ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT
FINAL REPORT OF THE WORKING GROUP

Presented
by
Stephen G.A. Pitel
Professor, Faculty of Law, Western University

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have not been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Minutes and the Resolutions on this topic as adopted by the Conference at the Annual meeting.

Charlottetown, Prince Edward Island
August 2023

Uniform Enforcement of Canadian Judgments Act

Final 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 and related materials. It identified and discussed several issues relating to whether changes are needed to the statute or the commentary. Those 16 issues were set out in the Interim Report of the Working Group, in each instance followed by the WG's recommendation and a summary of its analysis. The Interim Report is attached as Appendix A.

[2] In August 2022 the Interim Report was presented to the ULCC and its recommendations were accepted. While in subsequent discussions the WG occasionally revisited some of those 16 issues, it did not change its analysis or recommendations. The Interim Report should therefore be seen as an integral part of this Final Report.

[3] The WG met four times in the fall of 2022 and twice in early 2023. It discussed the additional issues set out below. It developed the revised uniform statute in accordance with the Interim Report, the suggestions offered during the presentation of the Interim Report to the ULCC, and these additional discussions.

17. The title of the statute

[4] WG Recommendation: rename the statute as the Uniform Enforcement of Canadian Judgments Act (UECJA).

[5] The title was originally established at a time when non-monetary orders (decrees) were treated differently from monetary orders for purposes of recognition and enforcement. Decrees were expressly included in the title to emphasize that the registration scheme applied to both. It is now better understood that while judgments and orders are different things, decrees are a subset of each (either non-monetary judgments or non-monetary orders). There is no need for express mention of decrees in the title (just as the title also does not expressly mention orders).

18. Creation of a new defence to registration

[6] WG Recommendation: add an optional defence to protect consumers and employees.

[7] Late in the WG's discussions in the spring of 2022 it was suggested that the WG should consider whether there should be a defence to registration if the judgment is against a consumer or employee made outside their home forum (typically defined as their place of residence).

[8] A defence of this nature can be found in the *Canadian Judgments Act*, SNB 2011, c 123, s 6(2). There are also relevant provisions in the *Civil Code of Quebec* and under European Union law. However, no such defence is available, under statute or at common law, in any other common law province.

[9] If such a defence should be created, there are issues as to its scope. One issue is the location of the relevant events. The defence in the New Brunswick statute only applies to consumer goods

or services supplied in New Brunswick and to employment performed in New Brunswick. A second issue is whether such a defence should apply despite an exclusive jurisdiction agreement in favour of the rendering forum. A third issue is whether such a defence would only apply in the absence of the defendant's participation in the proceedings. A fourth issue is whether employees and consumers should have the benefit of a wide defence (the judgment simply cannot be registered) or a more narrow defence (the employee or consumer is allowed to ask the enforcing court to assess the rendering court's jurisdiction and the judgment can be registered if it finds that it had jurisdiction).

[10] This defence arguably is not inconsistent with the core ideas behind the general preclusion of review of the rendering court's jurisdiction. The rendering court's decision as to its jurisdiction is not being somehow questioned by the enforcing jurisdiction. Rather, this is an exception to the basic requirement that a defendant is expected to raise jurisdictional issues where sued. That requirement may be unrealistic for vulnerable parties like employees and consumers. And it may make more sense to provide such parties with a wide defence than to require them to assess, in a given case, whether the court in which they are sued will end up being found to have jurisdiction such that they should have defended there. The essence of the defence would be that given their inability to defend elsewhere, no such judgment can be enforced against them.

[11] There are arguments that such a defence should not be created. First, while there is no available data, it would appear that there are few cases in which the court of a province or territory has taken jurisdiction in circumstances which would be caught by the defence. The defence, in other words, may be responding to an isolated concern. Second, it may be preferable to have these cases addressed on a more nuanced basis under the existing public policy defence. It would allow courts, on a case-by-case basis, to consider whether to reject enforcement against a consumer or employee and would obviate the need to draft potentially detailed provisions for a separate defence.

[12] Ultimately whether a jurisdiction should have a defence of this nature is very much a policy question. As a result, the WG did not consider it appropriate to take a firm view one way or the other. It instead elected to draft an optional defence. A jurisdiction adopting the statute would need to determine whether or not to provide this protection.

[13] The development of this optional defence led to some additional discussion in the WG about the decision to have the registration scheme operate alongside the common law action to enforce a judgment rather than replace the common law and serve as a complete code. The WG confirmed that decision. As a consequence, the commentary to the optional defence expressly notes that if similar protection for employees and consumers is also desired in the context of the common law action, additional statutory provisions would need to be drafted to modify the common law in that respect.

19. Recovery of registration costs

[14] WG Recommendation: delete s 8(b) making specific reference to costs as taxed, assessed or allowed.

[15] The WG considered the language in s 8(b) both somewhat dated and imprecise. To the extent that this language addresses the costs of judgment execution, this should not be included here as this provision deals specifically with the costs of the registration process only. To the extent that it is limited to those costs as taxed, assessed or allowed, this seems unnecessarily specific beyond the general provision for such costs "reasonably incurred". It describes ways in which it might be determined what costs are reasonable.

20. Clarify language in some provisions

[16] WG Recommendation: make minor revisions to improve the clarity of some provisions.

[17] The WG identified aspects of some provisions that it though could be made clearer through small changes. For example, s 6(4)(b) refers to a judgment obtained "ex parte without notice". This is repetitive; "ex parte" has been deleted. Section 6(3)(a)(i) refers to "principles" of private international law. The reference to "principles" is imprecise; this has been changed to "the private international law of [enacting province or territory]".

21. Expressly mention the relationship to the UCJPTA

[18] WG Recommendation: no change; no need for such a mention.

[19] The WG debated the extent to which the UECJA should explain, in the commentary, the relationship between it and the UCJPTA. The WG concluded that while the two statutes both concern private international law, they address different issues: the UCJPTA deals with the taking of jurisdiction while the UECJA deals with the recognition of Canadian judgments. Each statute needs to operate without reference to the other, as it is possible that a jurisdiction might not adopt both statutes. Neither is contingent on the other. Given this, the WG did not consider it necessary or beneficial to explain this expressly in the commentary.

22. Revisions to the commentary to Part III

[20] WG Recommendation: update the commentary to Part III (which deals with civil protection orders).

[21] While the WG had decided not to review Part III (see issue 10 in the Interim Report) it subsequently determined that some minor changes had to be made to the commentary rather than the statutory provisions. Several of these changes resulted from the fact that Part III was added to the statute in 2005 and amended in 2011 and the commentary included specific discussion of the evolution of the provisions. The current consolidation of the statute makes much of that commentary unnecessary. In addition, some changes to the commentary were made to clarify aspects of the operation of Part III.

[22] The ULCC Working Group consists of:

Stephen G.A. Pitel –Western University, Ontario (Chair - Principal Researcher)
Peter J. M. Lown, K.C. – Alberta (Co Chair)
Joost Blom, K.C. – University of British Columbia
Bradley Albrecht – Government of Alberta
Blair Barbour - Government of Prince Edward Island
Darcy McGovern, K.C. – Government of Saskatchewan
Laurence Bergeron - Gouvernement du Québec
Michael Hall - Government of New Brunswick
Geneviève Saumier – McGill University, Québec
Clark Dalton, K.C. – ULCC (until February 15, 2023)