



INTERNATIONAL DISPUTE RESOLUTION SPECIALTY GROUP

CANADA – PROVINCE OF ONTARIO

QUESTIONNAIRE

The aim of this questionnaire is to provide a framework for each country representative to describe the process, procedure and any other relevant issues, involved in enforcing a foreign judgment in that country. The questionnaire deals with both enforcement of judgments and arbitral awards.

In the event that there are further issues not covered by the questions below that should be considered by a party attempting to enforce a foreign judgment in a particular country, please include an appropriate question and answer, which deals with this issue.

INTRODUCTION

Canada is a Federal state comprised of 13 separate legal jurisdictions – 10 provinces and 3 territories. Every jurisdiction, except for the province of Quebec, has adopted the English Common Law System. Quebec has retained a civil law system based upon a Civil Code. The responses below are relevant to the province of Ontario, and other common law provinces and territory, as well as the province of Quebec, except where specifically noted.

PART I: ENFORCEMENT OF FOREIGN JUDGMENT

Enforcement

1. What procedures exist for recognition and enforcement of foreign judgments pursuant to conventions?

Many Canadian provinces, including Ontario, provide a statutory mechanism for the enforcement of judgments originating out of the United Kingdom under reciprocal enforcement of judgments legislation. The legislation incorporates the convention between Canada and the United Kingdom providing for reciprocal recognition and enforcement of judgments in civil and commercial matters. Under the legislation, a party may apply to the court for registration of a judgment granted by a United Kingdom court. If registered, the judgment may be enforced as if it had been obtained in Canada.

2. What procedures exist for recognition and enforcement of foreign judgments pursuant to statute or common law?

The provinces of New Brunswick and Saskatchewan have enacted uniform legislation providing for the recognition of foreign money judgments. The legislation codifies all the common law defences available in an action on a foreign judgment. However, before a judgment creditor may avail itself of the provisions of the legislation, the enforcing province must, by executive order, have declared the jurisdiction in which the foreign judgment was obtained to be a reciprocating jurisdiction. Reciprocity on the international level is the basis for the application of the legislation. The Canadian province

must be satisfied that the reciprocal provisions exist in the foreign jurisdiction for the enforcement of judgments obtained in Canada.

At common law, Canadian courts will recognize and enforce a foreign judgment if:

- (a) the foreign court had competent territorial jurisdiction;
- (b) the judgment is for a definite and ascertained sum of money; and
- (c) the judgment is final and conclusive.

For a Canadian court to enforce a foreign judgment, the judgment must be final and *res judicata* in the foreign jurisdiction. This occurs when the judgment of the foreign court is final in the sense that the foreign court that made it no longer has the power to rescind or vary it. In addition, the foreign judgment must be conclusive in the sense that it is one that may not at common law be impeached in an action to enforce it in Canada. Canadian courts will recognize a foreign judgment provided that there is a real and substantial connection between the subject matter of the action or the damages suffered by the plaintiff and the jurisdiction rendering the judgment. That is so even if the defendant does not atorn to the jurisdiction of the foreign court or is not otherwise within the court's jurisdiction.

3. Are there any practical problems or special time factors that a party seeking to enforce a foreign judgment should bear in mind?

The basis of recognition of a foreign judgment is that the judgment creates a new right in the plaintiff and an obligation by the defendant to obey it and pay the amount awarded. It is the role of the Canadian court to enforce the right and duty created rather than to enforce the judgment itself. The defendant's liability is a simple contract debt which arises from an implied promise to pay the foreign judgment. The plaintiff has the option of suing on the foreign judgment or on the original cause of action.

4. Are there any public policy or other issues which may affect enforceability?

A foreign judgment made by a foreign court may be impeached in Canada on the following narrow grounds:

- (a) the foreign court did not have jurisdiction over the subject matter or the parties;
- (b) there was a lack of identify between the defendant in the Canadian action and the defendant in the foreign action;
- (c) the foreign judgment was procured by fraud on the foreign court;
- (d) there was a failure of natural justice in respect of the procedure by which the foreign judgment was reached; or
- (e) enforcement of the judgment would be contrary to public policy in Canada.

Limitation Issues

5. What are the time limits for bringing civil claims?

The basic limitation period in all provinces is two years from the date that the party knew or it discovered or ought to have known that it had a right to a remedy. Most provinces also have an ultimate limitation period ranging from 15 (Ontario, Alberta, British Columbia) – 30 (Newfoundland) years commencing from the date of the act or omission that gives rise to the claim.

Confidentiality

6. Are court proceedings confidential or public?

Court proceedings in Canada are public unless a party obtains an order from the judge sealing the record.

Starting proceedings

7. How are civil proceedings commenced?

Generally a party commences an action by serving an originating claim on a defendant. The claim will outline the material facts and allegations which support the relief sought by the plaintiff.

In most jurisdictions in Canada a second option exists to commence a lawsuit. In certain circumstances the parties may choose to commence proceedings by way of an application (also known as an originating motion).

Proceeding by way of application has the advantage of being a simpler and more focused procedure and the decision can often be obtained much more quickly. However, applications may generally only be used where a statute or rules of civil procedure allows or in matters where there are likely to be no material facts in dispute.

Interim remedies

8. What interim remedies are available?

Under Canadian law, a party to a legal proceeding is entitled to seek a broad range of interim pretrial relief which are largely designed to protect its legitimate interests pending the ultimate disposition of the case. These remedies include:

- (a) interlocutory injunctions;
- (b) Mareva injunctions;
- (c) Anton Piller injunctions;
- (d) orders for interim recovery of personal property; and
- (e) security for a party's legal costs.

Inter parties costs

9. Does the court have power to order costs or to order security for costs?

The general rule is that a successful litigant is entitled to reimbursement of a portion of its legal costs. At the conclusion of a proceeding the court may make a determination as to the costs of the proceeding, which party should bear the cost and to what extent. The normal approach is that the successful party is entitled to its legal costs on a partial indemnity scale, which is running roughly one half to two thirds of its legal costs.

Where prior to beginning the litigation, the defendant has a reasonable apprehension that its legal costs will not be paid for by the plaintiff if the defendant is successful, the defendant can apply to the court

for an order that the plaintiff provide security for costs. Circumstances where security for costs will be ordered include where:

- (a) plaintiff is ordinarily resident outside the jurisdiction;
- (b) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff has insufficient assets in the jurisdiction to pay the costs of the defendant;
- (c) the plaintiff has another proceeding for the same relief pending in any jurisdiction

Jurisdiction

10. If a contract has some connection with your jurisdiction, are there mandatory laws under the local law that would apply to the contract irrespective of the parties choice of law in the contract?

No.

PART II: ENFORCEMENT OF ARBITRAL AWARDS

Enforcement

11. What procedures exist for enforcement of foreign awards?

Under the UNCITRAL Model Law, an arbitration award may be enforced by a Canadian court irrespective of the country in which the award was made. The court is required to enforce the award unless the defendant can bring itself within one of the exceptions contained in the Model Law.

Conventions

12. Is your country party to the New York Convention, Washington Convention and/or Geneva Convention?

Canada is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

UNCITRAL Model Law

13. Is the arbitration law based on the UNCITRAL Model Law?

With the exception of Quebec, international commercial arbitration in Canada is based on the Model Law. In Quebec the general provisions of the Civil Code and the Code of Civil Procedure deal with arbitration agreements and proceedings pertaining to domestic, foreign and international commercial arbitrations. However, when matters of extraprovincial and international trade are at issue, the interpretation of the Code of Civil Procedure is done in light of the Model Law.

Arbitrability

14. Are there arbitration awards which will not be enforced due to the subject matter of the dispute?

See above, question 4.

SPECIFIC FEATURES

15. Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

No.