

UNIFORM ENFORCEMENT OF CANADIAN DECREES ACT

(1997 Proceedings at page 41)

Introductory Comment: Apart from legislation that addresses particular types of orders, there is no statutory scheme or common law principle which permits the enforcement in one province of a non-money judgment made in a different province. This is in sharp contrast to the situation that prevails with respect to money judgments which have a long history of enforceability between provinces and states both under statute and at common law. With the increasing mobility of the population and the emergence of policies favouring the free flow of goods and services throughout Canada, this gap in the law has become highly inconvenient. The purpose of this Uniform Act is to provide a rational statutory basis for the enforcement of non-money judgments between the Canadian provinces and territories.

The Uniform Enforcement of Canadian Decrees Act (UECDA) embodies the notion of “full faith and credit” in the enforcement of judgments between the provinces and territories of Canada. There are two aspects to this. First, it rejects the concept of reciprocity. Where the UECDA has been adopted in a province, a litigant who has obtained an order in a second province may enforce it in the first province whether or not the UECDA has been adopted in the province where the order was made.

Second, the Act rejects a supervisory role for the courts of a province or territory where the enforcement of an out-of-province order is sought. In enforcing money judgments, the law has been preoccupied with the question of whether the court which gave the judgment had the jurisdiction to do so. If a Canadian decree is flawed, because of some defect in the jurisdiction or process of the body which gave it, the approach of the UECDA is to regard correction of the flaw as a matter to be dealt with in the place where it was made.

The UECDA embodies policies similar to those found in the *Uniform Enforcement of Canadian Judgments Act* (UECJA) which provides machinery for the interprovincial enforcement of money judgments. A conscious effort has been made to

make the approach and drafting of this Act parallel that of UECJA so far as the significant differences between money judgments and non-money judgments permit this to be done.

Definitions

1. In this Act,

“Canadian decree” means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory]

- (a) under which a person is required to do or not do an act or thing, or**
- (b) that declares rights, obligations or status in relation to a person or thing but does not include a judgment, decree or order that**
- (c) requires a person to pay money,**
- (d) relates to the care, control or welfare of a minor,**
- (e) is made by a tribunal of a province or territory of Canada other than [enacting province or territory], whether or not it is enforceable as an order of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, or**
- [(f) relates to the granting of probate or letters of administration or the administration of the estate of a deceased person;]**

Comment: A central concept of UECDA is the “Canadian decree.” The term first receives an expansive definition in paragraphs (a) and (b) which is then narrowed by the exclusions that follow. The first limb of the inclusive definition embraces orders like injunctions and those for specific performance. The second limb brings in orders that create certain rights or relationships. These might include things like adult guardianship orders. It will also include orders which are purely declaratory. Some kinds of declarations are recognized under current law, but that recognition may be subject to a jurisdictional challenge. Bringing them within the definition ensures that the full faith and credit principle applies to them

Excluded from the definition are types of orders that are the subject of existing machinery for interprovincial enforcement. The exclusion of probate orders is optional and enacting jurisdictions may wish to examine their local legislation respecting the recognition of foreign probates and decide whether they wish to rely on that or on UECDA.

The exclusion of orders of tribunals ensures that the scheme is confined to true court orders. Non-money orders made by tribunals are often intensely local in the policies they advance and unsuitable for interprovincial enforcement.

“enforcement” includes requiring that a Canadian decree be recognized by any person or authority whether or not further relief is sought;

“enforcing party” means a person entitled to enforce a Canadian decree in the province or territory where the decree was made;

“registered Canadian decree” means a Canadian decree that is registered under this Act.

Right to register decree

2. (1) **A Canadian decree may be registered under this Act for the purpose of enforcement, whether or not the decree is final.**

Comment: This act embraces interim orders as well as final orders. A condition at common law for the enforcement of a foreign judgment for money was that the judgment had to be final. This requirement of finality continues to be reflected in the UECJA. In the context of non-money judgments, other considerations arise.

There is a whole range of interlocutory injunctions that might be issued in the course of a proceeding. For example, orders may be given designed to preserve or protect the subject matter of the litigation or maintain the *status quo*. The court may issue a *Mareva* injunction to prevent the defendants disposing of specified assets. Orders such as these would not meet the test of “finality” but that seems an insufficient reason to deny their enforcement outside the place where the order was made.

Moreover, in many instances when an injunction is sought, although the pleadings are drafted to claim a final injunction, the real battle is over whether or not an interim injunction should be granted. When an interim injunction is granted, very often no further steps are taken. The legislation recognizes this reality.

- (2) **A Canadian decree that also contains provisions for relief that may not be enforced under this Act may be registered under this Act except in respect of those provisions.**

Comment: This ensures that a decree that provides for other relief is enforceable as to the provisions that are within this Act. For example an order made in a matrimonial proceeding may provide for the payment of money, custody of children of the marriage, and limit the contact one spouse may have with the other. The last of those provisions would be enforceable under this Act. The other provisions would be enforced under other schemes.

Procedure for registering decree

3. **A Canadian decree is registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the [superior court of unlimited trial jurisdiction in the enacting province or territory]**
- (a) **a copy of the decree, certified as true by a judge, registrar, clerk or other proper officer of the court that made the decree, and**
- (b) **the additional information or material required by regulation.**

Comment: Registering a Canadian decree is a purely administrative act.

Effect of registration

4. **Subject to sections 5 and 6, a registered Canadian decree may be enforced in [enacting province or territory] as if it were an order of, and entered in, the [superior court of unlimited trial jurisdiction in the enacting province or territory].**

Comment: Section 4 describes the effect of registration. It embodies the central policy of the UECDA that Canadian decrees from outside the enacting province or territory should be enforceable as if made by a superior court of the enacting province or territory.

Delay

5. Equitable doctrines and rules of law in relation to delay apply to the enforcement of a Canadian decree.

Comment: Conduct such as delay in seeking enforcement might disentitle the enforcing party to relief.

Application for directions

- 6. (1) A party to the proceeding in which a registered Canadian decree was made may apply to the [superior court of unlimited trial jurisdiction in the enacting province or territory] for directions respecting its enforcement.**
- (2) On an application under subsection (1), the court may**
- (a) make an order that the decree be modified in any manner required to make it enforceable in conformity with local practice,**
 - (b) make an order stipulating the procedure to be used in enforcing the decree,**

Comment: Non-money judgments are frequently framed with reference to the enforcement machinery available in the place where they are made. This may not always be compatible with the enforcement machinery and practice in a different province where enforcement is sought. Enforcement of an extra-provincial decree, according to its exact tenor, may be impossible. Section 6(1) provides that a party may apply for directions as to the way in which a decree is to be enforced and gives the enforcing court a generous power to “fine-tune” the decree so that it may be enforced according to its intent.

- (c) **make an order staying or limiting the enforcement of the decree, subject to any terms and for any period the court considers appropriate in the circumstances, if**
 - (i) **such an order could be made in respect of an order of the [superior court of unlimited trial jurisdiction in the enacting province or territory] under [the statutes and the rules of court] [any enactment of the enacting province or territory] relating to legal remedies and the enforcement of orders,**

Comment: The enforcing court has the same power to limit the enforcement of an extraprovincial decree as it has with respect to a local decree.

- (ii) **the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the decree was made, a proceeding to set aside, vary or obtain other relief in respect of the decree,**
 - (iii) **an order staying or limiting enforcement is in effect in the province or territory where the decree was made, or**
 - (iv) **the decree is contrary to public policy in [the enacting province or territory].**
- (3) **Notwithstanding subsection (2), the [superior court of unlimited trial jurisdiction in the enacting province or territory] shall not make an order staying or limiting the enforcement of a registered Canadian decree solely on the grounds that**
 - (a) **the judge or court that made the decree lacked jurisdiction over the subject matter of the proceeding that led to the decree, or over the party against whom enforcement is sought, under**

- (i) principles of private international law, or
 - (ii) the domestic law of the province or territory where the decree was made,
- (b) the [superior court of unlimited trial jurisdiction in the enacting province or territory] would have come to a different decision on a finding of fact or law or on an exercise of discretion from the decision of the judge or court that made the decree, or
- (c) a defect existed in the process or proceeding leading to the decree.

Comment: This provision gives specific effect to the full faith and credit policy of UECDA.

- (4) An application for directions must be made under subsection (1) before any measures are taken to enforce a registered Canadian decree if
 - (a) the enforceability of the decree is, by its terms, subject to the satisfaction of a condition, or
 - (b) the decree was obtained without notice to the persons bound by it.

Comment: Subsection (4) sets out particular instances in which directions must be sought. The first is where a decree stipulates that some condition precedent must be satisfied before the decree is enforceable. Typically, a decree might require that a person bound by it receive notice of it before any enforcement proceedings may be taken. The section requires that the enforcing party seek direction as to whether the condition has been satisfied for the purposes of enforcement within the enforcing province. The second instance is where the decree sought to be enforced is an *ex parte* order.

Protection orders

7. Law enforcement authorities acting in good faith may, without liability, rely on and enforce a purported Canadian decree that

- 1. was made in a proceeding between spouses or domestic partners having a similar relationship, and**
- 2. enjoins, restrains, or limits the contact one party may have with the other for the purpose of preventing harassment or domestic violence**

whether or not the decree has been registered in the [superior court of unlimited trial jurisdiction in the enacting province or territory] under section 3.

Comment: Protection decrees require some special treatment. In this context, enforcement is not so much a matter of invoking the assistance of the local court as it is in getting local law enforcement authorities to respond to a request for assistance. When the police are called on to intervene in a situation of domestic harassment their response may well turn on whether a valid protection decree exists. If the police are satisfied on this point they may be prepared to act in marginal situations. If they are forced to rely solely on powers derived from the *Criminal Code* they may be reluctant to intervene except in cases where the potential violence or breach of the peace is beyond doubt.

The strategy of section 7 is to insulate the police from civil liability where they, in good faith, act on what purports to be a valid protection decree. Those jurisdictions which have created and maintain an up-to-date central registry of protection orders on which the police normally rely may wish to consider alternative strategies.

Recovery of registration costs

8. An enforcing party is entitled to recover all costs, charges and disbursements

- (a) reasonably incurred in the registration of a Canadian decree under this Act, and**

- (b) **taxed, assessed or allowed by [the proper officer] of the [superior court of unlimited trial jurisdiction in the enacting province or territory].**

Costs and disbursements incurred in the registration of a Canadian judgment are recoverable.

Enforcing party's other rights not affected by registration

- 9. **Neither registering a Canadian decree nor taking other proceedings under this Act affects an enforcing party's right to bring an action on the original cause of action.**

Comment: An enforcing party is not required to elect irrevocably between options for enforcing a Canadian decree. Section 9 preserves the right of the enforcing party to employ the UECDA or to rely on whatever common law methods of vindicating rights are available. There is no reason to limit the enforcing party's options.

Power to make regulations

- 10. **The Lieutenant Governor in Council may make regulations [rules of court]**
 - (a) **prescribing the fee payable for the registration of a Canadian decree under this Act,**
 - (b) **respecting additional information or material that is to be filed in relation to the registration of a Canadian decree under this Act,**
 - (c) **respecting forms and their use under this Act, and**
 - (d) **to do any matter or thing required to effect or assist the operation of this Act.**

Comment: The regulation-making power in section 10 is self-explanatory.

*Application of Act***11. This Act applies to**

- (a) a Canadian decree made in a proceeding commenced after this Act comes into force, and
- (b) a Canadian decree made in a proceeding commenced before this Act comes into force and in which the party against whom enforcement is sought took part.

Comment: The application provision permits the retrospective application of the UECDA to some decrees. It may be unfair to enforce, on a full faith and credit basis, a decree made in a proceeding commenced before the UECDA came into force. Unfairness could occur where a resident of the enacting province relied on well-founded legal advice to not respond to distant litigation since any resulting decree would not (according to the law in force at the time) be enforceable outside the place where it was made. On the other hand, if that resident took part in the foreign proceeding there is little reason to deny the plaintiff the right to enforce the decree under the UECDA.

Closing Comments: It is important that Judges and litigants be sensitive to the fact that decrees are now capable of being enforced in other provinces and territories. There is a danger that they will not turn their minds to this question at the time the order is made. They should be encouraged to do that so, where it is appropriate, the court is given an opportunity to limit the geographic ambit of the decree. Consideration might be given to formalizing this process in rules of court.