

DRAFT
FOR DISCUSSION ONLY

**REGISTRATION OF FOREIGN JUDGMENTS TO
HARMONIZE THE LAW OF CANADA
AND THE UNITED STATES**

**[TENTATIVE NEW NAME: REGISTRATION OF
CANADIAN MONEY JUDGMENTS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 9-10, 2018 Drafting Committee Meeting

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March 6, 2018

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OF CANADA AND THE UNITED STATES**

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1 **REGISTRATION OF FOREIGN JUDGMENTS TO HARMONIZE THE LAW**
2 **OF CANADA AND THE UNITED STATES**

3
4 **Prefatory Note**

5
6 This Act is intended to supplement and integrate into a state’s existing Uniform Foreign
7 Country Money Judgments Recognition Act (UFCMJRA). *See* section 8, *infra*. In those states
8 that have not yet adopted the UFCMJRA, this Act may be adopted as a companion act at the time
9 of adoption of the UFCMJRA. This Act also is intended to harmonize with the laws of Canada
10 dealing with the recognition and registration of foreign country money judgments, particularly
11 the Canadian Uniform Enforcement of Foreign Judgments Act (UEFJA). Therefore, the scope of
12 this Act is congruous with that of each of the UFCMJRA and the Canadian UEFJA. *See* section
13 3 *infra*.
14

1 **REGISTRATION OF FOREIGN JUDGMENTS TO HARMONIZE THE LAW**
2 **OF CANADA AND THE UNITED STATES**

3
4 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Registration of Canadian
5 Money Judgments Act. [IF THE COMMITTEE AND THE CONFERENCE AGREE TO THIS
6 NAME CHANGE]

7 **SECTION 2. DEFINITIONS.**

8 (1) “Canada” means the sovereign nation of Canada, its provinces, territories, and other
9 political subdivisions and possessions. “Canadian” has a similar meaning.

10 (2) “Canadian judgment” means a judgment of a court of Canada, other than a judgment
11 that recognizes the judgment of another foreign country.

12 **Reporter’s Notes**

13
14 1. These definitions are analogs to the definitions of “Foreign country” and “Foreign-country
15 judgment,” which are the only two defined terms in the UFCMJRA.

16
17 2. The Canadian UEFJA does not apply to foreign judgments “that recognize the judgment of
18 another foreign State.” UEFJA §3(d). The UFCMJRA is silent on the issue. Because the
19 Drafting Committee’s charge is to draft a statute that covers judgments that come within the
20 scope of both the UEFJA and the UFCMJRA, this type of judgment has been excluded from the
21 definition of “Canadian judgment” in this Act. The exclusion was embodied in the definition of
22 “Canadian judgment” rather than in Section 3 dealing with Applicability of the Act as the best
23 way to avoid any negative implication as to whether such judgments are within the scope of the
24 UFCMJRA.

25
26 **SECTION 3. APPLICABILITY.** This [act] applies to a Canadian judgment to the
27 extent that the Uniform Foreign-Country Money Judgments Recognition Act applies to the
28 judgment.

29 **Reporter’s Notes**

30
31 1. The charge of the Joint Drafting Committee is to draft a registration act for final and
32 conclusive Canadian money judgments that come within the scope of both the UFCMJRA and
33 the Canadian UEFJA. Section 3 of the UFCMJRA sets out the scope of that Act. The limit in
34 the Joint Drafting Committee’s charge to final and conclusive money judgments derives from

1 that section, which states that the UFCMJRA applies to a foreign-country judgment to the extent
2 the judgment (1) grants or denies recovery of a sum of money; and is (2) final, conclusive and
3 enforceable under the law of the rendering jurisdiction. (Canada’s UEFJA applies more broadly
4 to a final order or judgment in a civil proceeding.) UFCMJRA section 3 also excludes (1)
5 judgments for taxes; (2) a fine or other penalty; and (3) a judgment for divorce, support, or
6 maintenance, or other judgment in connection with domestic relations. Canada’s UEFJA section
7 3 contains analogous exclusions for (1) recovery of taxes; (2) maintenance or support; and (3)
8 recovery of monetary fines or penalties. At its October 27-28, 2017 meeting, the Joint Drafting
9 Committee determined that these exclusions in the U.S. and Canadian Acts were sufficiently
10 similar as to not present a problem with regard to harmonization of the scope of Canada’s
11 UEFJA registration procedure and that to be developed for the United States by the Joint
12 Drafting Committee.

13
14 Canada’s UEFJA, however, does contain three additional exclusions not in Section 3 of the
15 UFCMJRA – (1) foreign judgments “arising out of bankruptcy and insolvency proceedings as
16 defined in Part XIII of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended;”
17 (2) “that recognize the judgment of another foreign State;” and (3) “rendered in proceedings
18 commenced before the coming into force of this Act.”

19
20 A subcommittee of the Joint Drafting Committee was appointed at the October 27-28, 2017
21 meeting to study the first of these exceptions, and determined that there was no need to provide
22 an exclusion from this Act for that type of judgment. The Subcommittee determined that two
23 categories of money judgments could arise in connection with bankruptcy proceedings – (1)
24 orders allowing or disallowing a claim against the debtor or its estate, and (2) orders adjudicating
25 a claim by the debtor or its estate against a non-debtor. Under U.S. bankruptcy law, the first
26 category (money judgments against the debtor or its estate) are required to be filed in connection
27 with the bankruptcy proceedings. Thus, only the second category, money judgments against
28 non-debtors, is implicated by the UEFJA exclusion. While this type of U.S. judgment would not
29 be covered by the UEFJA, it would be recognized under other Canadian law, and the
30 Subcommittee concluded that providing the option of recognition and enforcement of these
31 judgments coming from Canada through the registration procedure would be beneficial.

32
33 The second of the exceptions is covered in this Act by exclusion of judgments recognizing the
34 judgment of another foreign State from the definition in Section 2 (2) of “Canadian judgment.”
35 The third exception is covered in Section 10, providing that the Act has no retroactive effect.
36 (Section 12 of UFCMJRA has a similar provision.)

37
38 2. The Joint Drafting Committee determined at its October 27-28, 2017 Drafting Committee
39 Meeting that it was important to provide guidance with regard to so-called “mixed judgments” –
40 judgments that contain aspects that are in the scope of the registration act and others that are not.
41 The UFCMJRA deals with this question by providing in UFCMJRA section 3 that the
42 UFCMJRA applies to mixed judgments “*to the extent*” they are within its scope. This section
43 also uses the “to the extent” formulation in order to track the scope of the UFCMJRA. In
44 addition, section 4 of this Act contains specific provisions regarding mixed judgments.

1 **SECTION 4. REGISTRATION OF CANADIAN JUDGMENT.**

2 (a) A person seeking recognition of a Canadian judgment may file a petition for
3 registration in the office of the Clerk of [any District Court] in which an action for recognition of
4 the judgment could be filed under Section 6 of the Uniform Foreign-Country Money Judgments
5 Recognition Act.

6 (b) The petition for registration shall include the following information:

7 (1) a copy of the Canadian judgment certified as accurate by the Canadian court
8 that entered the judgment;

9 (2) [a statement] [documents necessary to establish] that

10 (a) the judgment is final and conclusive in the Canadian jurisdiction where
11 it was rendered, and, if applicable, that the judgment also is enforceable in that jurisdiction; and

12 (b) the judgment is a type of judgment that is within the scope of this [act];

13 (3) if the judgment or other documents are not in English, a certified translation
14 into English; and

15 (4) if the judgment is of a type described in subsection (c) or (d), a statement as to
16 the portion of the judgment for which registration is sought.

17 (c) A judgment that both grants or denies recovery of a sum of money and provides other
18 relief may be registered under this [act], but only to the extent of the grant or denial of monetary
19 relief.

20 (d) A judgment issued with regard to both a subject matter that is within the scope of this
21 [act] and a subject matter not within the scope of this [act] may be registered under this [act], but
22 only to the extent that the judgment relates to the subject matter within the scope of this [act].

23 (e) Upon the filing of a petition containing the information listed in subsection (a), the

1 Clerk of Court shall assign a registration docket number and register the judgment in the court’s
2 registration docket.

3 (f) A person filing a petition for registration of a judgment shall pay to the Clerk of Court
4 a fee of ___ dollars.

5 (g) Section 6 of the Uniform Foreign Country Money Judgment Recognition Act does not
6 apply to recognition of a judgment registered under this section.

7 **Reporter’s Notes**

8
9 1. Subsection (b)(1) is based on Canadian UEFJA §12(4)(a), which provides that the appropriate
10 certification is that of the court of origin.

11
12 2. Subsection (b)(2) is in effect a requirement that the person seeking registration provide a
13 statement (and/or documentation) that the judgment sought to be registered is of a type to which
14 the UFCMJRA (and thus this Act) applies. Under UFCMJRA §3(c), the party seeking
15 registration has the burden to establish that the UFCMJRA applies to the foreign-country
16 judgment. *Cf.* The Hague Convention on Choice of Court Agreements of 30 June 2005, Art. 13
17 1. d) (requiring person seeking recognition of a judgment to produce “any documents necessary
18 to establish that the judgment has effect or, where applicable, is enforceable in the State or
19 origin”); Uniform Choice of Court Agreements Implementation Act (2012), §19(a)(4) (same).

20
21 The brackets raise the issue as to whether a statement to this effect is sufficient, or documentary
22 evidence should be required.

23
24 3. Because of the limited scope of this Act, it will be possible for a Canadian judgment to contain
25 elements that are within the scope of this Act, and others that are not. This could occur in two
26 ways. First, the judgment could combine a monetary award (which would be within the Act’s
27 scope) with a non-monetary award, such as an injunction (which would not be within its scope).
28 Second, the judgment could relate to both a subject matter within the scope of the Act and one
29 that is excluded. UFCMJRA section 3 addresses this issue by providing that the Act applies to a
30 foreign country judgment “*to the extent* that the judgment” is within its scope and that the Act
31 does not apply “*to the extent*” that a judgment falls within one of the excluded subject matters.
32 Comments 2 and 5 to UFCMJRA explain that this language means that in both these instances
33 the UFCMJRA applies to the portion of the judgment within its scope. Section 3 of this Act also
34 uses this “to the extent” language for the same purpose.

35
36 At its October 27-28, 2017 Committee Meeting, the Joint Drafting Committee requested that
37 more specific guidance be provided to assist Court Clerks with regard to registration of mixed
38 judgments. Subsections (b)(4), (c) and (d), address this issue. Subsections (c) and (d) make it
39 clear that the portion of a mixed judgment within the scope of the Act can be registered.

1 Subsection (b)(4) requires the person seeking registration of a mixed judgment to expressly
2 indicate the portion of the judgment that may be registered under the Act.

3
4 4. Subsection (f) requires payment of a registration fee to the Clerk of Court. It is based on
5 Section 5 of the ULC Revised Uniform Enforcement of Foreign Judgments Act (dealing with
6 registration of sister state judgments). In addition to requiring payment of a registration fee, that
7 provision states that “Fees for docketing, transcription or other enforcement proceedings shall be
8 as provided for judgments of the [District Court].”

9
10 Query: Do we need to address the issue of fees in this Act? If so, do we need to address any fees
11 other than the registration fee?

12 13 **SECTION 5. EFFECT OF REGISTRATION.**

14 (a) Subject to subsection (b), a Canadian judgment registered pursuant to section 4 shall
15 have the same force and effect as provided in Section 7 of the Uniform Foreign-Country Money
16 Judgments Recognition Act for a judgment that has been determined to be entitled to recognition
17 by a court.

18 (b) No execution or other process for enforcement of a registered judgment may be issued
19 until the 31st day after service of notice of the registration pursuant to Section 6. The court for
20 good cause shown may by order provide for a longer period of time.

21 **Reporter’s Notes**

22
23 1. The initial consensus of the Joint Drafting Committee at the October 27-28, 2017 Drafting
24 Committee meeting was that the effect of registration is that the judgment should be considered
25 recognized, subject to a grace period during which the judgment could not be enforced, and the
26 possibility that the judgment debtor might have a defense that would cause recognition to be set
27 aside. Subsection (a) states the basic rule that a registered judgment is given the same effect as a
28 judgment that has been determined by a court to be subject to recognition under Section 7 of the
29 UFCMJRA.

30
31 2. Subsection (b) provides a grace period during which a person against whom a judgment has
32 been registered can take action to have the registration set aside before being subject to the
33 consequences of registration. Section 14(3) of the Canadian UEFJA contains an analogous
34 provision, which states that a registered judgment “may not be enforced by the sale or other
35 disposition of any property of the judgment debtor before the expiry of 30 days after the
36 judgment debtor has received notice of the proceedings to register the foreign judgment, or any
37 longer period that the enforcing court may allow.” There was discussion at the October 27-28,

1 2017 Drafting Committee Meeting as to whether the limitation in section 14(3) to sales of
2 property was too narrow, as it leaves the judgment debtor subject to other potentially harmful
3 consequences, such as those resulting from garnishment. For purposes of discussion, subsection
4 (b) prohibits all enforcement efforts during the grace period.

5
6 **SECTION 6. NOTICE OF REGISTRATION.**

7 (a) A person registering a Canadian judgment shall serve the person against whom
8 recognition of the judgment through registration is sought with notice of the registration [within
9 __ days of registration of the judgment].

10 (b) The notice of registration shall be served in the same manner as a summons and
11 complaint seeking recognition of a foreign-country money judgment by an action [in the district
12 court] is required to be served.

13 (c) The notice shall provide:

14 (1) the date and court in which the judgment was registered;

15 (2) the registration docket number assigned to the registration;

16 (3) the name and address of the person registering the judgment and of the
17 person's attorney; and

18 (4) a copy of the petition for registration.

19 (d) Proof of service of the notice of registration shall be filed with the Clerk of Court.

20 **Reporter's Notes**

21
22 1. There was some discussion at the October 27-28, 2017 Committee Meeting as to whether
23 notice of registration should be given prior to registration of the judgment or could be provided
24 after registration. The requirement in section 12(4)(b) of the Canadian UEFJA that a copy of the
25 notice be provided as part of the registration seems to contemplate that notice will be given prior
26 to registration; however, there was some doubt expressed as to whether this is indeed the case.
27 After some discussion, the tentative consensus of the Joint Drafting Committee seemed to be that
28 notice could be given after registration. Subsection (a) reflects that consensus. The 30-day non-
29 enforcement period, however, runs from the date of service of notice, not from the date of
30 registration, and, thus prompt and adequate notice remains critical to the ultimate enforcement of
31 the foreign judgment.

1 The bracket in subsection (a) raises the issue as to whether any time limit should be placed on
2 when notice should be given. The Canadian UEFJA does not expressly state a time limit (which
3 is consistent with its apparent requirement that notice be given prior to registration). Compare
4 this with section 6(1)(b) of the Reciprocal Enforcement of Judgments Act of the Province of
5 Alberta, which requires that notice be served within one month of registration, unless the Court
6 allows a longer period of time. Section 3(b) of the ULC Revised Uniform Enforcement of
7 Foreign Judgments Act (dealing with registration of sister-state judgments) requires that notice
8 be given “promptly.” *Cf. e.g.*, F.R.C.P. 4(m) (service of summons and complaint to be made
9 within 120 days after filing complaint, unless court allows a longer period).

10
11 2. At its October 27-28 Drafting Committee Meeting, there was a consensus among the Joint
12 Drafting Committee that notice by mail to the judgment debtor’s last known address – the type of
13 notice provided in the ULC Revised Uniform Enforcement of Foreign Judgments Act with
14 regard to registration of sister-state judgments – was not appropriate in the context of foreign-
15 country judgments. After some discussion, the initial consensus was to provide that notice be
16 subject to the standard court procedure with regard to this type of claim. Subsection (b)
17 therefore provides that the manner of notice is governed by the rules governing service of
18 summons and complaint in an action for recognition of a foreign-country judgment. *Cf.*
19 Reciprocal Enforcement of Judgments Act of the Province of Alberta, §6(1)(a) (notice of
20 registration to be served “in the same manner as a statement of claim is required to be served”).
21 Query whether the reference to standard court procedure should also answer the question raised
22 in Note 1 regarding timing of notice?

23
24 **SECTION 7. MOTION TO SET ASIDE REGISTRATION; DEFENSES TO**
25 **REGISTRATION.**

26 (a) A person against whom a Canadian judgment has been registered may file a motion
27 with the court to have the registration set aside within 30 days after the person was served with
28 notice of registration pursuant to Section 6. The court for good cause may by order provide for a
29 longer period of time.

30 (b) The registration may be set aside on any of the grounds upon which recognition of the
31 judgment could be denied under Section 4 of the Uniform Foreign-Country Money Judgments
32 Recognition Act.

33 **Reporter’s Notes**
34

35 1. A primary consequence of a registration process for recognition of Canadian judgments is that
36 it shifts the burden of invoking judicial scrutiny of the foreign judgment from the person seeking

1 recognition of the judgment to the person seeking to avoid recognition. This section provides the
2 procedure by which the person seeking to avoid recognition can invoke that judicial scrutiny.

3
4 2. Given the “plug in” relationship of this Act to the UFCMJRA, this section references the
5 defenses to recognition contained in the UFCMJRA rather than restating them.

6
7 3. This section is based in part on section 6 of the Reciprocal Enforcement of Judgments Act of
8 the Province of Alberta.

9
10 **SECTION 8. UNIFORMITY OF INTERPRETATION; RELATIONSHIP OF**

11 **THIS ACT TO THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS**

12 **RECOGNITION ACT.**

13 (a) In applying and construing this [act], consideration shall be given to the need to
14 promote uniformity of the law with respect to its subject matter among states that enact it.

15 (b) This [act] is intended to supplement the provisions of the Uniform Foreign-Country
16 Money Judgments Recognition Act, and the provisions of that [act] shall apply, except to the
17 extent this [act] expressly provides otherwise.

18 **Reporter’s Notes**

19
20 1. Subsection (b) states the relationship between this Act and the UFCMJRA. As the Joint
21 Drafting Committee discussed at its October 27-28, 2017 Drafting Committee Meeting, the
22 conceptual approach in drafting this Act is to create a “module” that will “plug in” to the
23 provisions of the UFCMJRA. This approach means that the provisions contained in the
24 UFCMJRA need not be restated in this Act, as those provisions will apply equally to this Act,
25 with the exception of a provision in this Act that states a different rule from the comparable rule
26 in the UFCMJRA. The obvious (and, potentially, only) example of the latter situation is that,
27 unlike Section 6 of the UFCMJRA, this Act does not require that the person seeking recognition
28 of a Canadian judgment file a court action. The “expressly provides otherwise” standard seems
29 the clearest way to express when a difference is intended, although it also requires very careful
30 drafting. Another way to approach this may be to provide discrete amendments to the
31 UFCMJRA, particularly if UFCMJRA Section 6 ultimately is the only section affected by this
32 Act.

33
34 **SECTION 9. NONEXCLUSIVE PROCEDURE.** This [act] does not prevent a person
35 from seeking recognition of a Canadian judgment pursuant to Section 6 of the Uniform Foreign

1 Country Money Judgment Recognition Act instead of through the registration procedure
2 provided in this [act].

3 **Reporter’s Notes**
4

5 1. Section 9 makes it clear that a person may seek recognition of a Canadian judgment either by
6 registering it under this Act or by a court action under Section 6 of the UFCMJRA. Compare
7 Section 6 of the ULC Revised Uniform Enforcement of Foreign Judgments Act, dealing with
8 registration of sister state judgments – “[t]he right of a judgment creditor to bring an action to
9 enforce his judgment instead of proceeding under this Act remains unimpaired.”

10
11 **SECTION 10. EFFECTIVE DATE.**

12 [(a) This [act] takes effect

13 (b) This [act] applies to the registration of a Canadian judgment issued in a proceeding
14 commenced in Canada after the effective date of this [act].

15 **Reporter’s Notes**
16

17 1. The Joint Drafting Committee’s charge is to draft a registration statute for final and conclusive
18 Canadian money judgments that come within the scope of both the UFCMJRA and the Canadian
19 UEFJA. The Canadian UEFJA does not apply to foreign judgments “rendered in proceedings
20 commenced before the coming into force of [the] Act.” Canadian UEFJA §3(f). Subsection (b)
21 of this section places a comparable limitation in this Act.