

**2000-2001 Working Group on Enforcement of Foreign Judgments Uniform
Enforcement of Foreign Judgments Act (Final Draft) Report**
August 2001

1. Overview of Activities

[1] The Working Group was asked by the ULCC at its August 2000 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 2000 Report and the resolutions of the Civil Section in that regard.

[2] The 2000-2001 Working Group was composed of Joost Blom, Russell Getz, Peter Lown, H. Scott Fairley, Greg Steele, Darcy McGovern, Benoît Emery, Frédérique Sabourin, John McEvoy and Tim Rattenbury with Kathryn Sabo as co-ordinator.

[3] From October 2000 to July 2001, the Working Group held a series of conference calls with a view to completing its discussions on the matters to be dealt with in the Uniform Act. The Working Group was aided significantly by the comparative law paper prepared by Frédérique Sabourin which identified a number of issues in the draft Uniform Act from the perspective of the Quebec Civil Code but which also constituted important questions to be considered from a common law perspective. The Working Group would like to express its appreciation to Me Sabourin for her work, which has greatly contributed to the final product.

[4] The issues dealt with by the Working Group in the course of its discussions included:

- ' provisional and protective measures;
- ' the relationship between the articles;
- ' the scope of the act, including the definition of "judgment" and the exclusion of judgments for maintenance or support;
- ' alternate grounds of jurisdiction including voluntary submission, ordinary residence and choice of court;
- ' providing for partial enforcement of a judgment and enforcement of severable claims;
- ' the enforcement procedure including registration, currency conversion, interest rates and translation.

[7] In the course of its consideration of the scope of the draft act, the Working Group considered whether it could be useful to include judgments for maintenance or support to the extent that existing regimes might not entirely allow for the recognition and enforcement of such judgments. The Working Group consulted the Family Law Committee which advised that it would be premature to decide to include such judgments within the scope of the UEFJA. A particular concern was that the draft act contains no provisions for the subsequent revision of such orders. The Working Group has therefore left judgments for maintenance or support on the list of excluded matters.

[8] Because of the substantial overlap in membership between the Canadian delegation to the Hague Conference on the Judgments Project and the members of the Working Group, the latter was conscious throughout the development of the draft UEFJA that the parallel process in The Hague would also have an impact on its work. In particular there was a great deal of discussion of the interaction between the Uniform Act, as a baseline for the enforcement of foreign judgments in respect of which conditions are imposed only after the fact, and the Convention process, under which the group of States party to the Convention can be presumed to be meeting a common standard even at the initial decision on jurisdiction before a judgment is rendered.

[9] In this regard, it has become apparent following the June 2001 Diplomatic Conference in The Hague that the recognition and enforcement of provisional and protective measures between States has been recognized as giving rise to too great a degree of uncertainty for simple enforcement to be broadly accepted in civil and commercial matters. Accordingly, the Working Group would recommend that provisional and protective measures be removed from the scope of the draft Uniform Act.

[10] The recognition and enforcement of authentic instruments was also recognized as an area that lacked widespread acceptance among Member States at the Hague Conference. For this reason, the Working Group has found it difficult to recommend full recognition and enforcement of such instruments until they are more clearly defined and an empirical demand is demonstrated in Canada for their recognition and enforcement.

[11] It has become clear that the Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters will not be concluded in 2002. Given the document resulting from the June Diplomatic Conference, the final product has become more difficult to predict. Accordingly, the Working Group recommends that the Conference adopt the draft act and commentary. Should the Hague Convention ever result in the need to modify the Uniform Act, the Working Group would be prepared to reconvene at a later date at the request of the ULCC to propose amendments by way of separate amending acts or reports.

2. Results of this year's activities

[12] The Working Group has made a number of modifications to the draft UEFJA. A definition of "civil proceeding" has been included to work with a modified definition of "foreign judgment". A definition of "registration" has been added. Judgments for the determination of the personal status or capacity of a person are no longer excluded from the scope of the Act. Part III on Enforcement has been developed. In addition, the commentary has been modified to provide clearer explanations for the text. A copy of the draft which has undergone an incomplete review by legislative drafters is attached.

[13] 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 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 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 rendered the judgment was based on a real and substantial connection between the country of origin and the action against the defendant.

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

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

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

[9] 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).

[10] Part 3 deals with the enforcement procedure.

[11] Part 4 covers the final provisions.

4. Particular issues to be considered by the Conference

[7] In particular, the attention of the Conference is drawn to several aspects of the draft act. First, should foreign provisional orders be included? Discussions at the Hague Conference have brought to light problematic considerations with respect to their recognition and enforcement in the context of the draft Convention which would be relevant to the Canadian situation as well. In 1998, taking into account the inclusion of provisional and protective measures in the Hague draft, the ULCC decided that the draft act should include foreign provisional and protective measures. At this time, the Working Group would recommend their exclusion. Second, the enforcement provisions are presented to the Conference for the first time. As such, the approach set out should be discussed. Third, the provisions on currency conversion and on interest rates present several options, with no preference expressed by the Working Group. The Conference may wish to consider whether one of these options is preferable.

[8] Once the Conference has completed its study of the draft act, the latter will need to be reviewed by legislative drafters in collaboration with the members of the Working Group to ensure consistency with the decisions of the Conference.

5. Recommendation

[7] Subject to the Conference's decisions with respect to the above-noted issues, it is recommended that the Conference approve and adopt the draft Uniform Enforcement of Foreign Judgments Act and commentaries with provision for circulating a revised version to its members for comment or objection before finalization.