect created an urgent need for uniform rules to control the enforcement of foreign judgments in Canada in a predictable fashion. Since the initial discussion of the project at the 1996 meeting of the Conference, the urgency expressed by practitioners appears to have abated to some extent. The Working Group has informally asked the International Law Section of the Canadian Bar Association to sound out members of that association to ascertain whether Canadian practitioners consider that the same situation persists.

[8] In parallel with work on the UEFJA, Canada has been participating in the Hague Conference negotiations to develop uniform rules for jurisdiction and recognition and enforcement of foreign judgments. The negotiations at the Hague Conference have reached a very difficult stage. Although the draft Convention contains provisions to cover most of the issues it intends to treat, it became clear at the October 1999 Special Commission that significant disagreement exists over the text and the policy decisions it reflects. In particular, the United States unequivocally indicated that the rules with respect to jurisdiction are unacceptable and that the text must be substantially changed if the US is to continue actively in the process. The US suggested in February 2000 that the project be suspended indefinitely.

[9] In May 2000, the Hague Conference decided not to suspend the project, but to postpone the Diplomatic Conference that was to have taken place in October 2000. In addition, the Diplomatic Conference has been split into two parts with the first in June 2001 and the second early in 2002. Moreover, it is intended that the first part of the Diplomatic Conference will not involve any final decision-making, such that the text will remain essentially open until the end of the second part in 2002. Finally, there will be some time before the required number of ratifications occurs to bring the Convention into force.

[10] One of the operating assumptions for the UEFJA Working Group has been and continues to be that the Hague Conference project will succeed and that Canada will eventually become party to that Convention, with as broad a Canadian implementation as possible. The implication of this is twofold: first, for those jurisdictions that adopt it, the UEFJA will apply to all foreign judgments that are not otherwise covered by a convention on recognition and enforcement to which Canada is a party (e.g. Canada-U.K.) until the Hague Convention comes into force and Canada ratifies it; and second, after the Convention is in force in a Canadian jurisdiction, that the UEFJA will apply to those judgments that fall outside the prohibited grounds of jurisdiction set out in the Hague Conference Convention and outside its general and specific permitted grounds. Clearly, however, a UEFJA is beneficial and needed whether there is a Hague Conference Convention or not.

[11] Given the link between the two projects, it would seem logical to ensure that their respective approaches and rules are compatible. Based on the policy choices set out in paragraph [5] above and the current Hague Conference draft, the approaches and rules are essentially compatible to date, although there are differences. For example, the scope of the types of judgments that are covered under the Hague Conference draft Convention is marginally narrower than under the UEFJA (Hague draft Article 1 and UEFJA s. 2). Additionally, the UEFJA rejects a “full faith and credit” approach. We do not yet know how the Convention will deal with this issue, which may be affected by the mechanism by which States become party to the Convention.

[12] More importantly, the UEFJA conditions for the enforcement of judgments could be construed as being slightly broader to the extent that one of the elements that can provide a basis for jurisdiction for the court in the State of origin is the existence of a real and substantial connection between that jurisdiction and the facts on which the proceeding was based (s. 6(f), but qualified by s. 8(i)). This leads to what may seem an odd result in terms of promoting a policy favouring support of uniform international rules: a broader range of non-Convention judgments could be more easily enforced than Convention judgments. On the other hand, we should bear in mind that the Hague Conference project, aimed at the adoption of a uniform set of rules across many countries and legal systems, has greater constraints on the extent to which agreement can be reached. Moreover, even if the range of judgments enforceable under it is more limited, the Convention aims to provide the additional dimension of facilitating enforcement of Canadian judgments in other countries.

[13] At this time then the differences between the two projects are not crucial ones, but it should be emphasized that we do not know what the Convention rules will be. At this point, we can speculate that the prohibited grounds of jurisdiction may be reduced. This could lead to an increase in the accepted bases of jurisdiction or to a broadened scope for the application of national law.

#### **4 Overview of the preliminary draft uniform Act: *Uniform Enforcement of Foreign Judgments Act***

[14] The proposed *Uniform Enforcement of Foreign Judgments Act* is divided into four parts.

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

[16] Part 2 refers to recognition and enforcement generally. It contains eight provisions on various matters: conditions for enforcement of judgments (s. 3) and provisional orders (s. 3A); the time within which enforcement is to be sought (s. 4); the discretion of the enforcing court to reduce foreign awards of non-compensatory and excessive damages (s. 5); the 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); the jurisdiction of the foreign court to make provisional orders (s. 7A); and an “escape clause” (s. 8).

[17] The two remaining parts are not yet completed. Part 3 deals with enforcement procedure. Part 4 will cover related issues that have yet to be considered by the Working Group, as well as final provisions.

#### **5 Issues left to be considered by the Working Group**

[18] The Working Group has not yet discussed Part III on Enforcement Procedure. This part needs to be discussed in light of the inclusion of non-money judgments and of provisional measures. In addition, should the UEFJA remain linked to developments on the Hague Conference project, and should the difference in conditions for enforcement referred to in paragraph [12] remain, the Working Group may wish to consider whether this should have implications for the process by which a foreign judgment is recognized and rendered enforceable. It could eventually be considered whether it should be easier to enforce a Convention judgment. At the very least, it would seem logical to suggest that the procedure should not be more onerous for a Convention judgment over a non-Convention one under the UEFJA.

[19] Additional provisions on various related matters need to be considered by the Working Group and possibly incorporated. These include: enforcement of authentic acts and of settlements; 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. It should be noted that a number of these questions also arise in the context of the Hague Conference project and have yet to be resolved there. In addition, the proposed act should include provisions on the power to make regulations, coming into force, etc.

[20] Once completed, the preliminary draft will need to be revised by legislative drafters in collaboration with the members of the Working Group.

## **6 Recommendation**

[21] Subject to the Conference's conclusions with respect to the question of the link to the work of the Hague Conference on the draft Convention on Jurisdiction and Foreign Judgments, it is recommended that the Conference mandate the Working Group to continue its work preparing a *Uniform Enforcement of Foreign Judgments Act* and, in the context of that work, to examine the other issues raised above.

*Uniform Enforcement of Foreign Judgments Act*  
(Tentative)

**PARTIAL DRAFT – August 2000**  
(Parts I - III)

**PART I**  
**Definitions and Scope of application**

*Definitions*

**1 In this Act,**

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

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

**“foreign provisional order” means an order directed to the respondent or third parties to freeze or attach the respondent’s assets located in [the enacting jurisdiction], or any other order under which the respondent is required to do or not to do a thing or an act, made by a court other than a court of a province or territory of Canada pending a final judgment on the merits;**

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

**“judgment debtor” means the person liable under a foreign judgment and includes the respondent in a “ foreign provisional order”.**

**“State of origin” means the State or a subdivision of a State where a foreign judgment was made.**

**Comments:** As is customary the proposed uniform act on enforcement of foreign judgments includes a section on definitions. Most of them are self-explanatory.

In light of the ULCC-Civil Section August 1998 discussions, the scope of the future UEFJA is not limited to only foreign judgments that are final and monetary in nature and also includes foreign provisional orders. For these reasons, the definition of “foreign judgments” is not limited to money judgments. In addition, a definition of “foreign provisional orders” is also provided. It is possible that at a later stage, we would be able to come up with only one generic expression that would encompass both “foreign judgment” and “foreign provisional judgment”.

*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;
- (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. This 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). Thus enforcement of foreign judgments on these matters will not be possible under the proposed UEFJA. However, enforcement of judgments on matters not mentioned in the list could be considered in compliance with the conditions set out in the Act.

**PART II**

**Enforcement generally**

*Reasons to refuse enforcement: Foreign final judgments*

**3 A foreign final 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 6 and 7;
- (b) the judgment has been satisfied;
- (c) the judgment is not enforceable or final in the State 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 State of origin;

## ENFORCEMENT OF FOREIGN JUDGMENTS

- (d) in the case of a default judgment, the [judgment debtor] [defendant] was not lawfully served according to the law of the State 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 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**
  - (ii) have resulted in a judgment rendered by a court of [enacting jurisdiction], or**
  - (iii) 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 foreign final judgments in Canada. It includes notably the following circumstances: either the foreign judgment is not final, is against 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 if, as provided in sub-par. (a), the foreign court lacked jurisdiction.

*Reasons to refuse enforcement: Foreign provisional orders*

**3A A foreign provisional order cannot be enforced in [enacting jurisdiction] if**

- (a) the foreign court lacked jurisdiction as provided in s. 7A;**
- (b) the order was [satisfied];**



- (c) the order is not enforceable in the State of origin; however, a registered foreign order is enforceable, but proceedings to enforce it may be stayed if an appeal is pending or the respondent is entitled to appeal or to apply for leave to appeal against the order in the State of origin;**
- (d) the respondent did not have a reasonable opportunity to present objections or defenses [either before the order was made or after the order was made in the case the proceedings were conducted *ex parte*];**
- (e) the order was obtained by fraud;**
- (f) the order was made contrary to the principles of fundamental fairness;**
- (g) the order is against public policy in the territory of [the enacting jurisdiction].**

**Comments:** This provision is largely inspired by the conditions set forth in s. 3 in relation to final foreign judgments subject to a few adaptations given that s. 3A would apply specifically to provisional orders made by foreign courts. Conditions mentioned in sub-par. b, e, f, and g remain fairly unaltered. However a few changes are notable in paragraphs a, c and d.

For instance, jurisdiction requirements referred to in sub-par. a would be those provided in a new section, s. 7A. The drafting of sub-par. c has been modified in order to delete the reference to the “finality” of the foreign order. The drafting of sub-par. d has also been revised to take into account the fact that most provisional orders are made *ex parte*; the respondent would still be entitled to oppose the recognition and enforcement of the order in case of failure to give him or her notice of the order.

Sub-par. h of s. 3 was left out as it would appear difficult in practice to find situations in the context of provisional orders in which the strict requirements of *res judicata* or *lis pendens* would apply. In such cases, if any, it was suggested to preserve the possibility of the enforcing court to take into consideration the existence of other similar provisional orders either made in the enacting jurisdiction or elsewhere at the time of an application for enforcement. Such a provision could be added in Part 3 on Enforcement Procedure.

*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 State of origin; or**

## ENFORCEMENT OF FOREIGN JUDGMENTS

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

**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, the [enforcing court] shall limit enforcement of that part of the award to the amount of similar or comparable damages that could have been awarded in [the enacting jurisdiction].**

**(2) [In exceptional cases], where upon application of the judgment debtor, the [enforcing court] determines that a foreign judgment includes an amount of compensatory damages that is [grossly] excessive in the circumstances, including those existing in the state of origin, the [enforcing court] may limit enforcement of that part of the award to a lesser amount but no less than the amount of damages which that [enforcing court] could have awarded in the circumstances, including those existing in the State of origin.**

**(3) References in this provision to damages include, where appropriate, judicial costs and expenses.**

**Comments:** The enforcement in Canada of foreign awards of damages which could include punitive, multiple or excessive compensatory damages, that would otherwise be considered enforceable under this Act, has raised, and continue to do so, a number of issues. This situation would warrant that under the UEFJA, the enforcing Canadian court be expressly empowered to limit the enforcement of damages so awarded that would be in excess of similar damages that could be awarded in similar circumstances had the action been filed in Canada. The defendant would have the onus to establish that the damages awarded by the foreign court are in excess of awards normally granted in Canada. This policy would be in line with the one now being considered at The Hague.

To clarify the rules that would be applicable, a distinction would be made in s. 5 between punitive and multiple damages (par. 1) which are not considered compensatory, on the one hand, and excessive compensatory damages (par. 2) on the other, given the principles set forth by the S.C.C. in *Hill v. Church of Scientology*. In addition, a third par. would specify that judicial costs and expenses are part of the damages award of which the enforcement could be limited.

*Jurisdiction based on various grounds*

*(voluntary submission; counter-claim; ordinary residence; choice of court; habitual residence; and a real and substantial connection)*

**6 A [foreign] court in the State of origin 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;**
- (d) that person, being a physical person, at the time the proceeding was instituted, was [ordinarily] [habitually] resident in the State 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 State of origin or had the control of its management exercised in that State; or**
- (f) there was a real and substantial connection between the State 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 considered to have territorial jurisdiction over the defendant for the purpose of the enforcement of its final judgment in Canada. Subject to the rule in sub-par. (f), all other rules in sub-par. (a) to (e) have been well-established in Canadian laws. Jurisdiction of a foreign court could be determined if the defendant submitted to the jurisdiction of the foreign court, including through a choice of court (sub-s. a, b, and c), where the defendant being a physical person was a habitual resident in the State 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.

Also jurisdiction could be determined when there was a real and substantial connection between the action, the defendant and the original court (f). This rule accords with the ruling of the Supreme Court in *Morguard*. Although formulated for intra-Canadian judgments, the real and substantial jurisdictional test 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*. The inclusion of this ground of jurisdiction reflects the evolution of Canadian rules on this matter.

## ENFORCEMENT OF FOREIGN JUDGMENTS

### *Real and substantial connections*

**7** For the purpose of section 6(f), in the case of a default judgment, a real and substantial connection between the State of origin and the facts on which the proceeding is based includes:

**(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,

**(i)** the wrongful act occurred in the State of origin, or

**(ii)** injury to person or property was sustained in the State of origin, provided that the defendant could reasonably foresee that the activity on which the action is based could result in such injury in the State of origin, including as a result of distribution through commercial channels known by the defendant to extend to that State;

**(c) Immovable**

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

**(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, settlor 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

**(i) were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the State of origin; and**

**(ii) were marketed through the normal channels of trade in the State of origin.**

**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. Grounds are identified here 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).

As a result of the discussions held in August 1998, section 7 is intended to operate:

- only in the case of default judgments, be it final or provisional; and
- in a non-exhaustive fashion so that additional grounds which would be acceptable both in the State of origin and in Canada could be considered by the enforcing court.

*Jurisdiction for foreign provisional orders*

**7A A court has jurisdiction to make a provisional order if that court is seized or is about to be seized of proceedings on the merits against the respondent in the State of origin and has jurisdiction in accordance with sections 6 and 7.**

**Comments:** Given that the conditions for the enforcement of foreign provisional orders are mentioned separately from those applicable to the enforcement of foreign final judgments, it made some sense to provide for a separate rule in the future UEFJA with respect to the foreign court's jurisdiction to grant a provisional order. Overall the jurisdictional requirements in this case are similar to those for foreign final judgments as spelled out in s. 6, although drafting adaptations may be necessary. There is no need to repeat here the comments already provided under that section.

However, the special context in which provisional orders are made, most often to assist foreign litigation, has also to be taken into consideration. For this reason, the Working Group felt that the rule in s. 7A should reflect at a minimum the necessary relation of the foreign provisional order with proceedings on the merits before the same foreign court. This additional requirement is found in the chapeau or introductory par. of s.7A.

**Note:** As case law on enforcement of foreign provisional orders in Canada will evolve, clearer rules might develop with respect to jurisdictional requirements.

*Escape clause*

**8 A foreign judgment may not be enforced if the judgment debtor proves to the satisfaction of the enforcing court that**

- (i) there was no sufficient real and substantial connection between the State of origin and the facts on which the proceeding was based; and**
- (ii) it was clearly inappropriate for the foreign court to take jurisdiction.**

**Comments:** Section 8 is aimed at better protecting Canadian defendants in circumstances where the foreign court took jurisdiction on tenuous grounds. It goes so far as providing the foreign final judgment debtor or the foreign provisional order respondent with the ultimate possibility at the enforcement stage to challenge the jurisdiction of the foreign court even though the defendant was not successful in challenging jurisdiction or has not done so at the time of the initial proceeding. This should only be used in exceptional circumstances as a last resort mechanism.

On that point, a useful reference can be made to s. 3164 of the *Civil Code of Québec* which reads as follows:

“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 State whose authority is seised of the case.” (our emphasis)

As pointed out during the deliberations of the ULCC-Civil Section in August 1998, the application of s.8 should be appreciated as clearly as possible, particularly in light of its relationship with other sections of Part II that deal with jurisdiction, namely s.3, 6 and 7.

In principle, the enforcement of a foreign judgment can be granted if the foreign court was competent to make either a final or a provisional order in accordance with the rules to be set out in the future UEFJA. Defences to enforcement are those listed in s.3, one of which being the lack of jurisdiction. This has to be determined in light of the requirements mentioned in s.6 and 7 for final judgments or s.7A for provisional orders.

For instance, if jurisdiction can be determined on the basis of a real and substantial connection as provided in s.6(f), examples of which are contained in s.7 in the case of default judgments, the defendant would not be successful in establishing that the foreign court lacked jurisdiction. For this reason, it might be necessary to adopt quite a high threshold for allowing the defendant to be able to do so.

The drafting of s.8 reflects this approach by identifying a set of requirements relating to the inappropriateness of the foreign court to have taken jurisdiction in light of the weakness of its connection with the cause of action. This would cover situations under which the defendant felt compelled to participate in the original proceeding for fear of penalties as well as situations where the defendant was not given sufficient time to challenge jurisdiction or was prevented from doing so.

**Part III**  
**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 it appropriate to provide for an enforcement mechanism in a uniform act dealing with foreign judgments although it did not consider it 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 introducing an action at common law for enforcement.

Pursuant to the discussion of the project in 1998, the Working Group will consider 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 the effect of registration (UEJCA, s. 5), interest on registered judgments (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).

## ENFORCEMENT OF FOREIGN JUDGMENTS

### *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,
- (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 on the plaintiff filing a form containing particulars of the judgment (s. 10.1 (b)) and defeasible by requiring notice to be served on 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.

**(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.

## ENFORCEMENT OF FOREIGN JUDGMENTS

In addition to further discussion on the preferred variant, the Working Group needs to consider further 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**

**(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) be 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 cancelled;
- (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

## ENFORCEMENT OF FOREIGN JUDGMENTS

- (a) that registration of the foreign judgment [under the *Uniform Enforcement of Canadian Judgments Act*] be cancelled;**
  - (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 to] [ may apply for ] the relief provided in section 5.**
- (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 the ground upon which an application for confirmation can 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 favourable 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 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 needs to consider further whether variant A or B is preferable and to discuss 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 no. 1, also be reviewed.

*[Consequences of default]*

**[14(1) If the judgment debtor does not file a notice in form 2 as provided in section 12(1) 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.

*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**

[to be considered by the Working Group]

**Schedule**  
**FORM 1**

*Uniform Enforcement of Foreign Judgments Act*  
*Uniform Enforcement of Canadian Judgments Act*

In the [enforcing court]

Between

---

Judgment Creditor

and

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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
- 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

## ENFORCEMENT OF FOREIGN JUDGMENTS

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 counterclaim.
- 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]*

- 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.



UNIFORM LAW CONFERENCE OF CANADA

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]*

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The address for service of the judgment debtor is:

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This notice was filed by:

\_\_\_\_\_  
(Judgment creditor, Solicitor or Agent)

Address:

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Telephone:

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ENFORCEMENT OF FOREIGN JUDGMENTS

**FORM 2**

*Uniform Enforcement of Foreign Judgments Act*  
*[Uniform Enforcement of Canadian Judgments Act]*

In the [enforcing court]

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 debtor is:

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This notice was filed by:

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(Judgment creditor, Solicitor or Agent)

Address:

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Telephone: \_\_\_\_\_