

UNIFORM LAW CONFERENCE OF CANADA

CIVIL SECTION

Reciprocal enforcement of tax judgments

Frédérique Sabourin
Québec

St. John's, Newfoundland and
Labrador
21 - 25 August 2005

[1] The *Uniform Enforcement of Canadian Judgments Act* and the *Uniform Enforcement of Canadian Judgments and Decrees Act* do not expressly provide for the exclusion of tax judgments and orders, as opposed to the *Enforcement of Foreign Judgments Act*.¹

[2] The *Reciprocal Enforcement of Tax Judgments Act* (see Annex I) adopted in 1965 by the Uniform Law Conference of Canada was revised in 1966 and repealed in 1980. The statute was never enacted in the Canadian provinces or territories.

[3] As a consequence, while Québec collects its own taxes and on occasion relies on tax judgments, it is the federal government that performs this task for the other provinces and territories through Canadian intergovernmental agreements; tax judgments are given by the Federal Court and therefore are enforceable throughout Canada.

[4] The *Civil Code of Québec* contains a provision (art. 3162) allowing for enforcement of tax judgments from the other Canadian provinces and territories. It reads as follows:

3162. A Québec authority recognizes and enforces the obligations resulting from the taxation laws of foreign countries in which the obligations resulting from the taxation laws of Québec are recognized and enforced.

[5] That article broadens the scope of an article in the *Code of Civil Procedure* originating in 1965 but since repealed. That article 21 CCP read as follows:

21. The courts of the province shall recognize and enforce the obligations resulting from the taxation laws of another Canadian province in which the obligations resulting from the taxation laws of Québec are recognized and enforced.

[6] In contrast, however, the various provincial and territorial tax statutes do not contain specific provisions dealing with reciprocal enforcement of tax judgments and orders.

[7] Article 3162 of the Civil Code therefore has become a dead letter and tax judgments and orders in Québec cannot be enforced in the other Canadian provinces and territories unless the uniform statutes encompass tax judgments

¹ Section 3. This Act does not apply to foreign judgments
(a) for the recovery of taxes; [...]
(e) for the recovery of monetary fines or penalties; [...].

and orders, or unless harmonized and uniform reciprocity provisions have been enacted.

1- Should the uniform statutes include or exclude such judgments and orders?

[8] Traditionally under both common law and civil law, foreign judgments given in tax and fiscal matters are not recognized and enforced.² The judgments are considered to be exclusively territorial and thus limited to the jurisdiction of the legal system giving them. Furthermore, the exclusion of tax judgments from the uniform statutes on the enforcement of Canadian judgments and orders is no doubt implied via the section 1 reference to "civil proceeding".³ And because reciprocity is an exceptional regime, it could be a significant factor. The uniform statutes have, however, abandoned this condition.

[9] For all these reasons, it would not appear advisable to include tax judgments and orders in the uniform statutes on the enforcement of Canadian judgments and orders. On the other hand, it could be useful to specifically exclude them for the sake of transparency and legal soundness.

2- Should harmonized and uniform reciprocity provisions be drafted?

[10] In light of the problems raised in this note, it would perhaps be appropriate to recommend the Conference revive the *Reciprocal Enforcement of Tax Judgments Act* (see Annex I), amending it as necessary and providing for a French version.

Recommendation:

[11] The *Uniform Enforcement of Canadian Judgments Act* and the *Uniform Enforcement of Canadian Judgments and Decrees Act* should be amended to expressly exclude tax judgments and orders from their respective areas of application.

² See the comment under section 3 of the *Uniform Enforcement of Foreign Judgments Act*: "This list accords with the traditional list of exceptions to enforcement of foreign judgments in Canada (taxes, penalties)."

³ See, for example, the definition of judgment in section 1 of the *Uniform Enforcement of Canadian Judgments 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,"

[12] The *Reciprocal Enforcement of Tax Judgments Act* (see Annex I), should be revived, amended as necessary and accompanied by a French version.

Reciprocal Enforcement of Tax Judgments Act

1. In this Act, "province of Canada" includes any Canadian territory.
2. A judgment for taxes, interests or a penalty due under the tax laws of a province of Canada and given under a tax law in respect of which the province is a reciprocating province shall be recognized in this province as a judgment for an enforceable obligation within the meaning of subclause i of clause a of subsection 1 of section 2 of the Reciprocal Enforcement of Judgments Act (notwithstanding subclause iii of clause a of section 2 of the Foreign Judgments Act).

(Note : Material in brackets to be included only in those jurisdictions wherein The Foreign Judgments Act is in force.)

3. (1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made in another province of Canada for the enforcement therein of judgments given in a court of this province for taxes, interests or a penalty due under the tax laws of this province, he may by order declare the province to be a reciprocating province for the purposes of this Act.

(2) The order may specify the tax laws in respect of which the other province of Canada shall be a reciprocating province.

(3) The order may alternatively specify the tax laws in respect of which the other province of Canada shall not be a reciprocating province.