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UNIFORM LAW CONFERENCE OF CANADA

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS AND DECREES ACT
INTERIM REPORT OF THE WORKING GROUP

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Introduction Remarks - Peter J. M. Lown Q.C.
Working group on the *Uniform Enforcement of Canadian Judgments and Decrees Act*

[1] After completion of the work on the *Uniform Court Jurisdiction and Proceedings Transfer Act,* which was approved at the 2021 annual meeting, the working group performed the necessary tidy up work for formal approval of the amended uniform act, ready for adoption and inclusion on the Conference website.

[2] Having completed the court jurisdiction work, the working group switched gears to begin consideration in January of this year to review the *Uniform Enforcement of Canadian Judgments and Decrees Act* and the additional measures that had been added to it. A total of 10 Meetings took place between mid January and the end of May.

[3] I am pleased to report that all members of the working group agreed to continue serving. The details of the membership are:

Stephen G.A. Pitel –Western University, Ontario ((Chair - Principal Researcher)
Peter J. M. Lown QC – Alberta (Co Chair)
Joost Blom QC – Univ of British Columbia
Bradley Albrecht – Gov't of Alberta
Frank Pignoli – Gov't of Ontario
John Lee – Gov't of Ontario
Blair Barbour - Gov't of Prince Edward Island
Darcy McGovern QC – Gov't of Saskatchewan
Laurence Bergeron - Gouv. du Québec
Michael Hall - Gov't of New Brunswick
Geneviève Saumier – McGill University, Québec
Clark Dalton – ULCC

[4] I want to thank all the members for their stamina in staying with the second part of two major projects. The discussions were engaged and perceptive and the policy decisions reached represented a thorough review of the issues.

[5] For Court Jurisdiction, Professor Blom set a high bar in terms of leadership, research and analysis. We were fortunate to engage Professor Stephen Pitel to assume the same role for this project and he did not disappoint. His grasp of the issues to create and articulate both the issues and the options was superb. The ability to make revisions to our working document in record time was impressive.

[6] The working group adopted a similar approach to Judgments as it did for Court Jurisdiction. The project is not starting from scratch. It is addressing issues that have arisen in the 30 years since the act was adopted. We did take a deeper look at some issues, to confirm that fundamental policy issues were still accurate and reliable. Finally, we paid more attention now to some of the procedural aspects that were a late addition to the act 30 years ago.

[7] This area of ULCC activity actually consists of four different pieces of legislation, some of which were grafted on to the original act. Through the helpful work of Clark Dalton, we were provided with an informal consolidation which we used as our working version throughout the meetings.

[8] The general approach was first to identify issues that have arisen either through litigation or professional or academic commentary. The list of the sixteen issues identified by the working group then became our working document as policy discussion, preferences and potential solutions were worked in. It is this "living document" that will form the basis for the presentation to the Conference.

[9] As we did with Court Jurisdiction, it is important to review whether the terminology of the French version is still appropriate 30 years on. That review will take place over the coming year so that we can confidently propose final revisions and commentary for adoption in 2023.

[10] It has been my pleasure to Co-Chair this working group, and in particular to work with Professor Pitel.

[11] The working group interim report follows, and we look forward to an informative discussion of these sixteen issues.

Uniform Enforcement of Canadian Judgments and Decrees Act

Interim Report of the Working Group

[1] The Working Group (WG) met ten times in the first half of 2022. It was provided with an informal consolidation of the *Uniform Enforcement of Canadian Judgments and Decrees Act* (UECJDA) and related materials. It identified and discussed several issues relating to whether changes are needed to the statute or the commentary. Those issues are set out below (numbered 1 through 16), in each instance followed by the WG's recommendation and a summary of its analysis.

1. Overarching aspects

[2] WG Recommendation: modernize the statute and the commentary to improve utility and ease of use.

[3] The UECJDA dates from 1998, though many aspects of it date from even earlier uniform statutes dealing only with money judgments. In the intervening years it has been amended four times and there is no official consolidated version as a uniform statute. In addition, the law on the recognition and enforcement of judgments has continued to evolve. As a result, some overall changes are seen as desirable by the WG.

[4] First, it would be ideal to prepare a consolidated version. As part of that process, some of the cross-references need to be changed, to keep pace with the various amendments that have been made.

[5] Second, several aspects of the commentaries need editorial revision and updating. As one example, the commentary could better explain the process contemplated for achieving the actual registration (use of a form attesting to the judgment's compliance with the statutory requirements).

[6] Third, the French version of the statute and commentary needs to be carefully reviewed to make sure that the most appropriate language is used.

2. Limits on the defendant's ability to challenge the rendering court's jurisdiction

[7] WG Recommendation: no change; affirm the current approach.

[8] A core feature of the UECJDA is that the defendant, in opposing registration, is precluded from arguing that the rendering court lacked jurisdiction over the dispute (see s 6(3)(a)). In practice this means that a defendant sued anywhere in Canada, if wanting to challenge jurisdiction, must appear where sued and advance that challenge. If the defendant does not, and judgment is granted, the defendant cannot raise the lack of jurisdiction in opposition to registration.

[9] The WG has considered whether to make any changes to this approach. In its discussions, it has identified three concerns. First, the approach contrasts with the common law approach (see *Chevron Corp. v Yaiguaje*, 2015 SCC 42 at para 23; *Lanfer v Eilers*, 2021 BCCA 241 at para 19) and the approach under the *Civil Code of Quebec*, SQ 1991, c 64, art 3155(1) (see *Barer v Knight Brothers LLC*, 2019 SCC 13 at para 33) under which the plaintiff must establish the required jurisdiction of the rendering court, which accordingly allows the defendant scope to argue in response that the rendering court did not have jurisdiction. The defendant can do this whether or not jurisdiction was challenged in the rendering court. This approach applies equally to international and inter-provincial judgments. The common law approach has remained consistent since the development of the UECJDA. Some provincial registration schemes explicitly preserve this aspect of the common law: see *Reciprocal Enforcement of Judgments Act*, RSO 1990, c R.5, s 3(a).

[10] Second, some commentators have argued that the UECJDA approach is unfair to defendants. Historically a defendant who was confident that a foreign default judgment would not be found enforceable in the place where the defendant had assets could choose not to raise jurisdictional objections in that foreign court and instead object to recognition. This meant that the plaintiff could not force such a defendant to take any steps at all in the place where the plaintiff started the litigation. A plaintiff's choice to sue in what the defendant was confident was a legally invalid forum could not force the defendant to take any steps there.

[11] Third, the UECJDA approach provides no express protection to certain types of defendants such as consumers or employees sued outside their place of transacting or employment. For an example of protections for such defendants see *Canadian Judgments Act*, SNB 2011, c 123, s 6(2).

[12] After extensive consideration, the WG is confident that these concerns do not warrant a change to the UECJDA approach. In its view, the arguments for the UECJDA approach are considerably stronger than the arguments against it.

[13] First, the difference from the alternative approach was deliberate and intended when the UECJDA was created. The fact that the common law has itself not subsequently evolved to a position closer to that in the UECJDA does not undermine the choice that was made. In provinces and territories that have adopted the UECJDA, the effect of s 6(3)(a) has arguably been to remove a common law defence to enforcement to which a defendant would otherwise be entitled, since a plaintiff choosing to use the scheme thereby precludes the defendant from objecting to the rendering court's jurisdiction. Nevertheless, the WG has not identified any judicial decisions in which that change has been criticized.

[14] Second, the appeal to fairness is based on an outdated notion of what can reasonably be required of a defendant sued within a federation. The UECJDA approach is based on the principle that a defendant should not be entitled to ignore a judicial proceeding within the federation. It is wrong in principle to allow a Canadian defendant validly to choose to ignore having been sued in any Canadian court. In the federal context, this is a relatively small step from the traditional position that a defendant cannot ignore proceedings within the defendant's

own jurisdiction, especially in light of the large size of several Canadian provinces and territories. It is also consistent with the parallel system of federal courts that have a national reach.

[15] It is important to appreciate that the UECJDA approach is not a codification of *Morguard Investments Ltd. v De Savoye*, [1990] 3 SCR 1077. Rather, it is consistent with the spirit of that decision, including the notion that the approach to recognition and enforcement of judgments within a federal system need not be based on the principles previously adopted from English law for truly foreign judgments. One of the core legacies of *Morguard* is a high degree of constitutionally-mandated consistency across provinces and territories as to the circumstances in which their courts will take jurisdiction over a dispute, whether under common law, the *Court Jurisdiction and Proceedings Transfer Act* (CJPTA) or the *Civil Code of Quebec*. This is not to say that all provinces and territories have the same rules for taking jurisdiction. There are variations under which one province or territory would take jurisdiction when others would not (see for example *Civil Code of Quebec*, art 3149; *Geophysical Service Inc v Arcis Seismic Solutions Corp*, 2015 ABQB 88 at para 42; *Canadian Pacific Railway Company v Hatch Corporation*, 2019 ABQB 392 at para 75). But it is still reasonable to expect a defendant to raise objections to a court's jurisdiction, including potentially the unconstitutionality of a particular basis for jurisdiction, before that court. The nature of those objections will be familiar to the defendant, since they would be guided by the same principles guiding such objections in the defendant's home province or territory. The exercise is therefore quite different from raising jurisdictional objections in a truly foreign court.

[16] Moreover, in the decades since the UECJDA approach was adopted, several developments have made it easier than ever before to respond to proceedings elsewhere in Canada. Interprovincial mobility of lawyer services means that more steps can be taken by a local lawyer. Modern technology means that more information is available through the Internet about how to retain counsel elsewhere. As a practical matter, the case for the UECJDA approach is stronger, not weaker, in the twenty-first century.

[17] In response to the arguments based on fairness, the WG has not identified examples of cases in which courts (or others) have considered it unfair that a defendant had to appear, at least for the purposes of raising jurisdictional issues, in another Canadian court. It is difficult to identify acceptable reasons for failing to appear beyond those that would, in any event, allow the defendant to seek to set aside or re-open the resulting judgment in the court which rendered it (such as a lack of notice of the proceedings or a situational inability to respond). More than two decades of experience with the UECJDA approach has not spawned problematic examples.

[18] There is another objection to the concerns about fairness. The relatively broad bases on which provinces and territories can assume jurisdiction – under s 10 of the CJPTA, the presumptive connecting factors at common law or the provisions of the *Civil Code of Quebec* – make it unlikely that there would be many cases in which a defendant sued in another province or territory would choose not to appear and then rely on lack of jurisdiction to oppose registration. Doing so would be abandoning possible defences to the merits of the claim, which would not generally be sound strategy. It would also require waiving the ability to seek a discretionary stay of proceedings in favour of another forum. A case in which a defendant would

want to refrain from appearing in another Canadian court, yet feel compelled to do so only because of the UECJDA, is a rare one.

[19] Third, providing special treatment for certain types of defendants such as employees or consumers raises its own problems including a lack of uniformity and consistency of approach and potential definitional issues as to the scope of any exceptions. Moreover, it should be noted that while some disputes do involve clear cases of imbalance between the plaintiff and the defendant, with the defendant in a clearly weaker position, the vast majority of these would not be assisted by changing the approach to addressing the court's jurisdiction. This is because in those cases, the court chosen by the plaintiff will have jurisdiction.

[20] There is also a concern that allowing judgment debtors to dispute the jurisdiction of the rendering court under the registration process increases the overall cost to the parties to civil proceedings. This undermines one of the advantages of the registration process over a common law action on the judgment: its economic efficiency.

3. The role of jurisdiction agreements and limits on subject-matter jurisdiction

[21] WG Recommendation: no change; affirm the current approach.

[22] The CJPTA was recently amended to address jurisdiction agreements and certain limits on subject-matter jurisdiction (see ss 11 and 12.2). The WG considered whether any changes are needed to the UECJDA to parallel those changes.

[23] One possible change is to provide that a judgment rendered in breach of an exclusive jurisdiction agreement (either in favour of the forum of registration or some other forum) cannot be registered. Another possible change is to provide that a judgment rendered in violation of the limits on subject-matter jurisdiction in the *Mocambique* line of authorities cannot be registered if the immovable property in issue is located in the forum of registration.

[24] However, the WG considers that these are additional types of challenge to the jurisdiction of the rendering court that are properly already caught by ss 6(3)(a)(i) and (ii) of the UECJDA. Like a more typical challenge to the court's jurisdiction, the scheme of the statute expects the defendant to raise each of these issues (a jurisdiction agreement or the issue of foreign immovable property) in the court in which it is sued and the failure to do so prevents later doing so in response to registration.

4. Application to registrations or judgments enforcing judgments

[25] WG Recommendation: amend the UECJDA to exclude judgments recognizing a foreign judgment.

[26] One of the few issues of the interpretation of the UECJDA that has arisen in the jurisprudence is the extent to which it applies to either (i) judgments that have been registered in another province or territory or (ii) court decisions of another province or territory recognizing a

foreign judgment. Each of these can be distinguished from what might be called a "merits judgment" which would be the decision that originally pronounced on the defendant's obligations to the plaintiff.

[27] In *Solehdin v Stern*, 2014 BCCA 482 the plaintiff obtained a Louisiana judgment and then sued (at common law) in Ontario to have that judgment recognized and enforced. This claim was successful. The plaintiff then registered the Ontario judgment (not the Louisiana one) in British Columbia. Following the defendant's objection, the Court of Appeal held the judgment was a "Canadian judgment" under the statute and so properly registered. The court distinguished *Owen v Rocketinfo, Inc.*, 2008 BCCA 502 in which a Nevada judgment was registered in California and then registration of the California judgment was sought in British Columbia. In that case the court found this was outside the statutory scheme. In *Solehdin*, giving effect to the Ontario decision was seen by the court as consistent with *Morguard* (para 28).

[28] Justice Côté drew a distinction between registrations and decisions to recognize in a separate solo concurrence in *H.M.B. Holdings Ltd. v Antigua and Barbuda*, 2021 SCC 44 at paras 60-63. However, concerns have been expressed about the bases on which she did so. For example, she differentiated between a court process involving judicial scrutiny and a registration scheme. But the scheme allows a defendant to oppose registration through a process of judicial scrutiny, considerably reducing the degree of difference between the approaches. In *H.M.B.* the majority (at para 25) suggested that *obiter* comments that a recognition decision could be registered in another province or territory in *Chevron Corp. v Yaiguaje*, 2015 SCC 42 might not accurately reflect the law. However, it expressly refused to decide the issue.

[29] There is no compelling case that registrations should be registerable elsewhere. Allowing this would allow one province or territory to in effect require other provinces and territories to give effect to any judgments, including those from outside Canada, it chooses to register. Recognition and enforcement decisions raise similar concerns, because the legal test for which judgments from outside Canada will be recognized is a matter for a particular province or territory. Crucially, that legal test is not subject to the same constitutional scrutiny (in accordance with *Morguard*) as is the law on the recognition of Canadian judgments.

[30] Accordingly, the definition of a Canadian judgment should be amended to remove from its scope a judgment that recognizes a judgment from outside the enacting province or territory.

5. Procedural elements: notice, time limit, limitations period

[31] WG Recommendation: amend s 5(1) to make the language clearer and broader, addressing the prospect that a province or territory might not have a limitation period on a domestic judgment's enforceability.

[32] Some registration schemes stipulate that the plaintiff, in some or all cases, must notify the defendant of the registration. The UECJDA addresses this in limited circumstances in s 6(4)(b). The WG noted that in cases in which the defendant is not currently notified of the registration, it is subsequently notified under various local execution processes such as seizure and sale or

garnishment. There does not appear to be a need for separate and uniform notice of the registration itself, a step which would impose additional time and expense on the plaintiff.

[33] Some registration schemes impose a time limit by which the defendant must raise any objections to the registration. However, the bases for objection under the UECJDA are very limited. Of these, the only ones that are open-ended as to time are ss 6(2)(c)(i) and (iv) and given their content they should continue to be open-ended. There does not appear to be any prejudice to the plaintiff, in terms of the ability to rely on the conclusiveness of the registration, due to the absence of a specific time limit for raising objections.

[34] On limitation periods, s 5(1) presumes that both the place where the judgment was made and the place where it is registered have a limitation period for the enforcement of a domestic judgment. This might not be the case: see for example *Limitations Act, 2002*, SO 2002, c 24, Sched B, s 16(1)(b). The section could therefore be amended to address this possibility. The WG also considers that s 5(1)(b) could be drafted more clearly without the need to stipulate, by each province or territory, the limitation period in question. The WG also considers that the provision is properly aimed at limitation on enforcement rather than on registration itself, such that reference to registration is better omitted.

[35] A possible provision:

> 5(1) A Canadian judgment that requires a person to pay money must not be enforced under this Act (a) after the expiry of any time limit for its enforcement in the province or territory where the judgment was made; or (b) after the expiry of any time limit for enforcement in [enacting province or territory] that would apply if the judgment had been made there on the date that it became enforceable in the province or territory where it was made.

6. The requirement of a final judgment

[36] WG Recommendation: amend the commentary to provide a clearer indication of what the statute means by a "final" judgment in s 2(1) and s 2(2).

[37] The WG has noted that the statute does not expressly define what is meant by a "final" judgment and that the commentary to s 2 does not directly address its meaning (though there is indirect discussion). Given that the term has a distinct and well-developed meaning in the conflict of laws (see *Nouvion v Freeman* (1889), 15 App Cas 1 (HL); *Four Embarcadero Venture Center v Mr Greenjeans Corp* (1988), 64 OR (2d) 746 (HCJ)), there is little benefit to providing a definition in the statute itself. Instead, it would be instructive to have some explanation in the commentary.

[38] Possible language for the commentary:

> As a general notion, a judgment is final if it is not subject to revision by the court that rendered it. A judgment is final even though the period for an appeal has yet to expire or an appeal has been commenced.

7. Setting aside registration

[39] WG Recommendation: amend s 6 to provide a clear process for setting aside a registration.

[40] The scheme of the UECJDA does not provide a clear basis for a defendant to ask the court to set aside a registration of a judgment. This is a separate issue from the enforcement of the judgment. In some cases, especially those involving non-monetary orders, a defendant might not want the judgment to remain registered even if no steps are taken to enforce it.

[41] Under the current wording, recourse to the court is through s 6. However, s 6(1) expressly provides for seeking directions "respecting its enforcement". This raises the conceptual possibility that a court could read the provision as inapplicable to issues relating to the registration of the judgment.

[42] The WG considers that s 6 should be amended to provide a clear process for seeking to set aside a registration. One instance where this could be sought is in a case in which the judgment does not, in fact, meet the required conditions for registration. Another instance is a case in which a judgment is registered but subsequently is overturned in the province or territory in which it was made.

8. Seeking directions

[43] WG Recommendations: no change.

[44] Section 6 enables a "party to the proceedings in which a registered Canadian judgment was made" to seek directions in respect of the registered judgment. The WG discussed whether this should be broadened to allow "interested parties" to the judgment and its enforcement to seek directions. The example posited was a sheriff or other quasi-judicial official involved with the enforcement of the registered judgment.

[45] While the WG recognized the importance of a sheriff being able to obtain directions in an appropriate case, it considers that this would and should occur under the general law on the execution of judgments in the province or territory and not pursuant to s 6. Section 6 is intentionally limited to the parties to the judgment that has been registered and is a process to address issues arising between them.

9. The role of public policy

[46] WG Recommendation: no change to the statute; add discussion in the commentary.

[47] At common law, a defendant can resist enforcement on the basis that it is contrary to the forum's public policy. The UECJDA preserves this right in s 6(1)(c)(iv). The WG has considered this provision and determined that it should be retained.

[48] Schemes for the registration of judgments typically preserve a public policy exclusion, intended to be narrowly interpreted, and it would accordingly be unusual to remove it. It is a fundamental aspect of a province or territory's sovereignty to reserve to itself the ultimate decision to refuse enforcement on public policy grounds. Moreover, there is no evidence in the jurisprudence of defendants unduly raising public policy to resist registration. The existence of this provision has not caused difficulties.

[49] The WG has noted that the statute does not explain what is meant by "public policy" and does not indicate its intended narrow scope. Because the term has a distinct and well-developed meaning in the conflict of laws, there is little benefit to attempting to provide a definition in the statute itself. But it would be instructive to have some explanation in the commentary.

[50] Possible language for the commentary:

> As noted in *Beals v Saldanha*, [2003] 3 SCR 416 at para 72, public policy would prohibit registration of a judgment "that is founded on a law contrary to the fundamental morality of the Canadian legal system". The defence is narrow, especially as between the constituent parts of a federation. The existence of a difference between the policy choices reflected in the law applied by the rendering court and those that prevail in the province or territory of registration is not enough.

10. Civil protection orders

[51] WG Recommendation: await direction as to whether to consider revisions to the schemes for Canadian and foreign civil protection orders, including whether those schemes should remain a part of the UECJDA.

[52] The initial version of the UECJDA did not address Canadian or foreign civil protection orders. Provisions on the former were added in 2005 and on the latter in 2011. The scheme for Canadian civil protection orders has been adopted, in some cases in a modified form, by British Columbia, Manitoba, Nova Scotia, Prince Edward Island and Saskatchewan. The scheme for foreign civil protection orders has only been adopted by Saskatchewan.

[53] The WG has identified, as a possible issue, whether civil protection orders are best included within the UECJDA or addressed in a separate statute. It is not unreasonable to choose to include them in the UECJDA and indeed doing so could be considered an important and desirable feature of the statute. On the other hand, a separate statute could provide a greater focus on the specific issues such orders raise. In addition, because the UECJDA does not otherwise deal with orders from outside Canada, it could be thought that a scheme addressing foreign civil protection orders better fits with the *Uniform Enforcement of Foreign Judgments Act* than with the UECJDA. The WG was advised that a possible consideration in whether to alter the legislative setting for foreign civil protection orders is that some American states have enacted legislation mirroring Part III of the UECJDA for the registration of Canadian civil protection orders.

[54] Without guidance on this issue, the WG has thus far chosen not to address the provisions in the UECJDA about Canadian and foreign civil protection orders.

[55] If, in future, the WG is directed to address civil protection orders, it should consider whether to involve additional members with the necessary subject-matter expertise.

11. Restitution orders

[56] WG Recommendation: revise the commentary to explain that restitution orders are not covered by the UECJDA but rather by s 741(1) of the *Criminal Code*, RSC 1985, c C-46.

[57] The commentary to the definitions states that a restitution order in a criminal proceeding is covered because it is "enforceable as [a] civil judgment". But it nonetheless has not been made in a "civil proceeding" which is a requirement for a "Canadian judgment". So, the 2004 amendments appear to have had the effect of removing restitution orders from the scope of the statute. In any event, the enforcement of restitution orders across Canada is addressed by s 741(1) of the *Criminal Code*, RSC 1985, c C-46.

12. Interest

[58] WG Recommendation: change s 7 to provide that the applicable rate of post-judgment interest is to be the same as was accruing where the judgment as rendered.

[59] The provisions about interest (s 7) are not easy to understand. Section 7(1) makes clear that interest does continue to run after registration. But it provides that interest "is payable as if" the registered judgment was a local order, suggesting that the local rate of interest is to be used from that time.

[60] This interpretation is furthered in s 7(2) which limits its reference to interest that has accrued under the law of the place of the judgment only up to "that date" (the date of registration). Overall, the approach is that for post-registration interest, the rate is the default rate that would be applied to a local judgment granted on the date of the registration. But there are other possibilities. One would be to use a particular rate specified in the judgment itself, if any. Another would be to use the default post-judgment interest rate applicable to the judgment in the province or territory in which it was made.

[61] To the extent that the judgment expressly provides a rate for post-judgment interest, that rate should be used. It should not be overridden by a default rate in the place of registration.

[62] In the absence of a rate in the judgment, one argument for the default rate of the place of registration is that local officials will be easily familiar with that rate whereas some additional steps would be required to determine the rate from the place of judgment. However, those steps would need to be taken in any case to determine the interest that has accrued since the judgment was rendered. The same jurisdiction's rate, identified by the enforcing party, would then be used post-registration.

[63] The WG considers that it would be more consistent with the overall approach to judgment enforcement to apply an expressly specified rate or, if none, the default post-judgment interest rate applicable to the judgment in the province or territory in which it was made. One additional benefit of this approach is that it ensures that the rendered judgment would be considered fully satisfied in the place where it was made (no additional amount of post-judgment interest, accruing to the time of payment, would remain outstanding). This approach is already used in some provinces: see Ontario's *Courts of Justice Act*, RSO 1990, c C.43, s 129(3).

[64] A possible revised provision is:

> 7. To the extent that a registered Canadian judgment requires a person to pay money, interest is payable on that judgment from the date of registration in accordance with the terms of the judgment and the law applicable to the calculation of interest thereon in the province or territory in which it was made.

13. Interaction with other statutes and common law

[65] WG Recommendation: (1) amend s 9 to make clear the continued ability to sue on the judgment at common law, and (2) revise the commentary to indicate that enacting jurisdictions should consider consequential amendments to other statutes necessary to avoid multiple possible processes for registration of Canadian judgments.

[66] The UECJDA was expressly proposed as an additional means for plaintiffs to enforce judgments. It does not preclude a common law action to recognize and enforce the foreign judgment. It also does not repeal any provisions of earlier statutes under which the same judgments might be registered (such as the Reciprocal Enforcement of Judgments Act, to the extent it applies to Canadian judgments).

[67] However, s 9 only preserves the ability to sue "on the original cause of action". It does not address the ability to sue at common law on the judgment. In addition, preserving any of these rights could be inconsistent with the registration. The registration makes the judgment as if it were one of the enforcing province or territory (s. 4) which could create an estoppel against either a claim on the original cause of action or on the judgment.

[68] As a result, s 9 likely requires amendment for greater clarity. A possible revised provision is:

> 9. Nothing in this Act deprives any enforcing party of the right to bring an action to recognize or enforce a Canadian judgment instead of proceeding under this Act.

[69] The WG has also considered whether to move to a single, exclusive method for recognition and enforcement of Canadian judgments. The WG considers it important to retain the common law action on a foreign judgment as an alternative process. Precluding this avenue is not consistent with the goal of improving the recognition and enforcement of foreign judgments. It is possible that a plaintiff might choose to resort to the common law action rather than use the registration scheme, and that option should remain available. The WG is not aware

of any difficulties that have been created since provinces and territories have adopted the UECJDA by the ongoing availability of a parallel process under the common law.

[70] However, the WG is concerned about having two or more parallel statutory registration processes for the same judgments. To the extent that a province or territory adopts the UECJDA, it should amend any other registration statutes (such as reciprocal enforcement of judgments legislation) to exclude judgments covered by the UECJDA. There is no merit to having multiple statutory registration processes for the same judgments and doing so risks confusion for plaintiffs. For example, different processes could have different time limits for the registration.

14. Transition

[71] WG Recommendation: delete s 17(c) as unnecessary.

[72] Section 17(c) purports to treat a "Canadian tax judgment" separately from a "Canadian judgment". However, a "Canadian judgment" is defined (s 1) to include a "Canadian tax judgment".

[73] The separate treatment in s 17(c) for Canadian tax judgments made sense, as a transition in 2007, when the UECJDA was amended to include these judgments. But as an integrated statute there is no need for the separate treatment. A province or territory enacting the UECJDA as a new statute would only need ss 17(a) and (b). Under s 17(b), default Canadian tax judgments made in proceedings commenced before the statute came into force would, like other default Canadian judgments, not be covered by the statute.

15. Effectiveness in handling non-monetary orders

[74] WG Recommendation: no change; affirm the current approach.

[75] While courts are reasonably familiar with giving effect to foreign monetary orders, cases involving foreign non-monetary orders are less common and raise additional issues. Accordingly, the WG specifically questioned whether any particular issues have arisen with respect to how non-monetary orders have been handled under the UECJDA. Primarily based on the jurisprudence, not only under the UECJDA but also dealing with enforcing non-monetary orders at common law, no issues were identified that would warrant a change. To the extent issues might arise, the scheme in ss 6(2)(a) and (b) allowing for local directions respecting enforcement of the foreign judgment can assist the parties.

16. Scope of judgments: tribunals

[76] WG Recommendation: no change.

[77] The WG discussed the variety of tribunals operating across Canada and the different monetary orders they can make. The scheme of the UECJDA is to treat monetary orders by tribunals in a manner similar to monetary orders by courts, which means that the defendant cannot challenge the tribunal's jurisdiction to make the order in the forum of registration. This

has been the approach under the statute and the WG did not identify compelling reasons for a change in this approach.