Enforcement of Foreign Judgments: A Brief Overview

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We frequently receive mandates from clients across Canada and the world (primarily the U.S.) to seek enforcement, in Alberta, of a judgment or order that those clients received from a court in other jurisdictions. These mandates run the gamut from enforcement of money judgments to enforcement of orders (like court declarations, injunctions, or subpoenas). This article provides a brief primer on the subject.

The most important thing to note at the outset is that Alberta courts generally exercise the concept of “comity”, which is defined as the recognition by one jurisdiction’s court of the judgments and orders of another.

Courts in provinces across the country exercise comity in regard to decisions of other Canadian provinces. The Supreme Court of Canada in the seminal Morguard decision held that the courts in one province should give full faith and credit to judgments given by a court in another province or territory so long as that court has properly exercised jurisdiction in the action. Recognition of judgments across the country is inherent in a federation, and the rules of comity as they apply between the provinces must be applied generously within the federal structure of Canada’s Constitution.

What is true regarding comity among Canadian provinces is generally true about judgments and orders of foreign courts. So long as the foreign court properly exercised jurisdiction, an Alberta court will generally enforce that judgment or order.

Alberta’s Reciprocal Enforcement of Judgments Act (the “Act”) provides a relatively simple process for enforcement of money judgments granted in Canadian provinces (except Quebec), select U.S. states, and Australia. As the Supreme Court in Morguard emphasized, however, the Act does not in any way limit the far larger application of comity in regard to orders and judgments not covered by the Act (i.e. non-money judgments or foreign judgments other than those select U.S. states).

Presently, the reciprocating jurisdictions contained in Alberta's Reciprocating Jurisdictions Regulation are as follows:

- all other Canadian provinces and territories, with the exception of Quebec;
- the States of Washington, Idaho and Montana; and
- Australia;

An application to register a judgment under the Act must be made within 6 years of the date of the judgment. The application can be made ex parte, that is, without giving prior notice to the judgment debtor, provided that the judgment debtor

- was personally served in the original action; or
- though not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court;
and the appeal period has expired, or the judgment debtor has appealed and the appeal has been dismissed.

Provided the above conditions are met, the application must be accompanied by a certificate from a clerk of the foreign court in the form specified in the Form Regulation.

If the above conditions are not met, notice of the application to enforce the judgment must be given to the judgment debtor in accordance with the Alberta Rules of Court. Where notice is given to the debtor, there are a limited number of defences available to the judgment debtor. Registration will not be made if the judgement debtor can show that:

- the original court lacked jurisdiction and/or authority to grant the judgment;
- the judgment debtor did not carry on business or ordinarily reside in the jurisdiction in which the judgment was granted, and did not appear or submit to the jurisdiction of that court in the proceedings;
- the judgment debtor was not served and did not appear in the original proceedings;
- the judgment was obtained by fraud;
- an appeal is pending or the time within which an appeal may be taken has not expired;
- the cause of action underlying the judgment would be against public policy in Alberta; or
- the judgment debtor would have a good defence if an action were brought on the original judgment.

Where a creditor's application with notice to register a judgment in Alberta is successful, the judgment is of the same force and effect as if it had been a judgment given originally in the Alberta Court of Queen’s Bench on the date of the registration and is valid for ten years from that date.

Where the application was without notice, the judgment must be served in the same manner as a statement of claim set out in the Alberta Rules of Court, and the judgment debtor has one month to apply to the Court to have the registration set aside. The Court may set aside the judgment for any of the reasons given above.

**Invitation for Discussion:**

Our litigation lawyers are skilled in enforcement matters. If you would like to discuss this blog in greater detail, or any other business litigation matter, please do not hesitate to contact Mohamed Amery, Andrew Hill, or one of the lawyers in the Business Litigation Group at Shea Nerland LLP.

**Disclaimer:**

*Note that the foregoing is for general discussion purposes only and should not be construed as legal advice to any one person or company. If the issues discussed herein affect you or your company, you are encouraged to seek proper legal advice.*