

Recognition and Enforcement of Foreign Judgments in Canada “Twenty Years of Evolution”

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INTRODUCTION

The free movement of goods, services, capital and persons depends upon the recognition and enforcement of foreign judgments. According to Brand “...in today's world ... exchanges occur even where legal rights are not easily enforced. At the same time, however, the lack of a system of rights enforcement or any limitation on enforcement raises transaction costs related to those exchanges. The higher costs of operating in such an environment result in higher prices necessary to maintain the same profit margin, thus causing a reduction in the number of exchanges that will occur. *The failure to enforce legal rights, including those reduced to judgment in other jurisdictions, thus represents a significant trade barrier* (emphasis added).”¹

The recognition and enforcement of foreign judgments is primarily within the domain of private international law (or conflicts of law) principles. Prior to 1990, the rules governing the recognition and enforcement of foreign judgments in Canada (with the exception of the province of Quebec)² were very similar to the rules of the common law applied in England. Canadian courts usually enforced a foreign judgment only where the defendant had submitted to the jurisdiction of the foreign court, or was present in the foreign jurisdiction when served with the originating process.

In 1990, the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye*³ held that a default judgment from Alberta was enforceable against a defendant in British Columbia, even

though the defendant had neither consented to the jurisdiction of the Alberta courts, nor was he served with process there. Assessing the significance of this case, Blom commented “... no other system of private international law has experienced a judicial re-invention of its foundations that was so rapid.”⁴

Morguard established that a court, at first instance, can assert jurisdiction over an out-of-province defendant in cases where there was a “real and substantial connection” between the forum and the action. Although *Morguard* involved an interprovincial judgment, lower courts extended the “real and substantial connection” test to the international arena. Later, in *Beals v. Saldanha*⁵, the Supreme Court of Canada approved this extension.

In this article I will discuss the evolution of the recognition and enforcement of foreign judgments in Canada since *Morguard*, the implications of the “real and substantial connection” test, and the defences available according with the jurisprudence. Further, I will cover the legislative efforts and its current status and prospect. Finally, I will also examine the Convention between Canada and the United Kingdom For The Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters⁶, and the approach taken on the matter by the European Union and the Hague Choice of Court Convention⁷.

JURISPUDENCE

Morguard

The 1990 Supreme Court of Canada decision in *Morguard* marked a new approach by Canadian courts to conflict of laws jurisprudence. The Supreme Court of Canada concluded that a default judgment from Alberta should be enforceable against a defendant in British Columbia because the Alberta court had a “real and substantial connection” to the dispute. La Forest J., writing for a unanimous court, wrote:

... [I]f it is fair and reasonable for the courts of one province to exercise jurisdiction over a subject matter, it should as a general principle be reasonable for the courts of another province to enforce the resultant judgment.⁸

He further stated:

The courts in one province should give full faith and credit, to use the language of the United States Constitution, to the judgments given by a court in another province or a territory, so long as that court has properly, or appropriately, exercised jurisdiction in the action.⁹

Although *Morguard* was first and foremost a constitutional law decision dealing with the interprovincial enforcement of judgments within the Canadian federal state, the court suggested that the same approach might apply to foreign judgments of comparable civilized jurisdictions, based on the principles of international comity. The Supreme Court of Canada defined comity as “the deference and respect due by other states to the actions of a state legitimately taken within its territory”¹⁰. In this regard, Justice La Forest reasoned:

The business community operates in a world economy and we correctly speak of a “world community” even in the face of decentralized political and legal power. Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal. Certainly, other countries, notably the United States and members of the European Economic Community, have adopted more generous rules for the recognition and enforcement of foreign judgments, to the general advantage of litigants.¹¹

Beals

In *Beals*, the defendants, residents of Ontario, sold to the plaintiffs a vacant lot situated in the state of Florida. In 1986, the plaintiffs brought an action in Florida over that transaction against the Ontario defendants and others. The Ontario defendants filed a defence but chose not to defend any of the subsequent amendments to the action. Pursuant to Florida law, the failure to defend the amendments had the effect of not defending the action. The Ontario defendants were subsequently noted in default, and were served with notice of a jury trial to establish damages. The Ontario defendants did not respond to the notice nor did they attend the trial. The jury awarded the respondents \$210,000 USD in compensatory damages and \$50,000 USD in punitive damages.

Upon receipt of the notice of the monetary judgment against them, the Ontario defendants sought legal advice. They were advised by an Ontario lawyer that the foreign judgment could not be enforced in Ontario. Relying on this advice, the Ontario defendants took no steps to appeal. The plaintiffs brought an action in Ontario to enforce the Florida judgment. By the time of the hearing in 1998, the foreign judgment with interest had grown to approximately \$800,000 CAN.

The Supreme Court of Canada confirmed in *Beals* that the realities of today's global economy demand that foreign judgment enforcement be governed by a principle of international comity. Thus, the real and substantial connection test of the *Morguard* decision should apply to judgments from outside Canada. Major J. noted, "the need to accommodate 'the flow of wealth, skills and people across state lines' is as much an imperative internationally as it is interprovincially."¹² The doctrine of comity, as enunciated in *Morguard*,¹³ "must be permitted to evolve concomitantly with international business relations, cross-border transactions, as well as mobility."¹⁴

On the other hand, LeBel J., in dissent, did not believe that the "real and substantial connection" test ought to be extended, without alteration, to international foreign judgments:

The jurisdiction test itself should be applied so that the assumption of jurisdiction will not be recognized if it is unfair to the defendant. To do so requires taking into account the differences between the international and interprovincial contexts as well as between the rationales that structure our conflicts law in these two spheres.¹⁵

The Real and Substantial Connection test

In *Morguard* La Forest J. made it clear that the need for order, fairness and jurisdictional restraint also applies to assumed jurisdiction. He wrote:

[I]t hardly accords with principles of order and fairness to permit a person to sue another in any jurisdiction, without regard to the contacts that jurisdiction may have to the defendant or the subject-matter of the suit ... Thus, fairness to the defendant requires that the judgment be issued by a court acting through fair process and with properly restrained jurisdiction.¹⁶

In *Hunt v. T & N plc*, the Supreme Court affirmed that “the exact limits of what constitutes a reasonable assumption of jurisdiction were not defined, and ... no test can perhaps ever be rigidly applied.”¹⁷ The Court added, “[T]he assumption of, and the discretion not to exercise jurisdiction must ultimately be guided by the requirements of order and fairness, not a mechanical counting of contacts or connections.”¹⁸

The Supreme Court of Canada has emphasized that the jurisdictional inquiry should be guided by the constitutional principles of order and fairness. In *Tolofson v. Jensen*, La Forest J. recognized that while “[t]he underlying principles of private international law are order and fairness ... order comes first for it is a precondition to justice.”¹⁹

Later, the Ontario Court of Appeal in *Muscutt v. Courcelles*²⁰ attempted to provide guidance on the content of the real and substantial connection test by enumerating eight factors for a court to consider when applying the “real and substantial connection” test. These factors have subsequently been considered by other courts, including the Supreme Court of Canada²¹. According to *Muscutt* these factors are:

- 1) the connection between the forum and the plaintiff's claim;
- 2) the connection between the forum and the defendant;
- 3) unfairness to the defendant in assuming jurisdiction;
- 4) unfairness to the plaintiff in not assuming jurisdiction;
- 5) the involvement of other parties to the suit;
- 6) the court's willingness to recognize and enforce an extraprovincial judgment rendered on the same jurisdictional basis;
- 7) whether the case is interprovincial or international in nature; and
- 8) comity and standards of jurisdiction, recognition and enforcement prevailing elsewhere.²²

Subsequently, in *Beals*, Major J. set out the requirements of the “real and substantial connection” test as follows:

The "real and substantial connection" test requires that a significant connection exist between the cause of action and the foreign court. Furthermore, a defendant can reasonably be brought within the embrace of a foreign jurisdiction's law where he or she has participated in something of significance or was actively involved in that foreign jurisdiction. A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection to the foreign jurisdiction must be a substantial one.²³

LeBel J.'s dissenting opinion in *Beals* reflected fairness concerns:

The [real and substantial connection] test should ensure that, considering the totality of the connections between the forum and all aspects of the action, it is not unfair to expect the defendant to litigate in that forum. ... [T]he connection must be strong enough to make it reasonable for the defendant to be expected to litigate there even though that may entail additional expense, inconvenience and risk.²⁴

In contrast, fairness concerns, according to Major J., are more appropriately addressed via the defences to enforcement or through the doctrine of forum non conveniens.²⁵

Legislation that identifies presumptive “real and substantial connections” would introduce some much-needed predictability on the concept. The Law Commission of Ontario in its recent consultation paper titled "Reforming the Law of Crossborder Litigation Judicial Jurisdiction"²⁶ suggested that the provisions of the statute relating to jurisdiction based on a “real and substantial connection” between the matter and the forum could read:

Real and Substantial Connection

3. A court may exercise jurisdiction in a civil matter where there is a real and substantial connection between Ontario and the matters in dispute, such as where the proceedings relate to:

(i) immovable or movable property in Ontario;

(ii) the estates of persons who died while ordinarily resident in Ontario, including their movable property elsewhere;

(iii) trusts administered in Ontario, or by trustees ordinarily resident in Ontario;

(iv) contractual or other obligations to be performed in Ontario, or governed by the law of Ontario;

(v) torts, equitable wrongs, or unjust enrichment that occurred in Ontario;

(vi) the status or capacity of persons ordinarily resident in Ontario; or

(vii) claims by public authorities in Ontario.

Defences to the Enforcement of Foreign Judgments

Major J. noted in *Beals* that once the court establishes that there is a “real and substantial connection”, it then needs to examine the available defences. Three defences have been recognized: fraud, lack of natural justice and public policy. Major J. also recognized that “unusual situations” may arise requiring the “creation of a new defence to the enforcement of a foreign judgment”. Further he added, “Should the evolution of private international law require the creation of a new defence, the courts will need to ensure that any new defences continue to be narrow in scope.”²⁷

Fraud

In *Beals* the Supreme Court of Canada held that, in order to balance the need to guard against fraudulently procured judgments with the need to preserve finality in judgments, only new or newly discovered material facts, which were not before the foreign court, will be considered with respect to the fraud defence. In this respect, Major J. stated:

It is simpler to say that fraud going to jurisdiction can always be raised before a domestic court to challenge the judgment. On the other hand, the merits of a foreign judgment can be challenged for fraud only where the allegations are new and not the subject of prior adjudication. Where material facts not previously discoverable arise that potentially challenge the evidence that was before the foreign court, the domestic court can decline recognition of the judgment.²⁸

In contrast, LeBel J. would not have ruled out the possibility of a boarder test for fraud:

If the defendant ignored what it justifiably considered to be a trivial or meritless claim, and can prove on the civil standard that the plaintiff took advantage of his absence to perpetrate a deliberate deception on the foreign court, it would be inappropriate to insist that a Canadian court asked to enforce the resulting judgment must turn a blind eye to those facts. ... In my opinion, a more generous version of the fraud defence ought to be available, as required, to address the dangers of abuse associated with the loosening of the jurisdiction test to admit a broad category of formerly unenforceable default judgments.²⁹

Denial of Natural Justice

Justice Major in *Beals* defines the defence of natural justice as follows:

The defence of natural justice is restricted to the form of the foreign procedure, to due process, and does not relate to the merits of the case. The defence is limited to the procedure by which the foreign court arrived at its judgment. However, if that procedure, while valid there, is not in accordance with Canada's concept of natural justice, the foreign judgment will be rejected. The defendant carries the burden of proof and, in this case, failed to raise any reasonable apprehension of unfairness.³⁰

Thus, it is not the substantive law applied that is relevant, but the process by which the foreign court came to its decision. The plaintiff is not required to show that the foreign legal system is a fair one, or even that the proceeding was fair procedurally, as prerequisite of enforcement. Rather, a defendant opposing enforcement has the burden of establishing that the foreign proceeding was unfair.

Fair process, according to Major J., is one that “reasonably guarantees basic procedural safeguards such as judicial independence and fair ethical rules governing the participants in the judicial system.”³¹ It also includes a requirement that the defendant be given adequate notice of the claim and an opportunity to defend.

Major J. further stated:

LeBel J. would expand the defence of natural justice by interpreting the right to receive notice of a foreign action to include notice of the legal steps to be taken by the defendant where the legal system differs from that of Canada's and of the consequences flowing from a decision to defend, or not defend, the foreign action. Where such notice was not given, he would deny enforcement of the resulting judgment. No such burden should rest with the foreign plaintiff. Within Canada, defendants are presumed to know the law of the jurisdiction seized with an action against them. Plaintiffs are not required to

reports that aspects of the government of Singapore do not meet the standards of the rule of law in Canada, this evidence goes against Singapore's formal legal structure as evidenced by its constitution and laws" and, importantly, "furthermore, Oakwell has provided evidence to the contrary". He concluded that, on a balance of probabilities, both parties enjoyed fair process in the Singapore courts.³⁷

LEGISLATION

In *Beals*, Major J. noted that the "real and substantial connection" test would defer to legislative reform:

International comity and the prevalence of international cross-border transactions and movement call for a modernization of private international law. The principles set out in *Morguard, supra*, and further discussed in *Hunt v. T&N plc*, [\[1993\] 4 S.C.R. 289](#), can and should be extended beyond the recognition of interprovincial judgments, even though their application may give rise to different considerations internationally. Subject to the legislatures adopting a different approach by statute, the "real and substantial connection" test should apply to the law with respect to the enforcement and recognition of foreign judgments.³⁸

In 2000, The Uniform Law Conference of Canada (ULCC) launched its Commercial Law Strategy, "which aims to modernize and harmonize Canadian commercial law with a view to creating a comprehensive framework of commercial statute law which will make it easier to do business in Canada, resulting in direct benefits to Canadians and the economy as a whole."³⁹

Following this strategy the ULCC has finalized the Uniform Enforcement of Foreign Judgments Act (UEFJA)⁴⁰ that reflects the private international law principles of comity and reciprocity.

According to the ULCC commentary, the following policy choices are reflected in the proposed UEFJA:

- A specific uniform act should apply to the enforcement of foreign judgments rendered in countries with which Canada has not concluded a treaty or convention on recognition and enforcement of judgments.
- It applies to money judgments as well as to those ordering something to be done or not to be done.

- It applies to provisional orders as well as to final judgments.
- It rejects the “full faith and credit” policy applicable to Canadian judgments under the Uniform Enforcement of Canadian Judgments (UECJA).
- The proposed uniform act adopts the “real and substantial connection” test established in *Morguard*, as a condition for recognition and enforcement of a foreign judgment.
- The proposed uniform act identifies the conditions for the recognition and enforcement of foreign judgments in Canada. These conditions are largely based on well-accepted and long-established defences or exceptions to the recognition and enforcement of foreign judgments in Canada.

In 2005, the Saskatchewan government implemented the UEFJA by proclaiming the Enforcement of Foreign Judgments Act (EFJA).⁴¹ The Act establishes that where a foreign court had a “real and substantial” connection to the underlying dispute, the resulting judgment may be registered in Saskatchewan and enforced as a Saskatchewan judgment, subject to the common law defences. The Sask. EJFA also includes recognition and enforcement of provisional orders and the time within which enforcement may be sought.⁴²

In addition, section 6 of the EJJA allows the Saskatchewan court discretion to limit damage awards or costs awards where the foreign judgment contains a punitive or non-compensatory element, or is otherwise excessive considering what would have been granted by a court in Saskatchewan. The defendant bears the evidentiary burden in obtaining any protection from this provision.

RECIPROCAL RECOGNITION AND ENFORCEMENT CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM

The Convention between Canada and the United Kingdom for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, 1984,⁴³ provides similar provisions and procedures for reciprocal enforcement of foreign judgments found in the provincial reciprocal enforcement legislation.⁴⁴ It applies to judgments rendered by the Federal Court of Canada and all reciprocating common law provinces and territories.

Part V Article VIII for the recognition of a judgment provides:

Any judgment given by a court of one Contracting State for the payment of a sum of money which could be registered under this Convention, whether or not the judgment has been registered, and any other judgment given by such a court, which if it were a judgment for the payment of a sum of money could be registered under this Convention, shall, unless registration has been or would be refused or set aside on any ground other than that the judgment has been satisfied or could not be enforced in the territory of origin, be recognised in a court of the other Contracting State as conclusive between the parties thereto in all proceedings founded on the same cause of action.

In *Cavell Insurance Co. (Re)*⁴⁵ the Ontario Court of Appeal noted that the principles of “real and substantial connection” and “order and fairness” adopted in *Morguard* and confirmed in *Beals* were “fundamental considerations for a court to properly determine whether to recognize a foreign judgment pursuant to private international law”.⁴⁶

The Ontario Court of Appeal also noted that English courts have long been accorded respect by their Ontario counterparts and that the U.K. parliamentary and legislative process was quite familiar to Ontario’s judges. Given that there existed analogous procedures in Canadian commercial litigation legislation, a recognition order would facilitate active participation of the parties involving a statutory procedure necessarily reaching across national boundaries.⁴⁷

THE HAGUE CHOICE OF COURT CONVENTION

The United States in 1992 made a formal request to the Hague Conference of Private International Law for the negotiation of a convention on jurisdiction and the recognition and enforcement of foreign judgments.

Although the goal of establishing an “International Convention for Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters” was not achieved then, on June 30, 2005, the Twentieth Session of the Hague Conference on Private International Law concluded with the signing of the Hague Choice of Court Convention⁴⁸ (“the Hague Convention”). This new multilateral treaty represents an important harmonization of international trade law by providing greater certainty and predictability for parties involved in business-to-business agreements across international borders.

The Hague Convention sets uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters ... [within a] secure international legal regime that ensures the effectiveness of exclusive choice of court agreements by parties to commercial transactions and that governs the recognition and enforcement of judgments resulting from proceedings based on such agreements”⁴⁹, and thus “promote international trade and investment through enhanced judicial co-operation.”⁵⁰

Article 3, paragraph *c*) provides the Hague Convention’s form requirement: the exclusive choice of court agreement must be “entered into or documented *i*) in writing; or *ii*) by any other means of communication which renders information accessible so as to be usable for subsequent reference.”

The Convention contains *three main rules* addressed to different courts:

1. the *chosen court* must hear the case if the choice of court agreement is valid according to the standards established by the Convention (in particular there is no discretion/*forum non conveniens* in favour of courts of another State);⁵¹
2. any *court seized but not chosen* must dismiss the case unless one of the exceptions established by the Convention applies;⁵² and,
3. any judgment rendered by the court of a Contracting State which was designated in an exclusive choice of court agreement that is valid according to the standards established by the Convention must be *recognized and enforced in other Contracting States*⁵³ unless one of the exceptions established by the Convention applies.⁵⁴

According with its Article 9, a court may refuse recognition or enforcement if:

- a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;
- b) a party lacked the capacity to conclude the agreement under the law of the requested State;
- c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,
 - i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
 - ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- d) the judgment was obtained by fraud in connection with a matter of procedure;
- e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;
- f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or

- g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

In addition, Article 11 of the Hague Convention allows refusal of recognition and enforcement of a judgment “if, and only to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.” Contracting States may also make Declarations limiting jurisdiction, recognition and enforcement, or with respect to certain matters.

On January 19, 2009, the Hague Convention of 30 June 2005 on Choice of Court Agreements received its first signature. Mr John B. Bellinger III, Legal Adviser to the US Secretary of State, signed the instrument of signature on behalf of the United States of America. A few months later, on April 1, 2009, during the Council on General Affairs, the Hague Convention of 30 June 2005 on Choice of Court Agreements was signed by the European Community. Mexico acceded in 2007.⁵⁵

Only one more ratification or accession is needed for the entry into force of the Convention, which is open to all states. Canada was an active participant in preparing the Convention and it is being considered for adoption.

THE EUROPEAN UNION

In 1968, the Member States of the European Community concluded an international agreement on the basis of Article 220 EC Treaty on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Convention, known as the "1968 Brussels Convention",⁵⁶ aimed at providing the legal support for the good functioning of the internal market.

In 2000, the rules of the Convention were modernised and transformed into a Community Regulation. Today, Regulation 44/2001⁵⁷ widely known as the “Brussels I Regulation”, which

applies to Member States of the European Union, is a highly structured regime resulting in almost automatic recognition and enforcement.

The Brussels I Regulation supports the good functioning of the internal market, addressing two key questions which arise in the event of a dispute involving natural or legal persons from different Member States:

- The courts of which Member State shall have jurisdiction to rule on the dispute; and
- How the judgment given by that court will be recognized and enforced by the courts of other Member States.

The Brussels I Regulation covers the civil and commercial field, *i.e.* patrimonial disputes such as all kind of contract and civil liability for damages. The Regulation also lays down protective jurisdiction rules for weaker parties in contracts such as consumers, employees and insured, and contains exclusive jurisdiction rules in a limited number of matters such as real property and certain industrial property rights. The Regulation strikes a proper balance between the interests of the various parties involved in a cross-border dispute by identifying the jurisdiction that is most appropriate to resolve the dispute.

On 21 April 2009, the European Union Commission adopted a report and a green paper on the functioning of the existing rules on jurisdiction of the courts and the recognition and enforcement of foreign judgments in civil and commercial matters. The Commission's Vice-President, Mr. Jacques Barrot, Commissioner responsible for Justice, Freedom and Security, stated: "Time has come now to achieve a true free circulation of civil and commercial judgments within the EU. Abolishing the remaining obstacles will make it easier and speedier for citizens and business to have access to justice abroad. It will thus complete the European area of justice and profit the functioning of the internal market."⁵⁸

CONCLUSIONS

The “real and substantial connection” test introduced in *Morguard* and expanded in *Beals* offers sufficient protection to Canadians involved in transnational litigation, as well as necessary certainty in this complex area of law. In addition, this approach is consistent with the principles of international comity, with modern commercial, economic and political realities, and the rules adopted by other countries specially the United States and the European Union. The Supreme Court approach reflects the needs of modern commerce and fully advance the various objectives of judgment recognition and enforcement.

As Von Mehren and Trautman asserted, “if in our highly complex and interrelated world each community exhausted every possibility of insisting on its parochial interests, injustice would result and the normal patterns of life would be disrupted.”⁵⁹

The three common law defences of fraud, public policy and lack of natural justice, along with the “real substantial connection” test, achieve a proper balance between the desire for order and fairness and responding to practical realities and trends. Moreover, Major J., in *Beals* left open the possibility that an unusual situation may arise making necessary the creation of a new defence to the enforcement of a foreign judgment.

On the other hand, the implementation by the rest of the provinces of the Uniform Enforcement of Foreign Judgments Act would represent a significant step towards harmonization and greater certainty. While maintaining the three common law impeachment defences discussed above, it is also gives the opportunity to introduce, like Saskatchewan’s Enforcement of Foreign Judgment Act, a clause to limit excessive damages awards and to enforce foreign awards only to the extent that comparable damages could have awarded by the enforcing court. This is consistent with the rules of the Hague Convention.

Finally, Canada should adopt the Hague Convention which represents an important opportunity for harmonization of international trade law by providing greater certainty and predictability for

parties involved in business-to-business agreements within the transnational litigation context, and “promote international trade and investment through enhanced judicial co-operation.”

Footnotes:

1. R.A. Brand, "Recognition of Foreign Judgments as a Trade Law Issue: The Economics of Private International Law" in J.S. Bhandari et al., eds., *Economic Dimensions in International Law* (New York: Cambridge University Press, 1997) at 613.

2. The rules governing the enforcement of foreign judgments in Québec, codified in Book Ten of the Civil Code, S.Q. 1991, c. 64, differ significantly from those described in this article.

3. *Morguard Investments, Ltd. V. DeSavoye*, [1990] 3 S.C.R. 1077.

4. J. Blom, "Reform of Private International Law by Judges: Canada as a Case Study" in J. Fawcett, ed., *Reform & Development of Private International Law: Essays in Honour of Sir Peter North* (Oxford: Oxford University Press, 2002) at 31.

5. *Beals v. Saldanha*, [2003] S.C.J. No. 77

6. The Convention between Canada and the United Kingdom for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, 1984.

7. Hague Conference on Private International Law ``*CONVENTION ON CHOICE OF COURT AGREEMENTS*``. available online at:

<http://www.hcch.net/index_en.php?act=conventions.text&cid=98> (last visited May 8, 2009)

8. Supra note 3 at para. 48.

9. Ibid. at para. 41.

10. Ibid at para. 29

11. Ibid at para.34

12. Supra note 5 at para. 26 citing La Forest J. in *Morguard*, supra note 3 at 1098

13. Supra note 3 at para. 3; La Forest J. defines comity as:

[T]he recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

14. Supra note 5 at para. 27.
15. Ibid at para.162.
16. Supra note 3 at para. 1103
17. *Hunt v. T&N plc* [1993] S.C.J. No. 125
18. Ibid at para. 37
19. *Tolofson v. Jensen* [1994] 3 S.C.R. 1022
20. *Muscutt v. Courcelles* [2002] O.J. No. 2128
21. The *Muscutt* “real and substantial connection” test has been applied by the Supreme Court of Canada in *Castillo v. Castillo*, [2005] 3 S.C.R. 870.
22. Supra note 20 at paras. 77-110
23. Supra note 5 at para. 32 [emphasis added].
24. Ibid. at paras. 182-183.
25. Ibid. at para. 35.
26. Law Commission of Ontario: The Codification of Judicial Jurisdiction in Ontario "*Reforming the Law of Crossborder Litigation Judicial Jurisdiction*" available online at:< <http://www.lco-cdo.org/fr/documents/JurisdictionConsultationPaper.pdf>>
27. Supra note 5 at paras. 39-42
28. Ibid. at para. 51 [emphasis added].
29. Ibid. at para. 234
30. Ibid. at para. 64
31. Ibid. at para. 62
32. Ibid. at para. 68
33. Ibid. at para. 71
34. Ibid at para. 75.

35. Ibid at para. 76.

36. *Oakwell Engineering Engineering Ltd. v. Enernorth Industries Inc.*, [2006] O.J. No. 2289 (Ont. C.A.)

37. Ibid. at para. 29.

38. Supra note 5 at para. 28

39. ULCC web-site “*Commercial Law Strategy*” available online at: <<http://www.ulcc.ca/en/cls/>> (site last visited May 8, 2009)

40. ULCC web-site: “Uniform Statutes: Uniform Enforcement of Foreign Judgments Act” available online at: <<http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1e5>>(May 8, 2009)

41. *Enforcement of Foreign Judgments Act*, 2005 c.E-9.121 (effective April 19, 2006)

42. Ibid. article 4(h)(i)

43. Supra note 6.

44. Reciprocal Enforcement of Judgements (U.K.) Act, R.S.O. 1990, c. R-6 is the Ontario statute that brings into force in Ontario the Convention between Canada and the United Kingdom for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, 1984.

45. *Cavell Insurance Co. (Re)*, [2006] O.J. No. 1998, LCNF/ 2006-052 (Ont. C.A.)

46. Ibid.

47. Ibid. at para. 48

48. Supra note 7.

49. Ibid. at preamble.

50. Ibid.

51. Ibid. at 5.

52. Ibid. at 6.

53. Ibid. at 8.

54. Ibid. at 9.

55. Hague Conference on Private International Law: ``News and Events``. available online at: <http://www.hcch.net/index_en.php?act=events.listing>
56. “*Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters*” (September 27, 1968) OJ C 27, 26.1.1998, p. 1.
57. *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, O.J. L12 of 16.1.2001, p. 1.
58. Europa, Press release rapid: “*European citizens and business to benefit from greater access to justice - strengthening co-operation in civil and commercial matters*” available online at: <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/606&format=HTML&aged=0&language=EN&guiLanguage=en>>
59. A.T. von Mehren & D.T. Trautman, "Recognition of Foreign Adjudications: A Survey and A Suggested Approach" (1968) 81 Harv. L. Rev. 1601 at 1603.