

**AMENDMENTS TO THE UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS
AND DECREES ACT - FOREIGN CIVIL PROTECTION ORDERS, 2011**

Draft Uniform Amendment Act

Uniform Enforcement of Canadian Judgments and Decrees Amendment Act, 2011

Short title

1 This Act may be cited as the *Uniform Enforcement of Canadian Judgments and Decrees Amendment Act, 2011*.

***Uniform Enforcement of Canadian Judgments and Decrees Act* amended**

2 The *Uniform Enforcement of Canadian Judgments and Decrees Act* is amended in the manner set forth in this Act.

New Part III

3 Part III is repealed and the following substituted:

**“Part III
Canadian Civil Protection Orders and Foreign Civil Protection Orders**

Comment:

The Part heading is amended to add the reference to Foreign Civil Protection Orders

“Interpretation of Part

9.1 In this Part:

‘foreign civil protection order’ means a foreign judgment, or a portion of a foreign judgment, made by a court of a foreign state that prohibits a specified individual from:

- (a) being in physical proximity to a specified person or following a specified person from place to place;**
- (b) contacting or communicating with, either directly or indirectly, a specified person;**
- (c) attending at or within a certain distance of a specified place or location; or**
- (d) engaging in molesting, annoying, harassing or threatening conduct directed at a specified person.**

Comment:

The definition of a Foreign Civil Protection Order covers substantively the same subject matter as that of a “Civil Protection Order”. It is however restricted to foreign judgments by a court that address this subject matter. This approach imports the definition of foreign judgment as defined below with the significant limitation that the judgment must be a judgment from a court rather than an administrative tribunal or other administrative decision maker.

A foreign civil protection order is limited to an order that contains an applicable prohibition against a specified individual. This reflects that the purpose of the provision is to protect one individual from possible harm or harassment from another individual. It is not available to be used to limit the conduct of a class of persons such as a political or social group or with respect to a corporate entity or a government body. While the definition is relatively open regarding restrictions on attending at or near a particular location, practically speaking these orders on an inter-jurisdictional basis will be restricted to generic locations such as the residence, school or work place of the spouse or children. Property specific remedies such as exclusive possession of the family home in the jurisdiction of the originating state will not be the relevant subject matter of enforcement in the foreign state. Accordingly, enforcement can routinely proceed by local policing agencies without a requirement to finally determine vested property rights of any person. Enforcement can instead focus on immediate risk reduction between the parties to the order.

‘foreign judgment’ means a foreign judgment as defined in *The Enforcement of Foreign Judgments Act*, except for any judgment made in a foreign state prescribed in the regulations, and includes a decision that would, if the decision were a final decision, be a foreign judgment pursuant to that Act.

Comment:

Foreign judgment is defined to mean a foreign judgment within the meaning of *The Uniform Enforcement of Foreign Judgments Act*. This draft presumes that *The Uniform Enforcement of Foreign Judgments Act* is in force in the enacting jurisdiction.

By expressly including decisions that are not final as foreign judgments for the purposes of this Act we obviate any need to assess whether the order is final or interim in nature. The focus will instead be on whether the order meets the subject matter definition for a foreign civil protection order. This is consistent with the approach already taken in subsection 2(1) of the Uniform Act.

An exception is also made for those foreign states that are specifically named in the regulations as foreign states whose judgments will not be recognized and enforced under this Part. This reflects the policy decision to extend a full faith and credit approach to civil protection orders from foreign states except where a specific decision has been made to exclude a particular state from this recognition and enforcement regime.

“Deeming of order

9.2 A Canadian civil protection order or a foreign civil protection order is deemed to be an order of *[the superior court of unlimited trial jurisdiction of the province or territory where the order is sought to be enforced]* and is enforceable in the same manner as an order of that court for all purposes.

Comment:

The phrase “or a foreign civil protection order” is added in section 9.2 to provide that a foreign judgment that meets the definition of a foreign civil protection order will be afforded the same treatment for recognition and enforcement purposes as a judgment of the local superior court of unlimited trial jurisdiction in the enforcing jurisdiction. This deeming provision is the key substantive provision in the full faith and credit approach to the recognition and enforcement of this narrow category of foreign judgments in the same manner as a civil protection order from another province or territory of Canada.

Subsequent to this process for immediate recognition and enforcement, in the event that a party wishes to challenge the foreign civil protection order, that order may be substantively challenged on grounds such as lack of jurisdiction or fraud in the same manner as any other foreign judgment under *The Uniform Enforcement of Foreign Judgments Act*.

“Enforcement by law enforcement agencies

9.3(1) A Canadian civil protection order is enforceable by a law enforcement agency in the same manner as an order of *[the superior court of unlimited trial jurisdiction of the province or territory where the order is sought to be enforced]*, whether or not the order is a registered Canadian judgment.

(2) A foreign civil protection order is enforceable by a law enforcement agency in the same manner as an order of *[the superior court of unlimited trial jurisdiction of the province or territory where the order is sought to be enforced]*.

Comment:

Subsection (2) has been added to provide a positive statement of law that a foreign civil protection order may be enforced by local law enforcement agencies in the same manner as they would enforce an order of the local superior court of unlimited trial jurisdiction. By speaking specifically to police agencies, this subsection seeks to avoid any need to have a legal interpretation of the effect of section 9.2 sought by the police agency prior to enforcement. This further facilitates the immediate enforcement of the order at the scene of an incident without the inherent risk to the potential victim that a delay and departure to seek legal advice would entail.

This provision, in concert with the liability protection in section 9.5, further releases the enforcing police agency from formalities such as translation and authentication. The order is deemed to be a local order and while the party seeking enforcement will bear a practical burden of communicating the content of the order to the police officer, there are no formal prerequisites to enforcement. Again, enforcement of a “false order” has as its consequence the temporary improper separation of two or more individuals when at least one of those individuals supported that separation. The validity or details of the purported order may be sorted out soon enough as could any potential charge for obstruction in the case of a truly fraudulent order or an “order” that was entirely misrepresented.

“Registration permitted

9.4 A Canadian civil protection order may be registered and enforced pursuant to Part II.

Comment:

No change has been made to this provision. This provision retains the ordinary procedure for the enforcement of a Canadian civil protection order in the same manner as any other Canadian judgment under the Act. It continues to apply exclusively to Canadian civil protection orders. Similarly, a foreign civil protection order may continue to be enforced in the same manner as any other foreign judgment under *The Uniform Enforcement of Foreign Judgments Act* (see proposed section 3.1 below).

“Immunity

9.5 No action or proceeding lies or shall be commenced against a law enforcement agency, including an employee or agent of a law enforcement agency, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the enforcement or supposed enforcement of a Canadian civil protection order or a foreign civil protection order or a purported Canadian civil protection order or a purported foreign civil protection order pursuant to this Part or the regulations made pursuant to this Act.

Comment:

The phrases “or a foreign civil protection order” and “or purported foreign protection order” are added to the existing liability protection for any law enforcement agency for good faith actions or omissions taken in furtherance of enforcement of a real or purported foreign civil protection order. This liability protection is intended to address in part the reluctance that a local law enforcement agency may have with respect to immediately enforcing an unfamiliar looking civil protection order from a foreign state. If it is well understood within the policing agency that there is no legal liability risk for good faith actions taken to protect a potentially endangered individual then professional police agencies can proceed to do take immediate steps to provide that protection. Education will be a key component of the implementation of this provision but it remains important to establish a strong legal foundation for police agencies to proceed from.

“Application of Part

9.6 This Part applies to a Canadian civil protection order or a foreign civil protection order:

(a) that is in force at the time this Part comes into force; or

(b) that is issued after this Part comes into force”.

Comment:

The phrase “or a foreign civil protection order” is added to section 9.6 to provide that this new part will apply to existing or future foreign civil protection orders that meet the definition in this Part. Given the intention of this Part to provide protection for individuals that a court of another jurisdiction has identified as requiring protection, there is no reason to restrict the application of this Part to future orders. This is the same approach that was taken with respect to Canadian civil protection orders.

Section 10 amended

4 The following clause is added after clause 10(b):

“(b.1) prescribing the foreign states for the purposes of section 9.1.

Comment:

Clause (b.1) is added to section 10 to provide regulation making authority to prescribe those foreign states whose judgments the enforcing jurisdiction will refuse to enforce under this new Part. No criteria for exercising this authority are set out in the Act as it is recognized to be a largely political issue driven by current events in a particular jurisdiction. Given the limited *in personam* subject matter of these orders, it is presumed that this power will be used sparingly. Unlike judgments for money or that deal with vested rights or the ownership of property, a foreign civil protection order most often merely requires one individual to stay away from another individual to avoid the risk of physical harm to one or the other. Traditional foreign judgment enforcement issues such as bias or fraud are of much less relevance or even import in this narrow protective context and may readily be addressed at a later date when the immediate risk of violence has been resolved in favour of enforcement.

Coming into force

5 This Act comes into force on [assent, proclamation, specific or future date].

Comment:

Coming into force.