UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

(1992 Proceedings at page 44)

Contents

Section

Preliminary Comment: Full Faith and Credit

The Uniform Enforcement of Canadian Judgments Act [UECJA] embodies the notion of "full faith and credit" in the enforcement of judgments between the provinces and territories of Canada. It involves rejection of two themes which have, in the past, characterized the machinery for enforcing such judgments.

First it rejects the concept of reciprocity. Where the UECJA has been adopted in province "X", a litigant who has taken judgment in province "Y" may enforce that judgment in province "X" under the legislation whether or not the UECJA has been adopted in province "Y". This stands in contrast to the approach of the Uniform Reciprocal Enforcement of Judgments Act [UREA].

Second, the Act rejects a supervisory role for the courts of a province or territory where the enforcement of an out-of-province judgment ["Canadian judgment"] is sought. The common law and the UREA are preoccupied with the question of whether the court which gave the judgment had the jurisdiction to do so. If a Canadian judgment is flawed, because of some defect in the jurisdiction or process of the body which gave it, the approach of the UECJA is to regard correction of the flaw as a matter to be dealt with in the place where it was made.

As a general rule, a creditor seeking to enforce a Canadian judgment in a province or territory which has enacted the UECJA should face no substantive or procedural barriers except those which govern the enforcement of judgments of the local courts.

Definitions

1. In this Act

"Canadian judgment" means

(a) a final judgment or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory],

(b) a final order that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, and

(c) an order that is made under section 725 or 726 of the Criminal Code (Canada) by a court or a province or territory of Canada other than [enacting province or territory] and that is entered as a judgment in the superior court of unlimited trial jurisdiction of the province or territory where the order was made;

"judgment creditor" means a person entitled to enforce a Canadian judgment;

"judgment debtor" means a person liable under a Canadian judgment;

"registered Canadian judgment" means a Canadian judgment that is registered under this Act.

Commentary: A central concept of the UECJA is the "Canadian judgment." The first limb of its definition brings in the "conventional" judgment or order of court of a Canadian province or territory other than the enacting province. The judgment must be final and have been made in a "civil proceeding."

A "Canadian judgment" may also include certain kinds of "deemed judgments" -- claims which provincial statutes permit to be enforced as judgments although they have not been the subject of formal litigation in a court. Only final orders of tribunals which exercise a judicial function qualify for enforcement as "Canadian

judgments." The definition does not extend to deemed judgments based on a certificate of an administrator stating that money is owed to an emanation of government.

Orders which are enforceable under the third limb of the definition are those made, in the course of a criminal proceeding, in favour of a victim of crime. These orders are authorized by the Criminal Code and are enforceable as civil judgments.

Not all judgments which satisfy the definition of "Canadian judgment" may be registered or enforced under the UECJA. Other limitations are imposed in sections 2 and 5. The other definitions in section 1 are self-explanatory.

Right to register judgment.

(2) (1) Subject to section 5, a Canadian judgment for the payment of money may be registered under this Act for the purpose of enforcing payment of the money unless the judgment is

(a) for maintenance or support, including an order enforceable under the [appropriate Act in the enacting province or territory}, or

(b) for the payment of money as a penalty of fine for committing an offence.

(2) A Canadian judgment that contains provisions for the payment of money and also contains other provisions may be registered under this Act in respect of the provisions for the payment of money but may not be registered in respect of the other provisions.

Commentary: Only judgments for the payment of money may be registered. A judgment which also provides for matters other than the payment of money may be registered, but the registration is only effective to the extent that the judgment calls for the payment of money. The effect of registration is set out in section 4.

Not all Canadian judgments for the payment of money may be registered under the UECJA. Section 2(1) sets out two kinds of judgments which are excluded from registration.

Orders for maintenance and support are excluded. A well-developed scheme for their interjurisdictional enforcement is already in place.

The exclusion of judgments for fines and penalties carries forward the current lay. They are not presently enforceable either through an action on the judgment or under reciprocal enforcement of judgment legislation.

Procedure for registering judgment

3. A Canadian judgment 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 judgment, certified as true by a judge, registrar, clerk or other proper officer of the court or tribunal that made the judgment, and

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

Commentary: Section 3 sets out the mechanics of registering a judgment under the UECJA. If more detailed guidance is desirable this may be done by regulation. See section 6.

Effect of registration

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

Commentary: Section 4 describes the effect of registration. it embodies the central policy of the UECJA that Canadian judgments from outside the enacting provinces or territory should be enforceable as if made by a superior court of the enacting province or territory.

Time limit for registration and enforcement

5. A canadian judgment shall not be registered or enforced under this Act

   (a) after the time for enforcement has expired in the province or territory where the judgment was made, or

   (b) later than [xxx] years after the day on which the judgment became enforceable in the province or territory where it was made.

[xxx? same number of years as for enforcement of judgments of the superior court of unlimited trial jurisdiction in the enacting province or territory.]

Commentary: The limitation laws of most provinces adopt different limitation period to govern the enforcement of "foreign" judgments than that which governs local judgments. "Foreign" judgments are usually subject to a shorter limitation period. Section 5 embodies the policy that Canadian judgments should be treated no less favourable than local judgments of the enacting province or territory. Thus Canadian judgments should not be subject to any shorter limitation period than local judgments.

In setting a limitation period for the enforcement of judgments under the UECJA, section 5 adopts a dual test. First, enforcement proceedings must be brought within the limitation period applicable to local judgments, with time running from when the judgment was made. Second, proceedings on the judgment must not have become statute barred through the operation of a limitation period in the place where it was made.

Power to stay or limit enforcement of registered judgment

6. (1) The [superior court of unlimited trial jurisdiction in the enacting province or territory] may make an order staying or limiting the enforcement of a registered Canadian judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if

(a) such an order could be made in respect of a judgment 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 creditors' remedies and the enforcement of judgments,

(b) the judgment debtor has brought, or intends to bring, in the province or territory where the judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,

(c) an order staying or limiting enforcement is in effect in the province or territory where the judgment was made, or

(d) the judgment is contrary to public policy in [the enacting province or territory].

(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 judgment on the grounds that

(a) the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment or over the judgment debtor under

(i) principles of private international law, or

(ii) the domestic law of the province or territory where the judgment 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, court or tribunal that made the judgment, or

(c) a defect existed in the process or proceeding leading to the judgment.

Commentary: Section 6 addresses the issue of the extent to which the courts of the enacting province or territory may intervene to stay or limit the enforcement of a Canadian judgment.

At common law, a local court whose assistance is sought in the enforcement of a foreign judgment may decline to give that assistance where it believes the foreign judgment is somehow flawed. In this context, a flaw might involve a lack of jurisdiction in the foreign court over the defendant or the dispute. it might, in some cases, involve the local court having a different view of the merits of the decision. A flaw might also include some defect in the process by which the foreign judgment was obtained such as a breach of natural justice or where there is a suggestion of fraud.

Allowing the local court to inquire into such matters may be appropriate where the judgment emanates from a truly "foreign" place. It is quite inappropriate in Canada as it puts the courts of one province in the position of supervising the actions of the courts of another province. The Common law approach cannot co-exist with the full faith and credit concept.

The UECJA expressly abrogates the common law approach. Section 62(2) stipulates that none of the "flaws" described above provide grounds for staying or limiting the enforcement of a Canadian judgment. The proper course of a judgment debtor who alleges that the judgment is flawed is to seek relief in the

place where the judgment was made, either through an appeal or a further application to the court or tribunal which made the judgment.

The UEJCA does recognize that there are other circumstances which might justify staying or limiting the enforcement, such as where the judgment is truly flawed, and the judgment debtor is taking steps to obtain relief in the place it was made. This is provided for in section 6(1)(b). The judgment debtor is likely to have a stronger claim for a stay if enforcement of the judgment has also been stayed in the place where it was made. See section 6(1)(c).

The policy of assimilating the enforcement of Canadian judgments to that of local judgments requires that the judgment debtor be entitled to take advantage of any limitations which the law of the enacting province or territory may impose with respect to the enforcement of local judgments. This might include, for example, a power in the local court to order payment by instalments. Section 6(1)(a) clarifies the power of the local court to make orders of this character which limit the enforcement of a Canadian judgment.

The court may also order a say with respect to a judgment which offends the public policy of the enacting province or territory. This exception to enforcement carries forward the policy of the current law.

An order made under section 6(1) staying or limiting enforcement may be made for a temporary period and subject to any terms which may be necessary to protect the judgment creditor's position. If an order is made under paragraph (b), terms might be imposed to ensure that the judgment debtor proceeds expeditiously. The court may, for example, set time limits or require the posting of security.

Interest on registered judgment

7. (1) Interest is payable on a registered Canadian judgment as if it were a judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory].

(2) For the purpose of calculating interest payable under subsection (1), the amount owing on the registered Canadian judgment is the total of

(a) the amount owing on that judgment on the date it is registered under this Act, and

(b) interest that has accrued to that date under the laws applicable to the calculation of interest on that judgment in the province or territory where it was made.

Commentary: Section 7 provides that a registered judgment will earn interest as if it were a local judgment. The principal amount of the judgment is calculated by that post judgment interest that has accrued before registration.

Recovery of registration costs

8. A judgment creditor is entitled to recover, as if they were sums payable under the registered Canadian judgment, all costs, charges and disbursements

   (a) reasonably incurred in the registration of a Canadian judgment 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].

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

Judgment creditor's other rights not affected by registration

9. Neither registering a Canadian judgment nor taking other proceedings under this Act affects a judgment creditor's right

   (a) to bring an action on the Canadian judgment or on the original cause of action, or

   (b) to register and enforce the Canadian judgment under the [Reciprocal Enforcement of Judgments Act].

Commentary:A judgment creditor is not required to elect irrevocably between options for enforcing a Canadian judgment. Section 9 preserves the right of the judgment creditor to employ the UECJA or to rely on common law methods of enforcement. There is no reason to limit the judgment creditor's options, so long as the judgment is satisfied only once.

it is contemplated that the provinces and territories will retain legislation for the reciprocal enforcement of judgments. While this legislation will be taken over by the UECJA with respect to Canadian judgments it will still be necessary as a vehicle for the enforcement of judgments, on a reciprocal basis, with non-Canadian jurisdictions.

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 judgment under this Act,

    (b) respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment 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.

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

Application of Act

11. This Act applies to

    (a) a Canadian judgment made in a proceeding commenced after this Act comes into force, and

    (b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the judgment debtor took part.

Commentary: The application provision permits the retrospective application of the UECJA to some judgments. It may be unfair to enforce, on a full faith and credit basis, a judgment made in a proceeding commenced before the UECJA came into force. This could occur where a resident of the enacting province relied on well-founded legal advice not to respond to distant litigation since any resulting judgment 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 judgment under the UECJA.