

Enforcing Foreign Judgments in Canada

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Canadian courts take a generous and liberal approach to the recognition and enforcement of foreign judgments.¹ In addition, many provinces have enacted reciprocal enforcement legislation, which facilitate the enforcement of judgments obtained in the foreign jurisdictions covered by such legislation. For example, in Ontario, the *Reciprocal Enforcement of Judgements (U.K.) Act*, RSO 1990, c. R.6 incorporates a bilateral enforcement treaty between Canada and the United Kingdom to provide for a streamlined process to enforce UK judgments in Ontario.

A party seeking to enforce a foreign judgment in Canada must bring a proceeding in the superior court of the province in which the party wishes to enforce the judgment. Where the amounts at issue are relatively modest, the small claims procedure may also be used. The Federal Court of Canada has no jurisdiction to enforce foreign judgments in Canada.²

The proceeding can be an action or an application. An action is a more complex proceeding that is commenced by statement of claim³ and involves discovery and trial. An application is a summary proceeding determined on affidavit evidence and out of court examinations. Generally, since it is unlikely that any material facts will be in dispute in proceedings to enforce a foreign judgment, it is usually preferable to go by application rather than by action.⁴

Below are some of the key aspects to the enforcement of foreign judgments in Canada. Notably, the province of Quebec, Canada's sole civil law jurisdiction, has different substantive and procedural requirements that must be met for a foreign judgement to be enforced in that province.

Enforcement of Foreign Monetary Judgments in Canada at Common Law

To promote international comity, the Supreme Court of Canada has set out the principles upon which Canadian courts will recognize and enforce a foreign judgment. Generally, a Canadian court will recognize and enforce a foreign monetary judgment without reconsideration of the merits provided:

- there was a real and substantial connection between the jurisdiction in which the judgment was obtained and the subject matter of the action;
- the judgment is for a sum certain,
- the judgment is final and conclusive, and
- the action to enforce is commenced within the applicable limitation period, which may vary in

different provinces or may be prescribed by reciprocal enforcement legislation.⁵

Before a Canadian court will recognize and enforce a foreign judgment, it must be satisfied that the foreign court had a “real and substantial connection” to the subject matter of the action or the parties. The presence of traditional indicia of jurisdiction (such as participation in the foreign proceeding, a contractual agreement to submit to the jurisdiction, residence, or presence in the foreign jurisdiction) will typically serve to satisfy the “real and substantial connection” requirement.⁶ It is *not* necessary to demonstrate a real and substantial connection between the defendant or dispute and the *Canadian* court. In a proceeding to enforce a foreign judgment within a province of Canada, it is service in accordance with the rules of court that grants the Canadian court jurisdiction over the defendant.⁷

Where the conditions above are satisfied, there are only limited defences available to resist enforcement in Canada, namely: denial of natural justice, fraud, and public policy.⁸

Recognition of Foreign Non-Monetary Judgments in Canada at Common Law

Canadian provincial courts will recognize and enforce foreign non-monetary judgments (e.g., for injunctive relief), provided that the judgment is not quasi-criminal or penal in nature (such as a foreign contempt order). However, a Canadian court being asked to enforce such a judgment will also consider other factors beyond the “real and substantial connection” test. In a decision involving the recognition and enforcement of a trademark injunction obtained in Ohio, the Supreme Court of Canada held: “[t]he recognition and enforcement of equitable orders [such as injunctive relief] will require a balanced measure of restraint and involvement by the domestic court that is otherwise unnecessary when the court merely agrees to use its enforcement mechanism to collect a debt.”⁹

In such cases, the balancing exercise of comity requires a careful review of the relief ordered by the foreign court. The Supreme Court of Canada listed several non-exhaustive factors that could impact the enforcement of an equitable (i.e., non-monetary) order:

- Are the terms of the foreign order clear and specific enough to ensure that the defendant will know what is expected of them?
- Is the order limited in its scope, and did the originating court retain the power to issue further orders?
- Is the enforcement of the foreign equitable order the least burdensome remedy for the Canadian justice system?
- Is the Canadian litigant exposed to unforeseen obligations?
- Are any third parties affected by the order?
- Will the use of judicial resources be consistent with what would be allowed for domestic litigants?¹⁰

The Ontario Superior Court of Justice has applied the principles set out above to recognize and enforce a California judgment that granted an injunction to stop the defendant from infringing the plaintiff's copyrights and other rights in a computer game.¹¹ More recently, the Ontario Superior Court of Justice recognized and enforced a Virginia default judgment that granted an injunction to stop the defendants from unlawfully using the plaintiffs' trademarks and logos and from unlawfully capturing broadcasts of the plaintiffs' television channels and transmitting them through a website.¹²

Defences to Recognition and Enforcement of Foreign Judgments at Common Law

Canadian courts have made it clear that except in exceptional circumstances, they will not allow parties to re-litigate the underlying claims or substantive defences giving rise to a properly obtained foreign judgment (in part, based on the principle of comity). Generally, the common law defences to the recognition and enforcement of a foreign judgment are limited to:

- (i) **Denial of natural justice** – Being a foreign process that violates Canadian principles of procedural justice (the hallmarks of natural justice in Canada include proper notice of the proceeding, a fair opportunity to present one's position and defend the claim, and an unbiased and independent adjudication);
- (ii) **Fraud** – Being a fraud on the foreign court that was undetectable and could not have been discovered by the exercise of reasonable diligence prior to the issuance of the foreign judgment; and
- (iii) **Public policy** – Being a foreign judgment that is based on foreign law that offends the Canadian view of basic morality or where the foreign court is proven to be corrupt.¹³

As such, enforcement of most foreign judgments issued from common law jurisdictions with litigation processes similar to those in Canada (such as England, Australia, and the United States) are not normally subject to substantive scrutiny in a Canadian proceeding seeking to recognize and enforce the foreign judgment.

Enforcement of Foreign Judgments in Quebec

As a civil law jurisdiction, the principles governing the enforcement of foreign judgments in Quebec are found in the *Civil Code of Québec* and the *Civil Code of Procedure*.

If a party seeks to enforce a foreign judgment in Quebec, they must serve an originating application in the Superior Court of Quebec (or in the Court of Quebec if they are seeking to enforce a monetary judgment worth less than \$85,000). In the application, the party must include the foreign decision and a certificate from a competent foreign public official stating that the decision is no longer appealable in the jurisdiction in

which it was rendered or that it is final or enforceable. If the decision was rendered by default, certified documents showing that the originating application was properly served on the defaulting party must also be attached to the application. All documents relied on in the application in a language other than French or English must be accompanied by a translation certified in Quebec.¹⁴

Quebec courts will recognize and enforce foreign judgments except where:

- (i) The issuing court had no jurisdiction;
- (ii) The judgment is not final or enforceable;
- (iii) The judgment is contrary to the fundamental principles of procedure;
- (iv) A decision has already been rendered in Quebec or in a third jurisdiction, or is pending before a court in Quebec first seized of the dispute, between the same parties, based on the same facts, and having the same subject;
- (v) The judgment is manifestly inconsistent with public order as understood in international relations; or
- (vi) The judgement enforces obligations arising from the taxation laws of a foreign jurisdiction.¹⁵

As is the case with the common law provinces and territories of Canada, most foreign judgments issued from common law jurisdictions with litigation processes similar to those in Canada are likely to be recognized and enforced in Quebec.

Conclusion

Canadian courts take a generous and liberal approach to the recognition and enforcement of foreign judgments. While different considerations apply to foreign monetary and non-monetary judgments, the principle of comity underlies the Canadian approach. Parties seeking to recognize and enforce a foreign judgment in Canada are encouraged to contact local Canadian counsel for further information.

¹ *Chevron Corp v Yaiguaje*, 2015 SCC 42 at para 27 [*Chevron*].

² *Federal Courts Act*, RSC 1985, c F-17, s 17(6).

³ The title of an originating process (e.g., statement of claim, notice of civil claim, etc.) may vary in different provinces.

⁴ *JGB Collateral LLC v John Rochon and Donna Jean Hewitt Rochon*, 2020 ONSC 1732 at paras 21-22.

⁵ *Pro Swing Inc v ELTA Golf Inc*, 2006 SCC 52 at paras 10-11 [*Pro Swing*] and *Independence Plaza 1 Associates, LLC v Figliolini*, 2017 ONCA 44 at paras 65ff.

⁶ *Morguard Investments Ltd v De Savoye*, [1990] 3 SCR 1077 at para 43 and *Beals v Saldanha*, 2003 SCC 72 at para 37 [*Beals*].

⁷ *Chevron* at para 27.

⁸ *Beals* at para 40.

⁹ *Pro Swing* at para 14.

¹⁰ *Pro Swing* at para 30.

¹¹ *Blizzard Entertainment Inc v Simpson*, 2012 ONSC 4312.

Cassels

¹² *Dish v Shava*, 2018 ONSC 2867.

¹³ *Beals* at paras 39-72.

¹⁴ *Code of Civil Procedure*, CQLR c C-25.01, ss 35 and 507-508 [CCP].

¹⁵ *Civil Code of Quebec*, CQLR c CCQ-1991, s 3155.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.