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Canada

Enforcement of Judgments in Civil and Commercial Matters

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Canada.

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Canada: Enforcement of Judgments in Civil and Commercial Matters

1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

The only implemented international treaty governing the reciprocal recognition and enforcement of civil and commercial judgments in Canada is the *Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters* (the "**Convention**"), which has been implemented in all Canadian provinces and territories excluding Quebec. The Convention applies to final money judgments in civil and commercial matters emanating from a court of the United Kingdom, and permits enforcement by a streamlined registration procedure rather than a fresh action. The Convention excludes, among other things, periodic maintenance orders, judgments for the recovery of taxes, judgments on appeal from non-court bodies, and matrimonial, custody, status, or capacity orders.

Beyond the Convention, certain provincial reciprocal enforcement statutes have designated specific foreign jurisdictions as "reciprocating." For example, Alberta's *Reciprocal Enforcement of Judgments Act*, RSA 2000, c R-6, provides for the reciprocal enforcement of judgments from Australia and the US states of Washington, Idaho, Montana, and Arizona. Manitoba's *The Reciprocal Enforcement of Judgments Act*, CCSM c J20, provides for the reciprocal enforcement of judgments from Australia and the US states of Idaho and Washington. Saskatchewan and New Brunswick have also enacted broader legislation governing the enforcement of foreign judgments generally.

Canada is also a party to the 1965 *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents* (governing service, not enforcement) and, in the arbitration context, to the New York *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* since 1986 as well as the *UNCITRAL Model Law*.

2. What, if any, reservations has your jurisdiction made to such treaties?

Canada has not restricted the substantive operation of the Convention. However, because the enforcement of civil judgments and civil procedure falls under provincial jurisdiction, the Convention (unlike treaties touching on exclusively federal matters) only takes effect in a province or territory once federal implementation is followed by local provincial or territorial implementing legislation. All provinces and territories except Quebec have done so.

Canada has also specifically excluded recognising or enforcing any judgment given under the US law entitled *Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* in its *Foreign Extraterritorial Measures Act*, RSC 1985, c F-29, and the Attorney General of Canada retains certain residual discretion to not recognise or enforce certain foreign judgments including antitrust judgments.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Yes. For all jurisdictions and countries not the subject of enforcement legislation, recognition and enforcement is governed by the common law, or in Quebec, the *Civil Code of Quebec*, CQLR c CCQ-1991, in particular articles 3155 and 3164-3168.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

As the Supreme Court of Canada recognised in *Chevron Corp. v. Yaiguaje,* 2015 SCC 42, at para 27, Canadian courts have adopted a generous and liberal approach to the recognition of foreign judgments. For a foreign judgment to be recognised and enforced, the foreign judgment must: (1) have been rendered by a court of competent jurisdiction; (2) be final (and any appeal period has passed); and (3) be for a definite sum of money. See *Pro Swing Inc. v. Elta Golf Inc*., 2006 SCC 52 at paras 10-11 (**"Pro Swing"**).

A foreign court will be found to be a court of "competent jurisdiction" where any of the following criteria is met: (1) the party in question was present or resident in the

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foreign court's jurisdiction, (2) the party submitted to the jurisdiction (by attornment or agreement), or (3) the foreign court had a real and substantial connection with the parties, the subject matter of the dispute, or the cause of action.

A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection must be a substantial one. See B*eals v Saldanha,* 2003 SCC 72, at paras 32-38 (**"Beals v Saldanha"**). The test applies Canadian conflict of law rules rather than foreign laws. Thus, Canadian courts are not bound by a foreign court's determination on jurisdiction or the level of connection.

Canadian courts may also enforce certain foreign non-monetary judgments or equitable orders, provided the judgment is: (1) rendered by a court of competent jurisdiction; (2) final, and (3) of a nature that the principle of comity requires the domestic court's enforcement. Comity does not require domestic courts to extend greater judicial assistance to foreign litigants than domestic litigants, and equitable discretion can be exercised by Canadian courts when deciding whether or not to enforce non-monetary judgments. See *Pro Swing*, at para 31. Various types of non-monetary judgments recognised include orders for specific performance, declaratory relief, constructive trust, and the freezing of assets.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Under the Convention, a UK money judgment is enforced in Canada through a streamlined summary registration process. The judgment creditor files a Notice of Application or equivalent to register the UK judgment within six years of the judgment or last appeal: filing in the Federal Court when dealing with a matter related to its prescribed jurisdiction, or generally to the Superior Court of the relevant province or territory where the debtor or their assets are located. Registration is subject to the practice and procedure of the registering court. The application is supported by a certified copy of the UK judgment and the evidence and documents required by the Convention, including proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and any other particulars required by the rules of the registering court. Under provincial reciprocal enforcement statutes, where applicable, a creditor similarly applies to register a judgment from a designated reciprocating jurisdiction.

Once registered, a Convention or reciprocally enforced judgment has, for enforcement purposes, the same force and effect as a judgment of the registering Canadian court.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

At common law the usual procedure is to bring a domestic proceeding on the basis of the foreign judgment, and the foreign judgment is not enforceable until recognised or converted into a Canadian judgment. The judgment creditor must generally commence a fresh proceeding (an action or, where available, an application) in the Superior Court of the province in which recognition and enforcement of the foreign judgment is sought. Where the judgment is for money, the relief sought is an order that the debtor pay the sum owed, and the creditor typically moves for summary judgment.

The phases of the procedure generally comprise: commencement and service of the originating process; delivery of the opposing party's responding pleadings/affidavits; documentary production by the parties; examinations for discovery, in which each party submits to questioning under oath about its case by the opposing party; interlocutory steps to facilitate resolution (mediation, judicial pre-trial); the hearing of the application or trial; and possible appeal. Summary judgment, or default judgment where a proceeding is not defended, may eliminate some or all of the above stages and allow the judgment creditor to proceed more quickly to enforcement of the resulting Canadian judgment. Obtaining default judgment after the opposing party has been noted in default for a failure to defend (and deemed to admit the truth of the allegations) may nevertheless require affidavit evidence, particularly where the relief sought is not a liquidated sum of money.

Once a Canadian judgment is obtained, the judgment creditor may use the ordinary provincial or territorial enforcement procedures. These include an examination in aid of execution (examining the debtor or another knowledgeable person under oath to identify assets and sources of payment), garnishing bank accounts and wages, filing and enforcing writs of seizure and sale or other applicable writs, and, in limited circumstances, applying for the appointment of a receiver.

Note that at common law, the Court of Appeal for Ontario confirmed in *H.M.B. Holdings Limited v. Antigua and Barbuda*, 2022 ONCA 630, that derivative or "ricochet" judgments, in which a foreign judgment recognised in one

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Canadian province is re-registered in another province, are impermissible. Instead, the judgment creditor should bring independent proceedings in each province to recognise and enforce the original foreign judgment.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Under the Convention, the applicant generally must file: (1) the original judgment or a certified copy; (2) a certified translation where the judgment is in another language; and (3) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment, as well as any other particulars required by the rules of the registering court.

At common law, no prescribed documents must be included, though the foreign judgment must be properly proved in evidence (usually by a certified copy), together with any evidence needed to establish finality, enforceability, the amount owing, and service/jurisdiction.

An apostille is not required to enforce a foreign judgment. Although Canada acceded to the *Hague Apostille Convention* (in force 11 January 2024), apostille formalities relate to authentication of public documents for cross-border use and are not a precondition to registration or enforcement of a foreign judgment.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

The time required varies greatly with the degree of the debtor's resistance. It could be as little as a few months where the proceeding is unopposed, to several years where enforcement is vigorously contested. A summary procedure is available in some circumstances: either registration under the Convention/reciprocal statutes, and, at common law, enforcement by application or summary judgment, where material facts may not be in dispute.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes. The court hearing the enforcement proceeding may grant interim relief, including a Mareva injunction (freezing the defendant's assets where there is a genuine risk of dissipation or removal from the jurisdiction), a Norwich order (compelling third parties to disclose information), an interim order for preservation of property, and a certificate of pending litigation (a notice functionally restricting dealings with land in which an interest in land is in question beyond securing a money judgment).

An initial order may, in an emergency, be obtained within days without notice, subject to duties of full and frank disclosure and an undertaking as to damages, following which notice must be given and a return hearing held. For example, in Ontario, a without-notice injunction or mandatory order may be granted for no more than 10 days unless extended by court order upon a further motion.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

For UK judgments under the Convention, the judgment creditor must apply for registration within six years of the date of the judgment or the date of last judgment in any appeal proceedings.

For all other foreign judgments not governed by the Convention or a reciprocal-enforcement statute, the applicable limitation period is generally governed by the law of the province or territory where recognition and enforcement is sought. The court's analysis may include when the judgment became final or enforceable, when appeal rights expired or were exhausted, when the creditor knew or ought to have known that enforcement proceedings in the Canadian jurisdiction were legally appropriate, and, in some cases, knew or ought to have known whether the debtor had assets in the jurisdiction.

For the common law provinces, the following general time limits are applicable to commence a proceeding to enforce a foreign judgment:

- **Alberta:** either 2 years after the date on which the claimant first knew of the judgment, or in the circumstances ought to have known that the judgment could be enforced, or 10 years after the judgment, whichever expires first, unless the law of the foreign jurisdiction provides for a shorter limitation period, in which case the shorter limitation period applies (*Limitations Act*, RSA 2000, c L-12, s 3(1), 12(2)). Where the judgment is registrable under Alberta's *Reciprocal Enforcement of Judgments Act*, RSA 2000, c R-6, a separate 6-

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year registration period applies (s. 2(1));
- **British Columbia:** for the payment of money or return of personal property, either the earlier of: (a) the expiry of the time for enforcement in the jurisdiction where the judgment was made; and (b) 10 years after the judgment became enforceable in the foreign jurisdiction (*Limitation Act*, SBC 2012, c 13, s 7);
- **Manitoba:** 2 years from discovery, subject to a 15-year ultimate limitation period after the day the act or omission on which the claim is based took place (*The Limitations Act*, CCSM c L150, s 6, 7, 10). If the judgment originates from a recognised reciprocating jurisdiction (such as Australia, Idaho, or Washington), a party has 6 years from the date of the original judgment to register it (*The Reciprocal Enforcement of Judgments Act*, CCSM c J20, s 3(1));
- **New Brunswick / Nova Scotia:** 2 years from discoverability, and in any event a 15-year ultimate limitation period (*Limitation of Actions Act*, SNB 2009, c L-8.5, ss. 5, 8; *Limitation of Actions Act*, SNS 2014, c 35, s 8). Where the judgment originates from a recognised reciprocating jurisdiction (neither province has designated any foreign jurisdictions other than implementing the Convention), a separate 6-year registration period applies (*Reciprocal Enforcement of Judgments Act*, RSNB 2014, c 127, s 3(1); *Reciprocal Enforcement of Judgments Act*, RSNS 1989, c 388, s 3(1));
- **Newfoundland & Labrador:** 6 years after the date on which the cause of action arose (*Limitations Act*, SNL 1995, c L-16.1, s 6(1)(g)). Where the foreign judgment is registrable (from the UK or Australia), an application to register it must be made within 6 years after the date of the judgment (*Reciprocal Enforcement of Judgments Act*, RSNL 1990, c R-4, s 3);
- **Ontario:** 2 years from when the time to appeal the foreign judgment has expired or, if appealed, when the appeal is finally decided: *Independence Plaza 1 Associates, LLC v. Figliolini*, 2017 ONCA 44; *Grayson Consulting Inc. v Lloyd*, 2019 ONCA 79, and in any event a 15-year ultimate limitation period from the judgment (*Limitations Act, 2002*, SO 2002, c 24, Sch B, ss 4, 5, 15). Ontario also provides for a 6 year registration period for recognized foreign jurisdictions, although no jurisdictions are recognized at this.
- **Prince Edward Island:** 10 years after the cause of action arose for an action on a judgment or order for the payment of money, unless the time for enforcement has already expired in the province or jurisdiction where the judgment was made (*Statute of Limitations*, RSPEI 1988, c S-7, s 2(1)(f)). Where the judgment is registrable (from US State of Washington), an application to register it must be made within 10 years after the judgment became enforceable unless the time for enforcement has expired in the reciprocating state (*Reciprocal Enforcement of Judgments Act*, RSPEI 1988, c R-6, s 2(1));
- **Saskatchewan:** the earlier of the period provided by the law of the state of origin or 10 years after the day on which the foreign judgment became enforceable in that state (*The Enforcement of Foreign Judgments Act*, SS 2005, c E-9.121, s 5).

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

Where the conditions to enforcement in Q4 above are met, including that the foreign court had jurisdiction under Canadian conflict of laws rules, the three main common-law defences to enforcement are: (1) breach of Canadian notions of natural justice in the foreign proceedings (such as inadequate notice or lack of a fair opportunity to be heard); (2) the foreign judgment was obtained by fraud; and (3) public policy, which is applied narrowly and generally requires enforcement of the foreign law to offend Canadian concepts of justice or basic morality or to "shock the conscience" of a reasonable Canadian. See *Beals v Saldanha*, at paras 35, 59-77; *Pro Swing*, at para. 12. For UK judgments, the Convention prescribes substantially analogous grounds.

Additional discretionary defences apply to non-monetary/equitable orders, including if the order is insufficiently clear or would impose an undue burden on the Canadian judicial system to supervise, or if laches, acquiescence, or unreasonable delay make enforcement inequitable. Canadian courts will also generally not enforce foreign public-law judgments or such as for taxes, fines, or penal matters. See *Pro Swing*, at paras 10, 28, 34, 86, 91, and 100.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

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No. Canadian courts do not re-litigate the merits. Recognition proceeds on the basis of comity, provided the preconditions are met and no defence is established. The enforcing court may, however, look behind the judgment to the limited extent necessary to assess jurisdiction, fraud, natural justice, public policy, finality, satisfaction, or other recognised objections.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Yes. Canadian courts will examine whether the foreign court had jurisdiction over the defendant according to Canadian conflict-of-laws rules; they are not bound by the foreign court's own view of its jurisdiction and whether there was a substantial connection. See answer Q4 on when a foreign court has "competent jurisdiction".

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

Yes. Adequate notice and an opportunity to be heard are components of natural justice; a judgment obtained without proper notice or a fair opportunity to defend may be refused enforcement. Under the reciprocal-enforcement statutes, registration may be refused where the debtor, not carrying on business or ordinarily resident in the original jurisdiction, was not personally served or did not voluntarily appear or submit.

Default judgments can be enforced, provided the foreign court had jurisdiction and the defendant received proper notice and a fair opportunity to defend. See *Beals v. Saldanha,* at paras 31, 36, 53, 79.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

For money judgments, the court has no broad residual discretion. Provided the judgment meets the jurisdictional preconditions and is not barred by one of the three main defences (such as fraud, public policy, or breach of natural justice), recognition and enforcement follow as a matter of right. Conversely, broader judicial discretion applies to foreign non-monetary or equitable orders, where the court will weigh factors such as clarity of the judgment, the burden of judicial supervision and practical enforcement concerns, and equitable considerations before deciding whether to grant recognition.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

Canadian courts will not enforce foreign judgments that are penal, tax/revenue, obtained under the *Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* or other public-law claims in substance, however, judgments including punitive or multiple damages awards are enforceable. *Beals v. Saldanha* itself enforced a foreign judgment that included a punitive component. However, this is subject to a public policy defence if the award is so excessive as to offend Canadian concepts of justice and basic morality, or a statutory override for the Attorney General of Canada to block the recognition and enforcement of foreign antitrust judgments that award multiple damages.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

Sometimes. As a general rule, a foreign judgment must be final and conclusive in the foreign court that rendered it before it will be recognised or enforced in Canada. However, under the common law, a pending appeal does not necessarily deprive the judgment of finality, provided the foreign court has finally determined the merits and the judgment is presently enforceable in that jurisdiction. In such cases, the Canadian court may allow the enforcement proceeding to be commenced but stay the domestic proceeding or execution pending the foreign appeal rather than dismissing it outright. See *Continental Casualty Company v Symons*, 2015 ONSC 6394, at paras 67-85 (canvassing cases).

This flexibility does not extend to registration under the Convention and most reciprocal-enforcement legislation, which generally provide that a Canadian court is prohibited from registering a judgment if it is not final or if an appeal is pending.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Yes. A decision recognising, enforcing, or registering a foreign judgment is treated as a standard civil order and

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may be appealed. In most Canadian jurisdictions (except Ontario and Quebec), commencing an appeal of a judgment for the payment of money does not automatically stay its enforcement. For non-monetary judgments, or in jurisdictions without an automatic stay, enforcement may only be stayed by a specific order of the appellate court on motion.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Yes. Interest accrued under the foreign judgment, including post-judgment interest under the law of the originating jurisdiction, may generally be claimed as part of the foreign judgment debt up to the date of recognition or registration, provided that the entitlement and calculation are proved. After recognition or registration as a domestic Canadian judgment, the applicable post-judgment interest rate depends on the law of the Canadian enforcing court and any governing statute or convention.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

Enforcement is usually carried out or satisfied in Canadian dollars, but the court may preserve the foreign-currency measure of the debt and convert it to Canadian dollars under the applicable provincial or federal rules when payment, registration, or execution occurs. The conversion date is not uniform across Canada and depends on the forum and applicable enforcement mechanism.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Yes. A successful party can generally expect a costs order requiring the unsuccessful party to pay a portion but not all of its legal fees and reasonable disbursements, determined in accordance with the costs and civil procedure rules of the provincial or territorial court which hears the proceeding. Additionally, where a foreign judgment is registered under a reciprocal enforcement statute or the Convention, the reasonable costs of the registration process can typically be recoverable as part of the registered judgment debt.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Yes. Third-party litigation funding is permitted in Canada, including for enforcement proceedings, subject to the doctrines of maintenance and champerty. Maintenance prohibits officious intermeddling in another person's litigation for an improper purpose and without justification or excuse while champerty is a form of maintenance where the third party supports the litigation in exchange for a share of the proceeds. Modern Canadian courts treat these doctrines as aimed at protecting the administration of justice from abuse, not as a blanket prohibition on commercial litigation-funding arrangements.

In ordinary private commercial litigation or enforcement proceedings, court approval of third-party litigation funding is generally not required, absent a court order or court-supervised context such as class proceedings or insolvency proceedings. A funder is not generally liable for adverse costs merely because it funded the litigation, absent an agreement with the litigant to the contrary. Liability may also arise where the funder is effectively the true litigant, controls or abuses the process, acts through a nominal plaintiff to oppress or defraud the defendant, or engages in conduct that amounts to the tort of maintenance.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

British Columbia has enacted the *Money Judgment Enforcement Act,* SBC 2023, c 29 which is expected to come into force in the next 5 years. It will simplify and modernize the enforcement process for judgment creditors in British Columbia and allow for greater enforcement on a larger scope of assets. Among other reforms, it will create a money judgment registry and, subject to certain exceptions, registration of a judgment will create an enforcement charge in favour of the judgment creditor. It will also facilitate enforcement against co-owned property and permit civil enforcement officers to convert a joint tenancy into a tenancy in common when entering into an agreement to dispose of the property.

Broad revisions to Ontario's civil procedure rules have also been proposed that could reduce the cost and

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uncertainty associated with locating and realizing a debtor's assets and facilitate post-judgment asset discovery and enforcement. The recommendations include permitting a judgment creditor to obtain a written without-notice order requiring named financial institutions to identify the branch holding a debtor's account and whether it has a positive balance. They also propose more effective sanctions for a debtor's failure to attend or answer questions at a judgment-debtor examination, as well as improved recovery of enforcement costs. However, these recommendations remain tentative, and it is uncertain whether or when they will be implemented.

24. Has your country ratified the Hague Choice of Courts Convention 2005, and if so when did it (or will it) come into force? If not, do you expect it to in the foreseeable future?

No. Canada has not signed or ratified the 2005 Hague Convention on Choice of Court Agreements, and it is not in force in any Canadian jurisdiction. While the independent Uniform Law Conference of Canada (ULCC) has developed a model *Uniform Act* should Canada eventually ratify it, implementation would require coordinated federal and provincial/territorial legislation before it would apply domestically. Ratification and implementation are not expected in the foreseeable future.

25. Has your country ratified the Hague Judgments Convention 2019, and if so when did it (or will it) come into force? If not, do you expect it to in the foreseeable future?

No. Canada has not signed or ratified the 2019 Hague Judgments Convention. Implementation would require federal action and coordinated provincial/territorial implementing legislation before it would apply to any Canadian jurisdiction. Ratification and implementation are not expected in the foreseeable future.

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