Enforcement of judgments and arbitral awards in Canada: overview

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JUDGMENTS: LEGAL FRAMEWORK

Domestic framework

1. What is the applicable domestic legislative framework for enforcement of judgments?

Domestic

The legislative framework for the enforcement of domestic judgments or orders obtained in a province or territory will depend on the jurisdiction and the type of judgment or order being enforced. Typically, the procedures for enforcing judgments or orders are set out in the rules governing civil procedure for a province or territory, for example:

- Rules of the Supreme Court of the Northwest Territories.

The relevant procedures may also be set out in specific enforcement statutes, such as:

- Alberta’s Civil Enforcement Act.
- Newfoundland and Labrador’s Judgment Enforcement Act.

Foreign

The enforcement of foreign judgments in a particular province or territory in Canada (which includes the enforcement of judgments obtained in other Canadian provinces or territories) is a matter of provincial jurisdiction under the Constitution. Judges appointed by the federal government under the Constitution have inherent jurisdiction to decide whether a foreign judgment should be recognised and enforced. Accordingly, proceedings are brought by the judgment creditor to enforce the foreign judgment in the superior courts of the province in which the judgment debtor resides or has assets.

Statutory enforcement. Provincial and territorial reciprocal enforcement of judgments legislation sets out the procedure for registering foreign judgments from other Canadian provinces or territories, and, in some cases for non-Canadian jurisdictions. The procedure varies depending on the province or territory.

The enforcement of foreign judgments in Québec, a civil law jurisdiction, is different to the rest of the Canadian provinces and territories (for example, judgments from Québec are not automatically enforceable in other Canadian provinces and territories under reciprocal legislation, and vice versa). The rules concerning the enforcement of judgments in Québec are codified in:

- Article 3155 of Title Four of Book Ten of the Civil Code of Québec.
- Articles 785 to 786 of the Code of Civil Procedure.

Some of the reciprocal enforcement statutes provide for the reciprocal enforcement of judgments from other countries (for example, Alberta’s Reciprocal Enforcement of Judgments Act provides for the reciprocal enforcement of judgments from Australia and the US states of Washington, Idaho and Montana).

Where a foreign judgment is registered under reciprocal enforcement legislation, the judgment will have the same force and effect as if it had been obtained or entered in the registering court.

Only two provinces, Saskatchewan and New Brunswick, have enacted legislation that governs actions brought in the superior courts of those provinces for the registration of a foreign judgment of another country.

The federal Justice for Victims of Terrorism Act (JVTA) allows victims of terrorism to sue on a foreign judgment obtained for loss or damage suffered as a result of terrorist activities. Under the JVTA (and subject to state immunity principles and legislation), a court of competent jurisdiction in Canada must recognize the judgment of a foreign court that, in addition to meeting the criteria under Canadian law for being recognised in Canada, is in favour of a person that has suffered loss or damage as a result of acts of terrorism.

Common law enforcement. If a foreign judgment originates from a jurisdiction not captured by the provincial or territorial reciprocal enforcement of judgments or enforcement of foreign judgments legislation, the foreign judgment may be enforced at common law. The party seeking to enforce the foreign judgment must commence new proceedings in the domestic or enforcing court. A foreign monetary judgment is a debt that is enforced by an action to claim payment of the debt.

In general, under the common law, a foreign judgment is prima facie enforceable in Canada if the foreign judgment:

- Originated from a court of competent jurisdiction (that is, from a court that had a real and substantial connection to the matter).
- Is final and conclusive.
- Is not for a penalty, taxes, a fine, or enforcement of a foreign public law. The enforcing court typically will not consider the substantive or procedural law of the foreign jurisdiction in which the judgment sought to be enforced domestically was obtained.

The Supreme Court of Canada recently confirmed that a real and substantial connection between the defendant or the action and the enforcing court in an action for recognition and enforcement of a foreign judgment is not a pre-requisite to the enforcing court having jurisdiction to recognise and enforce the foreign judgment (Chevron Corp v Yañez, 2015 SCC 42).
International conventions/agreements

2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

In April 1984, Canada and the UK entered into 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 (Canada-UK Convention). This Convention sets out the procedure for enforcing Canadian money judgments in the UK, and vice versa, and provides for a limitation period of six years from the date of the judgment. The Convention has been incorporated into Canadian law by federal and provincial legislation.

Canada is also a party to a number of conventions related to marine pollution (for example, the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001), which provide for the registration of certain foreign judgments.

Canada is not a signatory to the HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 (Hague Foreign Judgments Convention).

Definitions

3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

Domestic

The term "judgment" is defined in various Canadian provincial and territorial statutes.

In certain provinces and territories, the rules governing civil procedure provide a definition for a judgment. For example, the Ontario Rules of Civil Procedure defines a judgment as "a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party, and an "order" includes a judgment. The Ontario rules were adopted by the Supreme Court of Prince Edward Island in 1990 and contain the same definitions, and the Court of Queen's Bench Rules in Manitoba also include similar definitions. Rule 79 of the Nova Scotia Civil Procedure Rules, which governs enforcement proceedings regarding orders for the payment of money, defines a judgment as "an order, or a part of an order, providing for payment or recovery of money including costs".

In other provinces and territories, statutes governing enforcement define "judgment". For example, Alberta's Civil Enforcement Act defines judgment as an "order, decree, duty or right that may be enforced as or in the same manner as a judgment of the court".

Finally, each provincial and territorial reciprocal enforcement of judgments act in Canada provides a similar definition of judgment. For example, section 1(1) of Ontario's Reciprocal Enforcement of Judgments Act defines a judgment as "a judgment or an order of a court in any civil proceedings whereby any sum of money is payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by a court therein".

Foreign

Once a foreign judgment has been registered under provincial or territorial reciprocal enforcement legislation, enforcement proceedings are commenced as if the judgment was originally obtained in the registering court. The definition of "judgment" under both the relevant reciprocal enforcement statute and the rules of civil procedure of the registering court would apply to the foreign judgment.

Some provincial enforcement statutes define "foreign judgment". For example, Saskatchewan's Enforcement of Foreign Judgments Act defines a "foreign judgment" as "a final decision made in a civil proceeding by a court of a foreign state, rendered by means of a judgment, order, decree or similar instrument in accordance with the laws of that state, and includes a final decision made by an adjudicative body other than a court if the enforcing court is satisfied that the adjudicative body is the body that determines disputes of the kind in question in that state".

Enforceable/excluded types of judgment

4. What types of judgment in commercial matters are enforceable, and what types are excluded?

Domestic

Enforceable. The procedures for enforcing domestic judgments or orders are typically set out in the rules of civil procedure for a province or territory or in specific enforcement statutes. In Québec, enforcement mechanisms are set out in the Code of Civil Procedure (see Question 1).

Generally, orders or judgments that are made without notice (ex parte) to the party against whom the order or judgment is made are enforceable once served on that party. Default judgments and summary judgments are enforceable. The way in which these judgments are enforced will depend on the particular relief granted.

Judgments for a sum of money are typically awarded in the form of damages, which can include compensatory, aggravated, exemplary and punitive damages. Monetary judgments are typically enforced by any of the following:

- Writ of seizure and sale.
- Garnishment.
- A writ of sequestration.
- The appointment of a receiver.

If a judgment creditor requires additional information about the judgment debtor's property in order to enforce an order, an examination may be conducted. Each of these enforcement mechanisms are typically governed by provincial and territorial rules of civil procedure. Monetary judgments can also be enforced under various provincial and territorial statutes (for example, in Ontario, a judgment creditor is a "complainant" under section 248 of the Business Corporations Act (Ontario), and can apply to the court for an oppression remedy).

A declaratory judgment, which is a judicial statement clarifying, confirming or denying a legal right of the applicant, can be enforced either by:

- Operation of the declaration itself.
- Joining or appending consequential relief to the declaration.

Writs of possession are typically used to enforce orders for the recovery or delivery of the possession of land. In some provinces and territories, writs of possession can only be issued with leave of the court. The sheriff enforces writs of possession.

In some provinces and territories, a vesting order can be used to enforce a court order which determines the ownership or an interest in land or personal property, or where the court orders specific performance of an agreement for the sale of land.

An order for the recovery of possession of personal property (other than money) can be enforced by a writ of delivery or a writ of sequestration.

An order requiring a person to do an act (other than the payment of money) or to abstain from doing an act can be enforced against that person by a contempt order. The contempt power is to be used...
sparingly, particularly since contempt by its nature is a criminal offence.

A claim to enforce an injunction is typically brought before the court that granted the injunction, since injunctions are equitable remedies, and the granting of equitable relief flows from the court’s inherent jurisdiction. Non-compliance with an injunction is generally remedied by a contempt order.

In Ontario, non-compliance with other interlocutory orders may result in a court:

- Staying the party’s proceeding,
- Dismissing the party’s proceeding or striking out the party’s defence,
- Making any other order that is just.

In most provinces and territories, specific legislation provides for the enforcement of judgments and orders related to child or spousal support, custody and access, and property division and possession in the family law context. The enforcement of these judgments and orders will not be discussed here.

Excluded. In provinces and territories where the appeal of a judgment operates as an automatic stay of enforcement, that judgment will not be enforceable until the appeal has been finally decided.

Foreign

Enforceable. Historically, only foreign monetary judgments could be recognised and enforced in Canada. However, in Pro Swing Inc v Elta Golf Inc 2006 SCC 52, the Supreme Court of Canada expanded the traditional common law view which previously limited the recognition and enforcement of foreign orders to final monetary judgments. The court held that courts have jurisdiction to enforce non-monetary judgments (including equitable foreign judgments, such as injunctions, freezing orders, and orders for specific performance). Under Pro Swing, courts must scrutinise the impact of the foreign equitable order, and must consider certain additional factors in determining whether a foreign equitable order should be enforced in Canada. These factors include whether:

- The terms of the order are clear and specific enough to ensure that the defendant will know what is expected from him/her.
- The order is limited in its scope.
- The originating court retained the power to issue further orders.
- Enforcement is the least burdensome remedy for the Canadian justice system.
- The Canadian litigant is exposed to unforeseen obligations.
- Third parties are affected by the order.
- The use of judicial resources are consistent with what would be allowed for domestic litigants.

Pro Swing has been applied to recognise and enforce foreign non-monetary judgments in the following cases:

- In United States of America v Yemec, 2010 ONCA 414 (Ontario Court of Appeal) and Blizzard Entertainment Inc v Simpson 2012 ONSC 4312 (Ontario Superior Court of Justice), foreign injunctions were recognised and enforced.
- In Van Damme v Celber, 2013 ONCA 388 (Ontario Court of Appeal, leave to the Supreme Court of Canada denied), a foreign order for specific performance of a contract was recognised and enforced.
- In Bienstock v Adenyo Inc, 2015 ONCA 310 (Ontario Court of Appeal), the recognition and enforcement of a foreign order for a constructive trust was upheld on appeal.

Excluded. In Pro Swing, the Supreme Court confirmed that Canadian courts will not enforce a foreign judgment based on foreign penal, revenue, or other public laws.

Under Article 3156 of the Civil Code of Québec, a decision rendered by default will not be recognised or declared enforceable unless the claimant proves that the act instituting the proceedings was duly served on the defaulting party in accordance with the law of the place where the decision was rendered.

JUDGMENTS: PROCEEDURE FOR ENFORCEMENT

Overview

5. What is the general outline of enforcement proceedings?

Domestic

Generally, a domestic judgment can be enforced as of right in the province or territory in which it was obtained. A party seeking to enforce a judgment is entitled to (but is not required to) retain legal counsel to do so.

Typically, the appeal period for the judgment must have expired for proceedings to enforce the judgment to commence. In some provinces and territories, such as Ontario, the filing of an appeal or application for permission to appeal operates as an automatic stay of the enforcement of any provision of the order for the payment of money. In other provinces and territories, such as Alberta and Nova Scotia, there is no automatic stay of proceedings or enforcement. Where there is no automatic stay, a party can apply for one. The conjunctive test for granting a stay of proceedings was provided in the Supreme Court of Canada's decision in RJR-MacDonald Inc v Canada (Attorney General), [1994] 1 SCR 311. According to this test, the party seeking a stay must establish all of the following:

- There is a serious issue to be tried.
- Irreparable harm will result if the stay is not granted.
- The balance of convenience favours granting the stay.

The procedure for enforcement will depend on the nature of the judgment or order being enforced, and will be governed by the province's or territory's rules of court/civil procedure, provincial/territorial legislation and/or the common law.

The limitation periods for enforcement are governed by the limitation legislation in each province or territory, and can vary significantly between provinces and territories. For example, under Ontario's Limitations Act, there is no limitation period in respect of a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court. In contrast, British Columbia's Limitation Act expressly provides for a ten-year limitation period for a proceeding to enforce or sue on a judgment for the payment of money or the return of personal property.

Enforcement proceedings are usually brought on notice to the party against whom the judgment or order is being enforced.

Various fees (such as filing fees) must be paid in order to commence enforcement proceedings, and are set out in the relevant provincial and territorial judicature acts and their regulations.

Foreign

To register a foreign judgment under statute, a judgment creditor can apply to the court in the province or territory in which it seeks to have the foreign judgment registered. Under Manitoba's Reciprocal Enforcement of Judgments Act, a judgment creditor must apply for registration within six years of the date of the foreign judgment.

Under the reciprocal enforcement regime, reasonable notice of the registration application must normally be given to the judgment debtor in all cases in which the judgment debtor was not personally served with the process in the original action and did not appear or defend or otherwise submit to the jurisdiction of the original court.

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In all other cases, the application and order can be made without notice/ex parte.

The limitation period for the enforcement of foreign judgments differs significantly depending on the province or territory.

British Columbia’s Limitation Act subjects “extra-provincial judgments” (which are not simply monetary judgments) to a limitation period that is the earlier of either:

- The expiry of the time for enforcement in the jurisdiction where the extra-provincial judgment was made.
- The date that is ten years after the judgment became enforceable in the jurisdiction where the extra-provincial judgment was made.

Newfoundland and Labrador’s Limitations Act sets a six-year limitation period on an action “to enforce a foreign judgment”.

Ontario’s Limitations Act provides that there is no limitation period in relation to a proceeding to enforce an order of a court, or any other order that can be enforced in the same way as an order of a court under subparagraph 16(1)(b).

The Court of Appeal for Ontario recently interpreted whether this provision applies to the enforcement of foreign judgments. In Independence Plaza 1 Associates, LLC v Figliolini 2017 ONCA 44, the Court of Appeal held that the term “order of a court” in subparagraph 16(1)(b) refers to an order of a domestic court, which can only be obtained if the underlying cause of action was not time-barred.

If an action on a foreign judgment for recognition and enforcement is successful, it results in an Ontario judgment, the enforcement of which will not be subject to a limitation period under subparagraph 16(1)(b). In the context of the recognition and enforcement of foreign judgments, this can “only be justified if the underlying cause of action based on the foreign judgment has already passed a limitations hurdle in Ontario”. Therefore, in Figliolini the Court of Appeal found that a two-year limitation period applies to a proceeding on a foreign judgment, and that the limitation period begins to run, at the earliest, when the time to appeal the foreign judgment has expired, or, if an appeal is taken, the date of the appeal decision.

Once the enforcing court makes an order enforcing the foreign judgment, that order will not be subject to a limitation period, under subparagraph 16(1)(b).

There is a right of appeal from a judgment that recognises or registers a foreign judgment, either directly to an appellate court, or with leave of an appellate court. As explained above, the appeal period for the judgment must normally expire before proceedings to enforce the judgment can be commenced. The filing of a notice of appeal or an application for permission to appeal does not always automatically stay the execution of the judgment or the proceedings. If a judgment creditor is concerned that the judgment debtor is moving assets to avoid eventual execution of the judgment, the judgment creditor can obtain an injunction or a similar remedy to prevent the judgment debtor from dissipating assets pending the appeal.

Canada is a jurisdiction where the losing party pays a portion of the legal costs of the successful party. In most provinces and territories, the defendant or respondent in a proceeding can apply for security for its costs in certain situations (including where the claimant is ordinarily resident outside the jurisdiction or there is good reason to believe that the proceeding is frivolous and vexatious and that the claimant or applicant has insufficient assets in the domestic jurisdiction to pay the costs of the defendant or respondent).

Once a foreign judgment or order is registered under statute or recognised under the common law, it can be enforced as if it were a judgment or order obtained domestically, and the domestic procedural considerations would apply (see above, Domestic). Once recognised or registered in Canada, the judgment or order can be enforced in other Canadian provinces and territories, except Québec, through the various reciprocal enforcement regimes.

Foreign judgments: formal/simplified proceedings

6. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?

The recognition and enforcement of a foreign judgment at common law is subject to “formal proceedings”. The party seeking to have a foreign judgment recognised and enforced must commence new proceedings in the provincial or territorial court seeking that relief.

The registration of a foreign judgment originating from the UK is subject to a simplified procedure. The Canada-UK Convention has been incorporated into Canadian law by federal and provincial/territorial legislation, which provides for the application to a domestic provincial or territorial court for a streamlined registration of judgments relating to civil and commercial matters obtained in Great Britain or Northern Ireland (see Question 2).

Similarly, judgments or orders from reciprocating states under the provincial and territorial reciprocal enforcement statutes are also registered and enforced under streamlined procedures set out in those statutes.

7. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

Under Canadian common law principles, a foreign judgment cannot be immediately enforced by execution. A party seeking to have a foreign judgment recognised and enforced must commence new proceedings in the domestic court, either by action or application. To recognise and enforce a foreign judgment, the judgment creditor typically commences an action to claim payment of the debt represented by the foreign judgment.

If the judgment debtor does not defend the action, the judgment creditor will usually note the judgment debtor in default and then bring a motion for default judgment. If the judgment debtor defends the action, the judgment creditor will usually bring an application for summary judgment seeking judgment in the Canadian dollar equivalent of the foreign debt.

If the foreign judgment is recognised and a judgment has been made by the court to that effect, the foreign judgment can be converted into a form of order which will have the same force and effect as a domestic order, which can then be executed as if originally obtained in the domestic court.

Form of application

8. What documents and information must be provided with an application for enforcement?

Domestic

The documents and information filed when enforcing domestic judgments will vary depending on the province or territory in which the judgment is enforced, and the enforcement “device” or mechanism itself. For example, under Rule 60.07 of the Ontario Rules of Civil Procedure, a judgment creditor can obtain a writ of seizure and sale by filing a requisition that sets out the amount owing and the rate of post-judgment interest, together with a copy of the order as entered, and any other evidence necessary to establish the amount awarded. This information is filed with the registrar of the court where the proceeding was commenced. To enforce the writ of seizure and sale, a judgment creditor will file a
direction to have the sheriff enforce the writ for the amount owing, subsequent interest, and the sheriff’s fees and expenses.

Under the provincial and territorial reciprocal enforcement regimes, a judgment from a Canadian province or territory (except Québec) can be registered in another Canadian province or territory (except Québec) by filing with the registrar or clerk of the registering court an exemplification or a certified copy of the judgment, together with the order for the registration.

**Foreign**

**Statutory enforcement.** Under the provincial and territorial reciprocal enforcement regimes, judgments from reciprocating, non-Canadian jurisdictions can be registered by filing with the registrar or clerk of the registering court a certified copy of the judgment, together with the order for such registration.

Under the reciprocal enforcement regimes applicable to the UK, the registering court may require that an application for registration be accompanied by:

- The judgment of the original court or a certified copy of the judgment.
- A certified translation of the judgment, if given in a language other than the language of the territory of the registering court.
- Proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment.
- Any particulars of matters as required by the rules of the registering court.

**Common law enforcement.** For the recognition and enforcement of a foreign judgment under common law, the party seeking to enforce the foreign judgment can commence an action and will plead the necessary facts (including the foreign judgment itself) (see Question 1, Foreign: Common law enforcement). Oral discovery is typically available to the litigants. If, after the defendant defends and opposes recognition, the party seeking to enforce the foreign judgment brings an application for summary judgment, that application must be accompanied by the evidence required by the rules of civil procedure in the jurisdiction.

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**9. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?**

The statement of claim seeking recognition and enforcement of the foreign judgment or the notice of application seeking registration of the foreign judgment must include:

- General information about the judgment.
- The relief obtained in the foreign court.
- The material facts on which the party seeks to rely.

It is good practice to include the necessary facts in the statement of claim or notice of application (see Question 1, Foreign: Common law enforcement). The rules of court in the province or territory in which the foreign judgment is being enforced will govern the details about the originating process.

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**CHALLENGING ENFORCEMENT SERVICE**

**10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?**

**Domestic**

Originating processes such as statements of claim and notices of application must be served on all other parties. The rules of procedure in each province or territory will determine when the originating process must be served. Unless there are reasons that justify proceeding without notice, a court will usually decline to exercise jurisdiction unless and until it is satisfied that the affected party has received proper notice.

In some circumstances, an application for relief can be made without notice to the other party (ex parte) (for example, if an applicant is seeking an interim injunction against another party, notice of the proceeding may not be given to the other parties). In these circumstances, once an order has been made, the applicant is obliged to serve all parties affected by the order.

**Foreign**

With respect to service, under the reciprocal enforcement regimes, a foreign judgment will not be registered if the judgment debtor (that is, the defendant in the original proceedings) either:

- Was neither carrying on business or ordinarily resident within the jurisdiction of the original court and did not voluntarily appear.
- Was ordinarily resident or was carrying on business within the jurisdiction of that court, or agreed to submit to the jurisdiction of that court, and was not duly served with the process of the original court and did not appear.

Subject to the defences to recognition and enforcement, a Canadian court will recognise and enforce a foreign judgment under the common law if the foreign court had a real and substantial connection to the dispute. Non-compliance with service requirements of the foreign country is not one of the recognised defences to recognition and enforcement, per se. However, it can be raised by a defendant under the natural justice defence (see Question 17, Foreign).

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**Final/provisional judgments**

**11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?**

**Domestic**

Interim judgments or orders can be enforced in certain circumstances. For example, an order for an injunction is typically interlocutory (versus final) in nature, and can be enforced by seeking remedial relief in the form of a contempt order.

The effect of pending appeal proceedings depends on the province or territory in which the proceeding has been commenced: in certain provinces and territories, the filing of a notice of appeal is an automatic stay of execution or proceedings, while in other provinces and territories, a party must apply for a stay (see Question 5, Domestic).

**Foreign**

A foreign judgment must be final and conclusive in order to be recognised and enforced.

The effect of pending appeal proceedings depends on the province or territory in which the proceeding is commenced. Where a stay of execution pending appeal has not been granted in the jurisdiction in
which the judgment was entered, the judgment can be enforced. However, the Canadian court has a discretionary power to and may order a stay of local execution pending appeal.

Under the reciprocal enforcement regimes, a foreign judgment usually will not be registered if an appeal is pending or if the judgment debtor is entitled and intends to appeal the judgment.

Foreign judgments: jurisdiction

12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction (and if so, on what jurisdictional grounds can enforcement be refused)?

Under the reciprocal enforcement regimes, a foreign judgment will not be registered if the registering court is shown that the original court acted without jurisdiction. Similarly, under the common law recognition and enforcement regime, a foreign judgment will only be recognised if the party seeking to enforce the judgment demonstrates that the original court was one of competent jurisdiction. In both cases, the enforcing court will only consider whether the issuing court had jurisdiction simpliciter (that is, whether there is a real and substantial connection between the court and the defendant or subject matter), unless the party resisting enforcement does so on the basis that the foreign court lacked jurisdiction.

In *Chevron* the Supreme Court explained that in the context of recognition and enforcement, the real and substantial connection test operates to ensure that the foreign court from which the judgment originated properly assumed jurisdiction over the dispute. Once this has been demonstrated, the defendant has an opportunity to prove that one of the defences to recognition and enforcement should apply. There is no need to prove a connection between the enforcing jurisdiction and the foreign action.

13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

Exorbitant ground of jurisdiction

Generally, a foreign judgment will only be recognised and enforced in Canada if it is shown that, under Canadian conflict of laws principles, the foreign court had jurisdiction over the dispute/defendant. If the foreign court's jurisdiction is raised by the defendant as a ground on which to resist recognition and enforcement, the foreign court's determination of jurisdiction will be reviewed.

Voluntary acknowledgement

In Canadian conflict law, voluntary acknowledgement is also known as “consent-based jurisdiction”. A foreign court has consent-based jurisdiction to pronounce a judgment capable of being recognised and enforced in Canada when the defendant has submitted or agreed to submit to the foreign court's jurisdiction.

Foreign judgments: review of judgment

14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

In an action for the recognition and enforcement of a foreign judgment, Canadian courts will not evaluate the underlying claim that gave rise to the original dispute. The purpose of an action for recognition and enforcement, as confirmed by the Supreme Court in *Chevron*, is “to assist in enforcing an already-adjudicated obligation”.

Foreign judgments: public policy

15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

Recognition and enforcement of a foreign judgment can be refused on grounds of domestic public policy: this is one of the affirmative defences to recognition and enforcement.

The Supreme Court clarified the public policy defence in *Beals v Saldanha*, 2003 SCC 72, which “turns on whether the foreign law is contrary to our view of basic morality”. The public policy defence is not limited to procedural deficiencies in the foreign judgment; the defence is directed at “repugnant laws”.

16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

According to *Beals*, the public policy defence prohibits the enforcement of a foreign judgment founded on a law that is contrary to the Canadian legal system's fundamental morality, and guards against the recognition and enforcement of a foreign judgment rendered by a court that has been proven to be corrupt or biased. However, according to the Supreme Court, this defence is “not a remedy to be used lightly”, and has a narrow application.

Domestic and foreign: other conditions for recognition and enforcement

17. What other conditions exist to enforce and recognise a judgment/refuse recognition and enforcement?

Domestic

Under the reciprocal enforcement regimes, a judgment from a Canadian province or territory will not be registered in another Canadian province or territory if it is shown to the registering court that:

- The original court acted without jurisdiction.
- The judgment debtor, being a person who neither carried on business nor was ordinarily resident within the jurisdiction of the original court, did not voluntarily submit to the jurisdiction of that court.
- The judgment debtor, being the defendant, was not duly served with the process of the original court.
- The judgment was obtained by fraud.
- An appeal is pending, or the judgment debtor is entitled and intends to appeal against the judgment.
- The judgment was in respect of a cause of action which, for reasons of public policy, could not have been entertained by the registering court (see also Question 16).
- The judgment debtor would have a good defence if an action were brought on the original judgment.

The limitation periods for the reciprocal registration and enforcement of a judgment obtained from a Canadian provincial or territorial court in another Canadian province or territory are set out in relevant reciprocal enforcement legislation (see Question 5, Domestic).
Foreign
The conditions to registration (see above, Domestic) also apply to foreign judgments obtained in reciprocating states that are captured by the reciprocal enforcement legislation.

In the common law recognition and enforcement context, assuming the jurisdiction of the foreign court is established, the defendant can (in addition to raising the public policy defence) argue the following in an attempt to resist recognition and enforcement of the foreign judgment:

- That the foreign judgment should be impeached for fraud perpetrated on the court that issued the foreign judgment.
- That the foreign proceedings were contrary to Canadian concepts of natural justice (that is, that the defendant did not have adequate notice of the proceeding or a sufficient opportunity to be heard).
- That the foreign judgment is inconsistent with a prior judgment of the enforcing forum.

**JUDGMENTS: METHODS OF ENFORCEMENT**

18. What is the enforcement procedure after a declaration of enforceability is granted?

See Question 4.

**JUDGMENTS: INTERIM REMEDIES AND INTEREST**

**Interim remedies**

19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

It is possible to apply for interim measures from the enforcing court pending enforcement proceedings.

A party seeking to enforce a foreign judgment can apply to the enforcing court for:

- Prejudgment garnishment.
- A certificate of pending litigation.
- Interim orders for custody or preservation of property.
- Interim injunctions (including Mareva injunctions, Anton Piller orders and Norwich Pharmacal orders).
- Orders for security for costs.

**Interest**

20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

**Domestic**

A judgment creditor is usually entitled to pre- and post-judgment interest under provincial and territorial rules of civil procedure.

Under provincial and territorial reciprocal enforcement legislation, the reasonable costs of and incidental to the registration of the judgment are generally recoverable in the manner as if they were sums payable under the judgment.

**Foreign**

Canadian courts will usually allow interest to be paid on the judgment. The interest is usually based on the rate specified in the foreign judgment. If no rate is specified in the foreign judgment, Canadian courts will normally allow interest at a pre-judgment interest rate set by provincial and territorial statutes.

For foreign, non-Canadian jurisdictions captured by reciprocal enforcement statutes, the reasonable costs of registering a foreign judgment under those statutes may be recoverable.

**Currency**

21. Must the value of a foreign judgment be converted into the local currency?

Canadian courts are not typically permitted to award judgments in foreign currencies.

Federal and provincial/territorial legislation requires the value of the foreign judgment to be expressed in the Canadian dollar equivalent. For example, under Ontario’s Courts of Justice Act, where a person obtains an order to enforce an obligation in a foreign currency, the order will require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency. Furthermore, under the federal Currency Act, any reference to money or monetary value in any legal proceedings must be stated in the currency of Canada.

**ARBITRAL AWARDS: LEGAL FRAMEWORK**

**Domestic framework**

22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

**Domestic**

The UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Arbitration Law) has the force of law in Canada under the Federal Commercial Arbitration Act. The UNCITRAL Model Arbitration Law itself applies only to “international commercial arbitration”. Chapter VIII of the UNCITRAL Model Arbitration Law provides for the recognition and enforcement of awards, irrespective of the country in which the award was made.

The Federal Commercial Arbitration Act refers to the “Code”. The “Code” means the Commercial Arbitration Code, which is based on the UNCITRAL Model Arbitration Law. Under section 5 of the Federal Commercial Arbitration Act, the Code only applies in relation to:

- Matters where at least one of the parties to the arbitration is Her Majesty in right of Canada, a departmental corporation or a Crown corporation.
- Maritime or admiralty matters.

Each province and territory has enacted legislation governing domestic arbitration (such as Ontario’s Arbitration Act and Yukon’s Arbitration Act). Québec’s Code of Civil Procedure governs arbitrations in Québec.

Each provincial and territorial arbitration statute, including Québec’s Code of Civil Procedure, provides for the enforcement of awards made domestically. For example, in Ontario, section 50(1) of the Arbitration Act provides that a person entitled to enforcement of an award made in Ontario or elsewhere in Canada can make an application to the court to that effect within two years of the day on which that person receives the award. Sections 50(3) and 50(4) of Ontario’s Arbitration Act provide that the court must enforce such an award (subject to certain exceptions (see Question 33)).

In Québec, a party can apply to the court for the “homologation” (that is, recognition and enforcement) of an arbitration award (Article 645, Code of Civil Procedure). The court cannot refuse to homologate an arbitration award unless in certain, limited circumstances (Article 646, Code of Civil Procedure). In considering an application for homologation, the court cannot review the merits.
of the dispute. As soon as an award is homologated, it acquires the force and effect of a judgment of the court.

Foreign
The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) has the force of law in Canada under the federal United Nations Foreign Arbitral Awards Convention Act. However, the United Nations Foreign Arbitral Awards Convention Act limits the application of the New York Convention to differences arising out of commercial legal relationships, whether contractual or not. The Supreme Court of Canada has explained that the purpose of the New York Convention is to facilitate cross-border recognition and enforcement of arbitral awards by establishing a single, uniform set of rules that apply worldwide (Yugraneft Corporation v Rexx Management Corporation, 2010 SCC 19). The Supreme Court therefore distinguishes the New York Convention, a treaty, from the UNCITRAL Model Arbitration Law, which is a "codification of international best practices".

Through their incorporation into Canadian law, the New York Convention (Articles 1 to V) and the UNCITRAL Model Law (Articles 35 and 36) provide the framework for the recognition and enforcement of international commercial arbitral awards in Canada. Each province and territory has enacted legislation governing international commercial arbitrations, which all provide for the recognition and enforcement of foreign commercial arbitral awards. The recognition and enforcement provisions either adopt or are based on the UNCITRAL Model Arbitration Law and the New York Convention. For example, under sections 2 and 4 of Alberta's International Commercial Arbitration Act, both the New York Convention and the UNCITRAL Model Law apply in Alberta.

Some provinces and territories have separate pieces of legislation under which the New York Convention and the UNCITRAL Model Arbitration Law apply. For example, sections 1 and 2 of Yukon's International Commercial Arbitration Act provide that the UNCITRAL Model Arbitration Law applies in the Yukon. Yukon's Foreign Arbitral Awards Act is the statute under which the New York Convention applies in that territory.

Article 652 of Québec's Code of Civil Procedure allows courts to consider the New York Convention in determining an application for the recognition and enforcement of any arbitral award made outside Québec (that is, not just a foreign commercial arbitration award).

**International conventions/agreements**

23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Canada is a signatory to the New York Convention, which has the force of law in Canada.

The New York Convention provides that any state can declare that it will only apply the Convention to differences arising from commercial legal relationships. This reservation has been adopted by all Canadian jurisdictions, with the exception of Québec.

The New York Convention also provides that any state can, on the basis of reciprocity, declare that it will only apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state. Canada did not adopt this reciprocity reservation.

Canada is also a party to and has implemented the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID).

Under Article 54 of ICSID, an award rendered under the ICSID will be recognised as binding. The monetary obligations of the award are enforceable as if it were a final judgment of a court in that state. Canada is a party to a number of bilateral investment treaties and regional free trade agreements. Some of these treaties and agreements require the parties to provide appropriate procedures for the recognition and enforcement of arbitral awards. For example, under the Canada-Korea Free Trade Agreement, the parties will be in compliance with the requirement to have procedures for the recognition and enforcement of arbitral awards if they are a party to and in compliance with the New York Convention.

**Definitions**

24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

The New York Convention and the UNCITRAL Model Arbitration Law do not provide a definition of an "arbitral award" or "award".

Few Canadian provincial and territorial laws governing domestic arbitrations define an arbitral "award". For example, British Columbia's Arbitration Act defines "award" as the decision of an arbitrator on the dispute that was submitted to the arbitrator and includes:

- An interim award.
- The reasons for the decision.
- Any amendments made to the award under the Act.

Yukon's Arbitration Act, provides that "award" includes "umpirage and a certificate in the nature of an award".

British Columbia's International Commercial Arbitration Act defines an "arbitral award" as any decision of the arbitral tribunal on the substance of the dispute submitted to it and includes both:

- An interim arbitral award, including an interim award made for the preservation of property.
- An award of interest or costs.

**ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD**

25. What types of arbitral awards are enforceable, and what types are excluded?

**Domestic**

**Enforceable.** Monetary awards are typically in the form of damages and are generally always enforceable (see also Question 4).

Declaratory awards, to the extent that they are a declaration of rights made by an arbitral tribunal and related to the parties to the arbitration, will be enforced by Canadian courts. The courts will not enforce arbitral awards that declare (or attempt to declare) the rights of a third party or non-party to the arbitration, as the third party cannot have appeared to the tribunal's jurisdiction.

Whether interim awards are enforceable in general will depend on the jurisdiction. Under section 10 of British Columbia's Arbitration Act, an award includes an interim award. Section 29 of this Act provides that an "award" can be enforced in the same manner as a judgment or order of the court to the same effect. Therefore, under this Act, interim awards, including interim injunctions, are enforceable.

In Ontario, subsection 18(1) of the Arbitration Act provides that, on a party's request, an arbitral tribunal can make an order for the detention, preservation or inspection of property and documents subject to the arbitration or as to which a question may arise in the arbitration, and can order the party to provide security in that
connection. (The arbitration acts in Alberta, Nova Scotia, New Brunswick and Manitoba all contain similar provisions.) Subsection 18(2) provides that the court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

Ontario’s Arbitration Act also provides that an arbitral tribunal can order specific performance, injunctions and other equitable remedies. These equitable remedies can be enforceable, provided they are only made in relation to the parties to the arbitration who have submitted to the jurisdiction of the arbitral tribunal. A Norwich order made by an arbitral tribunal, for example, would not be enforceable, since Norwich orders permit discovery of third parties.

Excluded. An arbitral tribunal’s jurisdiction does not extend to parties who are not bound by the arbitration agreement and who have not attorned to the arbitral tribunal’s jurisdiction. Therefore, any award made against non-parties will not be enforceable.

In Ontario, family arbitration awards are only enforceable under the Family Law Act.

Generally, a court will not enforce an award if the subject-matter of the award is not capable of being the subject of arbitration under the law of the province or territory in which enforcement is sought.

Foreign

Enforceable. Each Canadian province and territory has incorporated both the New York Convention and the UNCITRAL Model Law into domestic law. Ontario’s International Commercial Arbitration Act 2017 (ICAA 2017), which entered into force on 22 March 2017, gives the New York Convention the force of law in that province. (Under the previous Act, the application of the New York Convention was ambiguous.) (see Question 4(b)).

The New York Convention sets out a complete code for the recognition and enforcement of foreign arbitral awards. Article III of the New York Convention provides that an arbitral award will be recognised as binding and enforced in accordance with the rules of procedure of the province or territory where the award is relied upon. Recognition and enforcement can only be refused on the limited grounds set out in Article V.

Similarly, Article 35 of the UNCITRAL Model Arbitration Law provides that an arbitral award made in an international commercial arbitration, irrespective of the country in which it was made, will be recognised as binding and, on application in writing to the competent court, will be enforced subject, subject to Article 36.

A court can only refuse to enforce a foreign arbitral award in very limited circumstances.

Monetary awards, typically awarded in the form of damages, are enforceable. Declaratory awards, insofar as they are a declaration of legal rights made by an arbitral tribunal regarding the parties to an arbitration agreement (and not third parties) are also enforceable.

Few Canadian jurisdictions will enforce interim relief granted in interim arbitrations. Foreign arbitral awards are enforced in British Columbia (BC) pursuant to BC’s International Commercial Arbitration Act. The definition of “arbitral award” in that Act includes an “interim arbitral award”. Ontario’s ICAA 2017 adopts the 2006 amendments to the UNCITRAL Model Arbitration Law, which allow for the recognition and enforcement of interim measures, except in limited situations. (Other Canadian provinces and territories have yet to adopt the 2006 amendments to the UNCITRAL Model Arbitration Law.)

Excluded. Courts will generally not enforce interim relief granted in international arbitrations, except as provided above (see above, Enforceable).

Generally, under both the UNCITRAL Model Arbitration Law and the New York Convention, a court will not recognise or enforce an award where it finds that either:

- The subject matter of the dispute is not capable of settlement by arbitration under the law of the state in which recognition and enforcement is sought.
- Recognition or enforcement would be contrary to the public policy of the recognising or enforcing state.

ENFORCEMENT PROCEEDINGS

Procedure

26. What is the procedure for making an application to enforce an arbitral award?

Domestic awards

Under the domestic arbitration legislation in Ontario, Alberta, Saskatchewan, Manitoba, and New Brunswick, a person entitled to the enforcement of an award made in that province or elsewhere in Canada can apply to the court to that effect.

In Ontario, Alberta, Saskatchewan, Manitoba and New Brunswick, arbitration legislation expressly provides that an application for enforcement must be made on notice. In limited circumstances, such as where there is neither the time nor means to provide meaningful notice, or where providing notice would frustrate the process, an application can be brought ex parte.

Typically, the application is made to the provincial or territorial superior court.

The limitation period for commencing enforcement proceedings varies across Canadian jurisdictions. In New Brunswick, for example, an application for enforcement of an award cannot be made more than two years after the day on which the applicant receives the award. In Alberta, an application for the enforcement of an award cannot be made either more than two years after the day on which the applicant receives the award or more than two years after all appeal periods have expired (whichever is later). A recent amendment to Ontario’s Arbitration Act modified the limitation period for enforcing awards: an application to enforce an award in Ontario cannot be commenced after the later of 31 December 2018 and the 10th anniversary of the day the award was received, or, if an application to set aside the award was commenced, the date on which the application was finally determined.

In some provinces and territories, leave of the court is required to enforce an award. In British Columbia, the Northwest Territories, the Yukon and Nunavut, an award can be enforced in the same manner as a judgment or order of the court to the same effect with leave of the court. In Nova Scotia, an award on a submission (that is, a written agreement to submit present or future differences to arbitration whether or not an arbitrator is named in the agreement) can, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. The legislation in Newfoundland and Prince Edward Island contains provisions similar to that of Nova Scotia’s.

Filing fees vary across jurisdictions. The filing fee for an application in the New Brunswick Court of Queen’s Bench is Can$35 and in the Manitoba Court of Queen’s Bench is Can$225.

In Ontario, Manitoba, Alberta, Saskatchewan, New Brunswick and Quebec, the court must recognise and enforce (or, in the case of Quebec, homologate) an award made in that province or elsewhere in Canada, except in certain circumstances be enforced by way of application under provincial and territorial reciprocal enforcement legislation (see Question 5, Domestic).

The court’s decision to grant or deny an application for enforcement is appealable.

Foreign awards

A party seeking to have a foreign award recognised and enforced in a Canadian jurisdiction must apply in writing to the competent court.
The application should include the original or a copy of the award and/or the arbitration agreement (see Question 28), exhibited to a sworn affidavit. An award made in a foreign jurisdiction that can be enforced by application under that regime.

If the subject matter of the arbitration is governed by federal law, the application for recognition and enforcement will be made to the Federal Court Trial Division. If the subject matter of the arbitration is governed by provincial or territorial law, the application must be made to the court of inherent jurisdiction (the superior court).

The New York Convention and the UNCITRAL Model Arbitration Law do not set out a specific time within which the application must be brought. However, the New York Convention provides that each contracting state must enforce arbitral awards in accordance with the rules of procedure of the jurisdiction in which the award is relied on. In Yurgraneffe, the Supreme Court of Canada held that the rules of civil procedure of the jurisdiction in which enforcement of the foreign award is sought will apply to those proceedings (provided they do not conflict with the express requirements of the New York Convention).

According to the Supreme Court, limitation periods (and the discoverability rules to which they are subject) fall under "rules of civil procedure" and therefore apply to the enforcement of international arbitration awards. As a result, the limitation periods applicable to the enforcement of foreign awards will vary significantly between the Canadian provinces. See also Question 41.

Filing fees vary across jurisdictions. A court's decision to grant or deny an application for enforcement can be appealed in the jurisdiction in which the recognition and enforcement proceedings were commenced.

27. Can parties seek to enforce only part of the award?

Parties can seek to enforce only part of an award. A party can enforce part of an award if the party against whom the award was made has partially performed its obligations under the award.

Form of application

28. What documents and information must be provided with an application to enforce an award?

Domestic
For the enforcement of domestic awards in Ontario, Manitoba, New Brunswick, Saskatchewan and Alberta, the original award or a certified copy must be included with the enforcement application material. The arbitration legislation in the other provinces and territories does not specify what documents are required, but it would be prudent for the party seeking enforcement to include the original award or a certified copy in the enforcement application material. As a practical matter, these documents would be exhibited to a sworn affidavit in support of the enforcement application.

Foreign
For the enforcement of international awards, Article 35(2) of the UNCITRAL Model Arbitration Law requires a party who applies for the enforcement of an award to include the original award or a copy with the enforcement application. Article 35(2) also indicates that if the award is not made in the official language of the state, the court can request the party to provide a translation of the award in the state's official language.

Under Article IV of the New York Convention, the party applying for recognition and enforcement must supply:

- The duly authenticated original award (or a duly certified copy of the award).

- The original arbitration agreement (or a duly certified copy of the agreement).

- (If applicable) a translation of the above documents if they are not made in an official language of the country in which the award is relied upon. The translation must be certified by an official or sworn translator or by a diplomatic or consular agent.

As a practical matter, these documents would be exhibited to a sworn affidavit in support of the enforcement application.

29. What information must be included in the application?

The notice of application for the enforcement of a domestic or international award should include:

- General information about the award and the arbitration that gave rise to the award.
- The jurisdiction of the arbitral tribunal to make the award and jurisdiction of the superior court to enforce the award.
- The applicable grounds for refusing enforcement (see Question 26), and how/why they do not apply.

CHALLENGING ENFORCEMENT
Service

30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

Domestic
For jurisdictions in which the grounds for refusing the recognition and enforcement of the award are not set out in the domestic legislation, a court can exercise discretion to refuse recognition and enforcement if the party resisting recognition and enforcement demonstrates that notice was not given (see Question 29).

In Ontario, Manitoba, New Brunswick, Saskatchewan and Alberta, the domestic arbitration legislation outlines the limited situations in which a court can refuse recognition and enforcement (see Question 29).

Foreign
A court can refuse to recognise or enforce a foreign award under Article 36(1)(a)(ii) of the UNCITRAL Model Arbitration Law if the party resisting recognition or enforcement can prove that either:

- Proper notice of the appointment of an arbitrator or of the arbitral proceedings was not given.
- He/she was unable to present his/her case.

A similar provision is found in Article V of the New York Convention.

Pending challenge proceedings

31. What is the effect of pending challenge proceedings to the award?

Domestic
A court in Ontario, Manitoba, Saskatchewan, New Brunswick and Alberta must give judgment enforcing an award obtained in those provinces or elsewhere in Canada, except in certain situations, including when there is a:

- Pending appeal.
- Pending application to set the award aside.
- Pending application for a declaration of invalidity. In those same jurisdictions, if the period for commencing an appeal, application to set the award aside, or application for a declaration that invalidity has not yet elapsed, the court can either:

- Enforce the award.

- Order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed or until the pending proceeding is finally disposed of.

Foreign

Recognition and enforcement can be refused if the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made (Article 36(1)(a)(v), UNCITRAL Model Arbitration Law; Article VI(b), New York Convention).

Canadian jurisprudence suggests that where an award is appealed, it may still be considered “binding” for the purpose of the provisions set out in the previous paragraph (European SpA v Alba Tours International Inc 1997 CarswellOnt 91). When an award is appealed but still considered binding for enforcement purposes, the court may exercise discretion to adjourn the decision on enforcement pending a determination of an appeal (European).

Both the UNCITRAL Model Arbitration Law (Article 36(2)) and the New York Convention (Article VI) provide that if the application for the setting aside or suspension of the award is made to a court of the country in which, or under the law of which, the award was made, the recognizing/enforcing court can adjourn the decision and order the party who is resisting the award and/or its recognition and enforcement to provide appropriate security.

Review/opposition

32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

Domestic

The enforcing court will not review an award if all formalities are complied with and if the award meets all of the statutory requirements. The party resisting recognition and enforcement may be better served to appeal the award, to apply to set aside the award, or to apply for a declaration of invalidity. However, the availability of these remedies will depend on the particular Canadian province or territory.

Foreign

The enforcing court will usually not review an award if all formalities are complied with and if the award meets all the statutory requirements.

Article 34 of the UNCITRAL Model Arbitration Law provides that recourse to a court of the state (not the court to whom an application for recognition and enforcement has been made) against an arbitral award may only be made by an application for setting aside. Article 34 sets out the grounds on which the award can be set aside by the court.

33. What are the grounds for refusing enforcement?

Domestic

In Ontario, Manitoba, Alberta, Saskatchewan and New Brunswick, the court must recognise and enforce an award made in that particular province unless any of the following are applicable:

- The 30-day period for commencing an appeal or an application to set the award aside has not yet elapsed.

- There is a pending appeal, an application to set the award aside or an application for a declaration of invalidity.

- The award has been set aside or the arbitration is the subject of a declaration of invalidity.

- (For Ontario only) the award is a family arbitration award.

In Ontario, Manitoba, Alberta, Saskatchewan and New Brunswick, the court must recognise and enforce an award made elsewhere in Canada unless any of the following are applicable:

- The period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed.

- There is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made.

- The award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there.

- The subject-matter of the award is not capable of being the subject of arbitration under Ontario law.

- (For Ontario only) the award is a family arbitration award.

Under Article 646 of Québec's Code of Civil Procedure, the court cannot refuse to homologate an award except on proof of any of the following:

- One of the parties did not have the capacity to enter into the arbitration agreement.

- The arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under Québec law.

- The procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed.

- The party against which the award or measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case.

- The award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not homologated if it can be dissociated from the rest.

In the other provinces and territories, domestic arbitration legislation does not list the specific grounds for refusing to enforce an arbitral award, and the courts of these provinces and territories therefore have more discretion. In Nova Scotia, for example, the enforcement process begins with filing the award and the arbitration. The party resisting enforcement then has an opportunity to establish grounds for refusing enforcement. Some courts have held that the grounds for refusing enforcement in Nova Scotia include, for example (Rusk Renovations Inc v Dunsworth, 2013 NSSC 179):

- Absence of notice.

- Excess of the submission to arbitration.

- Breach of public policy.

Foreign

Recognition and enforcement of international awards can be refused under the New York Convention if the party resisting recognition or enforcement can prove any of the following (Article V, New York Convention):

- Under the law applicable to the agreement, the parties were under some incapacity, the agreement is not valid under the law
to which the parties have subjected it, or failing any indication of the applicable law in the agreement itself, the agreement is not valid under the law of the country where it was made.

- The party against whom the award is invoked was not given proper notice of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.

- The award deals with a difference that was not contemplated or does not fall within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, the part of the award which contains decisions on matters submitted to arbitration can be recognised and enforced.

- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.

- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

Recognition and enforcement of an arbitral award may also be refused under the New York Convention if the competent authority of the country in which recognition and enforcement is sought finds that either:

- The subject matter of the difference is not capable of settlement by arbitration under the law of that country.

- The recognition or enforcement of the award would be contrary to the public policy of that country (see Question 34, Foreign).

Similar provisions are set out at Article 36 of the UNCITRAL Model Arbitration Law.

The discretionary nature of these provisions is important. Even if a party proves any one of the grounds for refusal set out above, the court retains discretion over whether to enforce the award.

**Public policy**

**34. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?**

**Domestic**

Given the federal nature of Canada’s composition of provinces and territories, an occurrence in which public policy would differ in any meaningful way to affect the enforcement of a domestic award would be very rare.

**Foreign**

Under the UNCITRAL Model Arbitration Law (Article 36(1)(b)(ii)) and the New York Convention (Article V(2)(b)), a court can refuse to recognise and enforce an arbitral award if the recognition and enforcement would be contrary to the public policy of that country. Similarly, an award can be set aside if the court finds that the award conflicts with the public policy of the country in which the award was made.

The public policy of the country where recognition and enforcement is sought applies.

The public policy ground for refusal is not limited to procedural deficiencies in the award. In fact, often the public policy ground focuses on whether the award offended principles of justice and fairness.

The Canadian courts have explained that the purpose of imposing Canada’s public policy on international awards is “to guard against enforcement of an award which offends our local principles of justice and fairness in a fundamental way... or where there was ignorance or corruption on the part of the tribunal which could not be seen to be tolerated or condoned by our courts” (Schreter v Camac Inc, [1992] 7 OR (3d) 608 p (Ontario General Division)).

**35. In what circumstances and against which awards has the principle of public policy generally been applied?**

To be refused on grounds of public policy, an award must be contrary to “essential morality”. This ground for refusal must be narrowly construed, and courts must exercise care in relying on this ground for refusal. In *Schreter*, the court warned against re-opening the merits of an arbitral decision where there has been no misconduct, as this could bring the enforcement procedure set out in the UNCITRAL Model Arbitration Law into disrepute.

Canadian courts have held that instances of corruption, bribery, or fraud would offend the essential morality of domestic law and “shared notions” of justice that are common to legal systems throughout the world, such that “no court would hesitate to set aside an award arrived at in this manner” (*Corporacion Transnacional de Inversiones SA de CV v Stet International SpA*, [1999] 45 OR (3d) 183 (Superior Court)).

**ACTUAL ENFORCEMENT**

**36. What is the execution procedure when a declaration of enforceability is granted?**

Canadian courts have the same powers with respect to the enforcement of arbitral awards as they do with respect to the enforcement of judgments. Arbitral awards can therefore be enforced in the same manner as judgments (see Question 4).

**37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?**

A judgment debtor’s rights are restrained after judgment. The judgment debtor’s available next steps, if any, will depend on the circumstances of the case. Assuming the judgment is, at least, in part, for a sum of money, the judgment debtor may be able to raise statutory exemptions for wages and pensions in an attempt to resist the judgment creditor’s efforts to seize and garnish. Furthermore, if the judgment debtor is insolvent, remedies may be available under the federal Bankruptcy and Insolvency Act.

**ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST**

**Interim remedies**

**38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?**

As a general proposition, the enforcing court has the same powers with respect to the enforcement of arbitral awards as with respect to the enforcement of its own judgments (see, for example, section 50(8) of Ontario’s Arbitration Act and section 49(8) of Alberta’s Arbitration Act). It is therefore possible to apply for interim remedies pending enforcement proceedings (see Question 19).
Interest

39. Is the creditor entitled to interest? If so, on what basis is it calculated?

In Canada a judgment arising out of enforcement proceedings is, in effect, an order of the enforcing court. The judgment will be subject to the law of the enforcing court and the rules applicable to judgments of that court (including the rules regarding interest).

Currency

40. Is it required to convert the value of foreign awards into the local currency?

Under the federal Currency Act, any reference to money or monetary value in any legal proceedings must be provided in Canadian currency, so an applicant seeking recognition and enforcement of an award should include the Canadian dollar equivalent of the award in his or her application.

JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM

41. Are any changes to the law currently under consideration or being proposed?

Judgments
Not applicable.

Arbitral awards

Uniform Arbitration Act 2016. On 1 December 2016, the Uniform Law Conference of Canada adopted a revised Uniform Arbitration Act 2016 (UAA 2016), which is intended to modernise domestic arbitration legislation.

The provision respecting the enforcement of arbitral awards has been revised in the UAA 2016. Under the old Uniform Act, if the award gave a remedy that the court did not have jurisdiction to grant, or would not grant in a proceeding based on similar circumstances, the court could grant a different remedy or remit it to the arbitral tribunal together with the court's opinion. However, the working group that consulted on the UAA 2016 had concerns with leaving it open to a court to find that it would not have granted a remedy granted by the award in similar circumstances and remit the matter back to the arbitral tribunal. The new provision in the UAA 2016 states that "unless the court orders otherwise, a court decision to enforce an award has the same effect as a court judgment granting the remedy described in the award." As explained in the UAA 2016 itself, the new provision is "intended to give more guidance regarding the meaning and effect of an award being enforced by a court."

Provincial and territorial legislatures now have the opportunity to consider the revised UAA 2016 and determine how to implement it in their respective jurisdictions. (However, the UAA 2016 is unlikely to significantly affect Québec, given that its new Code of Civil Procedure entered into force on 1 January 2016.)

International Commercial Arbitration Act 2017. On 22 March 2017, the International Commercial Arbitration Act 2017 (ICAA 2017) entered into force in Ontario. The ICAA 2017 repealed and replaced Ontario’s International Commercial Arbitration Act that was previously in place. Importantly, the ICAA 2017 adopted the 2006 amendments to the UNCITRAL Model Arbitration Law, including, for example, the amendment that allows for the recognition and enforcement of interim measures. In addition, the ICAA 2017 gives the New York Convention the force of law in Ontario. (Under the previous Act, no reference was made to the New York Convention, resulting in uncertainty about the Convention’s application in Ontario).

The ICAA 2017 also aligns the limitation periods in which to commence proceedings for the enforcement of international arbitral awards, domestic arbitral awards, and those prescribed by the Limitations Act. The ICAA 2017 grants a party ten years to enforce an international or domestic arbitral award. The ten-year period begins on the date the award was released, or, if proceedings to set aside the award are commenced, the date on which that proceeding has concluded. An equivalent amendment has been made to Ontario’s Arbitration Act in respect of the limitation period in which to commence proceedings for the enforcement of a domestic award.

ONLINE RESOURCES

Canadian Legal Information Institute (CanLII)

W www.canlii.org/

Description. Provides free access to Canadian court judgments, tribunal decisions, statutes and regulations from all Canadian jurisdictions and in both English and French.
Practical Law Contributor profiles

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Areas of practice. Civil, commercial and multi-jurisdictional litigation; anti-bribery, anti-corruption, anti-money laundering law; competition/antitrust law.

Recent transactions
- Successfully set aside a Mareva injunction obtained by a Singaporean corporation against an African sovereign in Ontario, Canada.
- Successfully set aside the registration and enforcement of a Brazilian freezing order in Antigua and Barbuda.
- Retained to resist the registration and enforcement of a freezing order obtained in the British Virgin Islands in Ontario, Canada. The litigation settled prior to enforcement proceedings.

Professional associations/memberships. Member of the Ontario and Canadian Bar Associations; Member of The Advocates' Society; Member of the American Bar Association.