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UNIFORM LAW CONFERENCE OF CANADA
CIVIL SECTION

POLICY REPORT
ON THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

PRESENTED BY

THE WORKING GROUP ON THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

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For more information, please contact
info@ulcc-chlc.ca

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WORKING GROUP MEMBERSHIP

[1] The members of the Working Group are:

- Geneviève Saumier – Université de Montréal – chair
- Stephen Pitel – Western University
- Joost Blom – University of British Columbia
- Catherine Walsh – Université McGill
- Brad Kring – Alberta
- Michael Hall – New Brunswick
- John Lee – Ontario
- Frank Pignoli – Ontario
- Emmanuelle Jacques – Ottawa
- Blair Barbour – Prince Edward Island
- Laurence Bergeron – Québec
- Darcy McGovern – Saskatchewan
- Christina Croteau – ULCC

[2] The working group met four (4) times since the ULCC Annual Meeting in August 2024, at which it presented an oral report.

[3] This policy report identifies and discusses several issues relating to whether changes are needed to the current Uniform Enforcement of Foreign Judgments Act (UEFJA) and its commentary. Those issues are set out below and include the WG's recommendations and a summary of its analysis.

BACKGROUND

[4] A brief recap of the history of the UEFJA is necessary to explain the analysis in this report and the WG recommendations.

[5] The ULCC has a long history of working to produce uniform legislation to address the enforcement of judgments across borders. One of its earliest products was the 1924 Reciprocal Enforcement of Judgments Act (REJA), followed in 1933 by the Foreign Judgments Act (withdrawn in 1994). Their relative failure led to a revision of the REJA in 1954 to allow for inclusion of reciprocal foreign jurisdictions.

[6] The current UEFJA was adopted by the ULCC in 2003. The project was the result of a 1995 study on the opportunity for reform prepared by the federal Department of Justice and a subsequent request to the ULCC in 1996 by Ministers of Justice. Developing the UEFJA was also complementary to the Uniform Enforcement of Canadian Judgments Act (UECJA) (1992) and the Uniform Court Jurisdiction and Proceedings Transfer Act (UCJPTA) (1994).

[7] In 1996, the main considerations put forward were threefold: lack of uniformity across Canada, uncertainty, and potential disadvantage to Canadian judgment debtors compared to

those from other jurisdictions. It should be recalled that the application of *Morguard Investments Ltd. v De Savoye*, [1990] 3 S.C.R. 1077 to foreign country judgments remained somewhat unconfirmed at the time (*Beals v Saldanha*, [2003] 3 S.C.R. 416, 2003 SCC 72 was released in 2003). New Brunswick and Saskatchewan were the only two common law jurisdictions with legislation regarding foreign judgments that in essence codified the pre-*Morguard* common law approach (*Foreign Judgments Act*, RSNB 1973, c. F-19; RSS 1978, c F-18). The Civil Code of Québec had recently been adopted (in 1991, coming into force in 1994) and contained a comprehensive codification of private international law, including rules on the effect of judgments from outside the province. These were largely in line with the post-*Morguard* approach although Québec rules of indirect jurisdiction are much narrower.

[8] Today, only Saskatchewan has adopted the 2003 UEFJA (*The Enforcement of Foreign Judgments Act*, SS 2005, c E-9.121). As noted above, Québec has a comprehensive codification in the Civil Code. New Brunswick still has its *Foreign Judgments Act* (RSNB 2011, c 162). It was amended in 2000 but it is still based on the original UEFJA and thus retains the pre-*Morguard* common law approach.

[9] The UEFJA was amended in 2011 to include foreign civil protection orders. This revised version has not been adopted in any Canadian jurisdiction. It should be noted, however, that the UECJA includes, in Part III, provisions on the enforcement of foreign civil protection orders, also added in 2011. To date only Saskatchewan has implemented this modification (*The Enforcement of Canadian Judgments Amendment Act*, 2011, SS 2012, c 12).

[10] In terms of its application by courts, CanLII reveals 19 references in judgments in the twenty years since the statute came into force in Saskatchewan. This number does not reflect how often the statute is relied upon by judgment creditors for registration and enforcement of a foreign judgment. Indeed, in the absence of a challenge by the judgment debtor, there will be no record of a court's interpretation of the statute. Unfortunately there is no data on registration of foreign judgments under the statute. This makes it difficult to assess whether the current version of the statute is useful.

[11] A summary review of the reported judgments reveals a few interpretive issues:

(i) the distinction between a "final judgment" and a judgment that is subject to appeal;

(ii) whether "notice" under s. 4(d) necessarily means "actual" notice;

(iii) who bears the onus when defences to registration are raised under s. 4; and

(iv) what constitutes a breach of procedural justice under s. 4(f).

[12] Overall, however, the decisions show familiarity with the operation of the statute, including at the appellate level.

APPLICATION

[13] The work of the WG is aimed at the common law provinces and territories.

[14] The final report will explain how the UEFJA differs from the applicable law in Québec.

CONSULTATIONS

[15] No external consultation was carried out on the proposed policies.

ANALYSIS AND ISSUES

[16] This section describes the main discussions held by the WG.

1 – Options regarding the UEFJA

[17] As a first step, the WG discussed the relevance of revising the UEFJA.

[18] The lack of success of the UEFJA in terms of implementation might suggest that the considerations put forth for its development in 1996 are no longer pressing. These were the lack of uniformity (unchanged since then), uncertainty (arguably reduced since *Beals* and *Chevron Corp. v Yaiguaje*, 2015 SCC 42 for common law jurisdictions and *Barer v Knight Brothers LLC*, 2019 SCC 13 for Quebec) and potential disadvantage to Canadian defendants sued in foreign jurisdictions. This last point is very difficult to assess although it is generally acknowledged that enforcement of foreign judgments in Canada (at least outside New Brunswick and to some extent Quebec) is very generous compared to other countries. In any event, since the UEFJA does not have a reciprocity criterion and largely codifies the common law position, there is no indication that it is an answer to any potential ongoing disadvantage to Canadian defendants. These considerations could support a recommendation to the ULCC to withdraw the UEFJA or at least to stop recommending its adoption.

[19] On the other hand, the ULCC recently adopted revisions to the UCJPTA in 2021 and to the UECJA in 2023. Revisiting the UEFJA now provides an opportunity to reconsider the policy choices that underly the 2003 statute, some of which differ from today's Canadian common law on enforcement of foreign judgments (see below in section "3 – Outstanding issues"). In addition, a revision could lead to an alignment of the UEFJA with the UECJA and the UCJPTA as much as possible, to build on the relative successes of both uniform acts. Such alignment would present legislators, lawyers and parties with a modern and more coherent statutory package dealing with the main procedural aspects of international litigation, viz. jurisdiction and enforcement of judgments from within Canada and from outside the country.

[20] An additional consideration for revising the UEFJA is the potential ratification by Canada of the 2019 HCCH Judgments Convention. Indeed, it might make sense to consider whether the more generous (in some respects) UEFJA should be revised to avoid any disadvantage to Canadian defendants sued abroad. Such defendants would have fewer defences under the UEFJA to the enforcement of foreign judgments from non-Contracting States than under the Convention for foreign judgments from Contracting States.

[21] Based on the preceding considerations, the majority of the WG members are of the opinion that a full revision of the UEFJA is desirable, as this would, among other things, align it with the revised UCJPTA and UECJA and better reflect the current law on enforcement of foreign judgments in Canada. As indicated below, the WG is also proposing one important modification to the current common law approach in response to the potential disadvantage to Canadian parties sued abroad.

2 – Alignment of the UEFJA with the UECJA and the UCJPTA

[22] As a second step, the WG considered the extent of the harmonization of the UEFJA with the UECJA and the UCJPTA, with regard to the following elements.

A – Structure

[23] Aligning the UEFJA with the UECJA involves a restructuring of the former in terms of the latter. The alignment also involves redrafting equivalent sections of the UEFJA to follow the wording of the UECJA with modifications where necessary to reflect the different origins of the judgments involved.

[24] In addition, the alignment of the structure of the UEFJA with the structure of the UECJA reflects the fact that both instruments deal with the enforcement of extra-provincial judgments with differences resulting only from the origin of the judgment in Canada or outside the country. This provides greater coherence between the two instruments and promotes uniform interpretation of equivalent parts.

B – Indirect rules of jurisdiction

[25] In addition to textual modifications, alignment of the UEFJA with the UECJA requires the inclusion of provisions that are not found in the current UECJA. The most significant of those are a series of indirect rules of jurisdiction that are to be used to assess the foreign court's exercise of jurisdiction over the judgment debtor.

[26] Such rules are not found in the UECJA because that statute deviates from the common law by excluding any consideration of the extra-provincial court's jurisdiction over the defendant. This exclusion is based on the policy position taken in that statute that any objections to the jurisdiction of a court in Canada should be raised before that court and not before another court in Canada at the enforcement stage. That policy position is an extension of the constitutional obligation of mutual recognition and enforcement of judgments within Canada put forth by the Supreme Court of Canada in *Morguard*. That obligation does not

operate with respect to judgments from outside Canada and there is no policy justification either for prohibiting the assessment of a foreign court's jurisdiction at the enforcement stage.

[27] The UCJPTA includes a series of provisions defining the rules of *direct jurisdiction* that a court in Canada applies to determine whether it has jurisdiction in cross-border litigation. The WG considers that these rules of direct jurisdiction are suitable as rules of *indirect jurisdiction* in the context of enforcement, with a few minor modifications. Indeed, if the links between an action and a jurisdiction in Canada are sufficient to justify jurisdiction over that action, those links should be considered equally legitimate when present in a jurisdiction outside Canada. As a result, the WG considers it necessary to insert the UCJPTA's jurisdiction rules into the UEFJA where they will act as indirect jurisdiction rules governing the assessment of the foreign court of origin's jurisdiction at the enforcement stage.

[28] The most significant modification to the UECJA suggested by the WG concerns jurisdiction over entities other than individuals, mainly targeting corporate entities. Under the UCJPTA, the residence of such entities is defined very broadly and includes any place of business of such an entity even if it is unconnected to the litigation. In the UCJPTA context, this breadth can be mitigated by recourse to *forum non conveniens*, allowing a court in Canada to decline to exercise its jurisdiction in such a case. The WG has rejected the inclusion of *forum non conveniens* in the evaluation of a foreign court's jurisdiction (following the Supreme Court in *Canada Post Corp. v Lépine*, 2009 SCC 16, albeit in a case from Quebec). This would result in a somewhat narrower rule of residence for non-individual defendants, which is also more consistent with international norms.

C – Common law defences

[29] Another proposed variance from the UECJA concerns the common law defences of fraud and violation of procedural fairness. These defences are not included in the UECJA but are present in the UEFJA. The WG considers that for judgments from outside Canada, these two defences should be retained.

[30] Again, the justification for a different position under the UECJA is that defendants in Canadian courts are expected to raise such objections before the court of origin. The distinct procedural and judicial laws in foreign jurisdictions may not provide equivalent opportunities and thus the defences should remain in the context of enforcement of a judgment from outside the country.

D – Exclusion of the enforcement of judgments that enforce a foreign judgment

[31] The WG considers that the limitation introduced in the revised UECJA to exclude the enforcement of judgments that themselves enforce a foreign judgment is equally justified in the international context. The current UEFJA contains such a limitation (s. 3(d)) and the WG would retain it in the revised version.

3 – Outstanding issues

[32] Finally, the WG discussed the issues below, but did not reach a consensus at this stage.

A – Common law enforcement action

[33] The most significant outstanding issue is whether the revised UEFJA should retain or exclude the common law enforcement action. The text of the current UEFJA is silent on this point but the travaux préparatoires make clear that the statute was intended to exclude the option of proceeding by way of an action for enforcement at common law (see para 7 of the report of the working group presented at the 2003 annual meeting). This is unlike the UECJA, which expressly retains the common law route, including in the 2023 revision (see s. 10). It should be noted, however, that the situation regarding the UECJA and the UEFJA is not equivalent with respect to this issue. Indeed, the enforcement model under the UECJA is advantageous to judgment creditors because two aspects of the common law action are excluded under the statute: there is no evaluation of the jurisdiction of the court of origin and the fraud and procedural justice defences are not allowed. With the simplified registration mechanism provided by the UECJA, there is no reason to expect that judgment creditors will opt for a slower and riskier common law action. In other words, the value-added of the UECJA route is self-evident and retaining the common law option does no harm.

[34] In the case of foreign judgments, however, the situation is not equivalent. If, for example, the revised UEFJA restricts the definition of corporate residence (as suggested in para 28 above), a foreign judgment creditor may be successful, at common law, in enforcing its foreign judgment against a Canadian judgment debtor that had a place of business in the jurisdiction of origin even though the action against it had nothing to do with that place of business. The Canadian judgment debtor would not benefit from the stricter rule of indirect jurisdiction in the UEFJA. In other words, on any point where the UEFJA is more restrictive than the contemporary Canadian common law on enforcement, a judgment creditor could take advantage of the preserved common law action. A policy position taken in the UEFJA could thus be undermined by retaining the common law action. This would also increase uncertainty for parties in the initial litigation abroad, since prospects for foreign enforcement influence conduct in the jurisdiction of origin.

[35] Note that excluding the common law route under the statute does not eliminate common law enforcement altogether given that the statute does not apply to all foreign judgments (e.g. maintenance and support are expressly excluded in both the UECJA and the UEFJA, although admittedly they may be covered by other statutory law). This raises the question of whether the scope of the revised UEFJA should parallel that of the UECJA. The WG has not fully considered this point.

B – Enforcement of foreign judgments dealing with rights *in rem* to immovable property

[36] A narrower outstanding issue is whether the revised UEFJA should limit enforcement of foreign judgments dealing with rights *in rem* to immovable property to judgments from the jurisdiction where the property is located.

[37] The revised UCJPTA adds a new section (s. 12.1) limiting direct jurisdiction in an equivalent way. Whether or not this should be reflected in the UEFJA has not been finally determined by the WG. It should be noted that the 2019 HCCH Judgment Convention has done so.

C – The protection of Canadian consumers and employees

[38] The WG has not determined whether the optional language included in s. 7(2)(a)(ii) of the revised UECJA should remain optional in the revised UEFJA. The protection of Canadian consumers and employees in default proceedings abroad may prove to be more compelling in the international context than in the national context, such that this language should be mandatory.

D – Foreign civil protection orders

[39] The WG has not considered how to treat foreign civil protection orders in the UEFJA. These were added to the UECJA in 2011 and retained in the revised version of 2023.

OPTIONS FOR CONSIDERATION

[40] In light of the issues and the analysis made in the previous section, the WG recommends that delegates approve the following policies.

[41] That the UEFJA be fully revised in order to

(i) align it with the revised UCJPTA and UECJA; and

(ii) better reflect the current law on enforcement of foreign judgments in Canada.

[42] That the structure of the UEFJA be harmonized with the UECJA.

[43] That the provisions defining the rules of direct jurisdiction in the UCJPTA be included in the UEFJA as rules of indirect jurisdiction, with a modification for jurisdiction over entities other than individuals (e.g. corporate entities), in such a way as to establish a more restrictive residence rule for these defendants.

[44] That the common law defences of fraud and violation of procedural fairness be included in the UEFJA.

[45] That the limitation introduced in the revised UECJA to exclude the enforcement of judgments that themselves enforce a foreign judgment be included in the UEFJA.

[46] To the extent possible, that the interpretative issues arising under the current UEFJA, as identified in paragraph 11 of this report, be addressed.

NEXT STEPS

[47] The WG has advanced significantly in its revisions of the UEFJA in accordance with the approach presented above. Presuming that the outstanding issues can be resolved at forthcoming meetings of the WG, a full draft of the text and commentary of the revised UEFJA should be available for consideration by the ULCC at its annual meeting in 2026.

DRAFT RESOLUTION

[48] In view of the above, it is proposed

THAT the policy report of the working group on the Uniform Enforcement of Foreign Judgments Act be accepted;

THAT the Working Group continue working in accordance with the direction of the ULCC; and

THAT the Working Group present a final report and a draft Uniform Act at the 2026 annual meeting.