REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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October 26, 2018
REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

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REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

Prefatory Note

This Act is intended to supplement and integrate into a state’s existing Uniform Foreign Country Money Judgments Recognition Act (UFCMJRA). See section 8, infra. In those states that have not yet adopted the UFCMJRA, this Act may be adopted as a companion act at the time of adoption of the UFCMJRA. This Act also is intended to harmonize with the laws of the Canadian provinces and territories dealing with the recognition and registration of foreign country money judgments, particularly the Canadian Uniform Enforcement of Foreign Judgments Act (UEFJA), in order to facilitate the enforcement of Canadian money judgments in the United States in a manner comparable to the way U.S. money judgments are enforced in Canada. Therefore, the scope of this Act is limited to the type of money judgments that would come within the scope of both the UFCMJRA and the Canadian UEFJA. See section 3 infra.
REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Registration of Canadian Money Judgments Act.

Reporter’s Notes

The Drafting Committee agreed at its March 9-10 Drafting Committee Meeting to request approval to change the name of the Act from “Registration of Foreign Judgments to Harmonize the Law of Canada and the United States” to the “Registration of Canadian Money Judgments Act.” The consensus was that the proposed new name better reflected the content of the Act. The ULC Executive Committee approved the name change at its April 5, 2018 meeting.

SECTION 2. DEFINITIONS. In this [act]:

1. “Canada” means the sovereign nation of Canada and its provinces and territories.
   “Canadian” has a corresponding meaning.

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

Reporter’s Notes

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

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

SECTION 3. APPLICABILITY.

(a) This [act] applies to a Canadian judgment to the extent the judgment is within the scope of [cite to Section 3 of the Uniform Foreign-Country Money Judgments Recognition Act].

(b) A Canadian judgment that both grants recovery of a sum of money and provides other
relief may be registered under this [act], but only to the extent of the grant of monetary relief.

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

Reporter’s Notes

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

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

A subcommittee of the Joint Drafting Committee was appointed at the October 27-28, 2017 Drafting Committee meeting to study the first of these exclusions, and determined that there was no need to provide an exclusion from this Act for that type of judgment. The Subcommittee determined that two categories of money judgments could be implicated in connection with bankruptcy proceedings – (1) orders allowing or disallowing a claim against the debtor or its estate, and (2) orders adjudicating a claim by the debtor or its estate against a non-debtor. The Subcommittee concluded that the Canadian UEFJA exclusion was intended to address the first category of judgments. Under Canadian law, both bankruptcy and non-bankruptcy matters are heard in the provincial courts. The UEFJA exclusion thus serves as a jurisdictional provision that directs the provincial courts to apply the recognition rules of its bankruptcy law rather than those
of the Canadian UEFJA to this type of judgment. A similar exclusion is not needed under U.S. law because, under U.S. bankruptcy law, the first category of judgments (money judgments against the debtor or its estate) is required to be filed in connection with the bankruptcy proceedings. The Subcommittee further determined that the second category of judgments -- money judgments against non-debtors -- would not come within the Canadian UEFJA exclusion for those “arising out of bankruptcy and insolvency proceedings”, and also would be a type of judgment subject to the UFCMJRA. Therefore, current law provides parity with regard to recognition of bankruptcy-related judgments without the need to provide an exclusion in this Act.

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

2. The Joint Drafting Committee determined at its October 27-28, 2017 Drafting Committee Meeting that it was important to provide guidance with regard to so-called “mixed judgments” – judgments that contain aspects that are in the scope of the registration act and others that are not. The UFCMJRA deals with this question by providing in UFCMJRA section 3 that the UFCMJRA applies to mixed judgments “to the extent” they are within its scope. This section also uses the “to the extent” formulation in order to track the scope of the UFCMJRA. In addition, subsections 3(b) and (c) make it clear that mixed judgments may be registered to the extent that they involve the type of relief and subject matter that is within the scope of this Act. Subsections (b) and (c) originally were contained in Section 4, but the Joint Drafting Committee determined at its March 9-10 Drafting Committee Meeting that it would be more logical to place them in Section 3.

3. A Canadian judgment could contain elements that are within the scope of this Act, and others that are not, in one of two ways. First, the judgment could combine a monetary award (which would be within the Act’s scope) with a non-monetary award, such as an injunction (which would not be within its scope). Second, the judgment could relate to both a subject matter within the scope of the Act and one that is excluded. Subsection (b) addresses the first situation, providing that a judgment that grants both monetary and non-monetary damages may be registered, but only to the extent of the grant of monetary relief. Subsection (c) addresses the second situation, providing that a judgment that is issued with regard to both a subject matter within the scope of the Act and one that is outside its scope may be registered, but only to the extent the judgment relates to the subject matter within the scope of this Act.

SECTION 4. REGISTRATION OF CANADIAN JUDGMENT.

(a) A person seeking recognition of a Canadian judgment in order to enforce the judgment may register the judgment in the office of the [court clerk] of a court in which an action for recognition of the judgment could be filed under [cite to Section 6 of the Uniform
Foreign-Country Money Judgments Recognition Act].

(b) A registration under subsection (a) must include the following:

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

(2) a [signed] statement by the person seeking recognition by registration or the person’s attorney stating:

   (A) the judgment is final, conclusive, and enforceable in the Canadian jurisdiction where it was rendered;

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

   (C) if the judgment is of a type described in section 3(b) or (c), the portion of the judgment for which recognition by registration is sought;

(3) if the judgment is not in English, a certified translation of the judgment into English; and

[(4) a registration fee of $ [____].]

(c) On receipt of a registration that includes the items listed in subsection (b), the [court clerk] shall file the registration, assign a [registration] docket number, and enter the judgment in the court’s [registration] docket.

Reporter’s Notes

1. Section 3 states the scope of this Act in terms of type of judgment – this Act applies to a judgment to the extent the judgment is a type of judgment to which the UFCMJRA applies. Subsection 4(a) further limits the availability of the registration procedure based on the purpose for which recognition is sought. It provides that a person may register a Canadian judgment if recognition is sought in order to enforce the judgment (i.e. to use available procedures in the state to collect the amount of the judgment from the assets of a person against whom it was rendered.) The registration procedure thus is not available when recognition of a Canadian
1 judgment is sought solely to establish its preclusive effect with regard to the determination of the
dispute (or issues in the dispute) by the rendering court. The decision to limit the Act to
recognition for the purpose of enforcement was made by the Joint Drafting Committee at its
March 9-10 Drafting Committee Meeting. The Joint Drafting Committee believed that the issue
of recognition of a foreign judgment solely to establish its preclusive effect inevitably will be
raised in the course of an already-initiated court proceeding, and, thus, is best dealt with under
the procedures of Section 6 of the UFCMJRA. Limiting the registration procedure established
by this Act to situations when recognition is sought for purposes of enforcement also brings this
Act more closely into alignment with the registration procedure in the Canadian UEFJA, which
focuses on enforcement of judgments. See UEFJA § 12(1) (“[a] foreign judgment that is
enforceable under this Act may be registered ….”).

2. The term “court clerk” is bracketed in this Section and Section 6 in recognition that each state
will need to insert the officer who will handle the registration process in that state. A Legislative
Note to that effect will be required in the final draft.

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

4. Subsection (b)(2) (A) and (B) are in effect a requirement that the person seeking registration
provide a statement that the judgment sought to be registered is of a type to which the
UFCMJRA (and thus this Act) applies. Under UFCMJRA Section 3(c), the party seeking
recognition has the burden to establish that the UFCMJRA applies to the foreign-country
1. d) (requiring person seeking recognition of a judgment to produce “any documents necessary
to establish that the judgment has effect or, where applicable, is enforceable in the State or
origin”); Uniform Choice of Court Agreements Implementation Act (2012), §19(a)(4) (same).

5. As discussed in the notes to Section 3, the limited scope of this Act means it is possible for a
Canadian judgment to contain elements that are within the scope of this Act, and others that are
not. First, the judgment could combine a monetary award (which would be within the Act’s
scope) with a non-monetary award, such as an injunction (which would not be within its scope).
Second, the judgment could relate to both a subject matter within the scope of the Act and one
that is excluded. UFCMJRA Section 3 addresses this issue by providing that the Act applies to a
foreign country judgment “to the extent” that the judgment” is within its scope and that the Act
does not apply “to the extent” that a judgment falls within one of the excluded subject matters.
Comments 2 and 5 to UFCMJRA explain that this language means that in both these instances
the UFCMJRA applies to the portion of the judgment within its scope. Section 3 of this Act also
uses this “to the extent” language for the same purpose. In addition, Subsections 3(b) and (c)
make it clear that the portion of a mixed judgment within the scope of the Act can be registered.
Subsection (b)(2)(C) of this section requires the person seeking registration of a mixed judgment
to expressly indicate the portion of the judgment that may be registered under the Act.

6. The word “signed” in subsection 4(b)(2) is bracketed to flag for the Joint Drafting Committee
the issue of whether there should be a separate signature requirement with regard to the required
statement, or whether signature of the registration by the person seeking recognition by registration or that person’s attorney is sufficient. Although the Joint Drafting Committee discussed this issue at its March 9-10 Drafting Committee Meeting, it did not completely resolve the question.

7. Subsection (b)(4) requires payment of a registration fee to the Clerk of Court. It is based on Section 5 of the ULC Revised Uniform Enforcement of Foreign Judgments Act (dealing with registration of sister state judgments). This fee is one of the “items” required for issuance of a docket number and entry in the docket by the Clerk of Court under Subsection (c). Subsection (b)(4) is bracketed in recognition that various states deal with the question of fees in different ways. Some states combine fees in centralized statutes. Other states may establish fees by administrative rule. A Legislative Note will provide guidance on this issue in the final draft of the Act.

8. Subsection (c) makes filing of all the items listed in subsection (b) a requirement for the Clerk of Court to register the judgment, issue a docket number (required to give notice to the person against whom registration of the judgment is sought) and enter the registration in the Court’s registration docket. The term “registration” is bracketed in this subsection, as well as in Section 6 in recognition that different states may use different terminology to describe the docket where registrations will be filed. A Legislative Note will provide guidance on this issue in the final draft of the Act.

9. Section 4 does not require that the information required for registration be provided in any particular form, although the Drafting Committee has briefly considered the possibility of providing a form that could be used on a voluntary basis as a means of providing guidance and encouraging uniformity.

SECTION 5. EFFECT OF REGISTRATION.

(a) Subject to subsection (b), a Canadian judgment registered under Section 4 has the same force and effect as provided in [cite to Section 7 of the Uniform Foreign-Country Money Judgments Recognition Act] for a judgment determined by a court to be entitled to recognition.

[Alternative A]

(b) No execution or other process for enforcement of a registered Canadian judgment may be issued for 30 days after service of notice of registration under Section 6. The court for good cause may provide for a shorter or longer time. This subsection does not prohibit a discovery request seeking information about property that may be available to satisfy the
1 judgment.

[Alternative B]

(b) No execution or other process for enforcement of a registered Canadian judgment may be issued for 30 days after service of notice of registration under Section 6. The court for good cause may provide for a shorter or longer time. This subsection does not prohibit a discovery request seeking information about property that may be available to satisfy the judgment or use of a prejudgment remedy available under law of this state other than this [act] for collection or preservation of assets.

[Alternative C]

(b) A registered Canadian judgment may not be enforced by the sale or other disposition of property [or garnishment or attachment of assets] for 30 days after service of notice of registration under Section 6. The court for good cause may provide for a shorter or longer time.

End of Alternatives

Reporter’s Notes

1. The Joint Drafting Committee reached consensus that the effect of registration should be that the judgment is considered recognized, subject to a grace period during which the judgment could not be enforced (at least to some extent), in order to provide the person against whom the judgment has been registered an opportunity to raise any defenses that would cause recognition to be set aside. Subsection (a) states the basic rule that a registered judgment is given the same effect as a judgment that has been determined by a court to be entitled to recognition under Section 7 of the UFCMJRA. Thus, once registered, (and subject to the grace period provided in subsection (b)), a Canadian judgment is (1) conclusive between the parties to the same extent as the judgment of a sister-state entitled to full faith and credit and (2) enforceable in the same manner and to the same extent as a judgment rendered in the recognizing state. See UFCMJRA §7. Section 14 of the Canadian UEFJA contains similar provisions, providing that,”[o]n registration, a foreign judgment is enforceable as if it were a judgment of the enforcing court,” and the enforcing court “has the same jurisdiction and control over a registered foreign judgment as it has over its own judgments and may order enforcement in respect of one or more of its parts.”
2. Subsection (b) provides a grace period during which a person against whom a judgment has been registered can take action to have the registration set aside before being subject to the consequences of registration. Section 14(3) of the Canadian UEFJA contains an analogous provision, which states that a registered judgment “may not be enforced by the sale or other disposition of any property of the judgment debtor before the expiry of 30 days after the judgment debtor has received notice of the proceedings to register the foreign judgment, or any longer period that the enforcing court may allow.”

3. The Joint Drafting Committee has not yet reached consensus as to the appropriate scope of the stay of execution provided by subsection (b). There was discussion at the October 27-28, 2017 Drafting Committee Meeting as to whether the limitation in the Canadian UEFJA section 14(3) to sales or other disposition of property was too narrow, as it leaves the judgment debtor subject to other potentially harmful consequences, such as those resulting from garnishment or freezing of bank accounts. For purposes of discussion, subsection (b) of the March draft prohibited all enforcement efforts during the grace period. At the March 9-10 Drafting Committee Meeting, considerable discussion ensued as to whether the blanket prohibition on enforcement activities during the 30 day period was too broad. The discussion centered around finding the right balance between protection of a judgment debtor who may have a valid defense to recognition and the ability of a judgment creditor to effectively and efficiently enforce its judgment, including avoiding disposition of assets during the grace period. The Joint Drafting Committee agreed that preliminary discovery measures aimed at obtaining information about assets that might be available to satisfy the judgment should be allowed during the grace period. There was also consensus on the length of the grace period (30 days from service of notice, subject to the ability of the court to lengthen or shorten the period for good cause). There was a lack of consensus, however, with regard to the basic issue of the extent of collection actions permissible during the grace period, and the Joint Drafting Committee ultimately decided the best way to proceed was to draft three alternatives based on views that had gained some support in order to help focus future discussion.

Alternative One prohibits all enforcement activity during the grace period, other than discovery designed to obtain information about property that may be available to satisfy the judgment. Alternative Two expands on the permissible activity to allow both discovery and the use of prejudgment remedies. The status of a registered judgment cannot be described literally as “prejudgment”, as under subsection 5(a), once registered it is given the effect of a recognized judgment; nevertheless there was some feeling among the Joint Drafting Committee that extending prejudgment remedies to the registration situation could provide an appropriate balance between protection of the interests of the judgment creditor and the judgment debtor. Alternative Three is closest to section 14(3) of the Canadian UEFJA. Like section 14(3), it prohibits disposition of property, with the bracketed language indicating that other specific enforcement activity that might cause considerable harm to the judgment debtor, such as garnishment and attachment, also might be prohibited. Alternative Three differs from the other two alternatives in that it allows all enforcement activity during the grace period other than that specifically excluded, while Alternatives One and Two prohibited all enforcement activity other than that specifically allowed.
SECTION 6. NOTICE OF REGISTRATION.

(a) A person that registers a Canadian judgment under this [act] shall serve notice of registration on the person against whom recognition of the judgment through registration is sought.

(b) Notice under this section must be served in the same manner that a summons and [complaint] seeking recognition of a foreign-country money judgment in a civil action must be served.

(c) Notice under this section must include:

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

   (2) the [registration] docket number assigned to the registration;

   (3) the name and address of the person registering the judgment and of the person’s attorney; and

   (4) a copy of the registration, including all documents required under Section 4(b).

(d) Proof of service of notice of registration must be filed with the [court clerk].

Reporter’s Notes

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

2. Registering a Canadian foreign judgment is an alternative to the commencement of a law suit for its recognition. Nevertheless, some of the rules that apply to commencement of a law suit
also apply in the registration context. Subsection (b) provides that the manner in which notice is
to be given is the same as that provided by the rules governing service of summons and
complaint in an action for recognition of a foreign-country judgment. Cf. Reciprocal
Enforcement of Judgments Act of the Province of Alberta, §6(1)(a) (notice of registration to be
served “in the same manner as a statement of claim is required to be served”). The Subsection
reference to other law for the specific methodology by which “notice” is given includes not
only the rules governing the method of notice, but also those concerning other issues, such as the
timing of notice.

3. The Joint Drafting Committee considered whether a less stringent notice requirement – for
example, service of notice by registered mail – would be adequate. Keeping in mind the
Committee’s charge to harmonize the Act with Canadian law, a subcommittee composed of the
Canadian members of the Joint Drafting Committee was asked to determine the manner of
service in Canadian jurisdictions under both the Reciprocal Enforcement of Judgment Acts still
in force in a number of Canadian provinces and the more modern Canadian UEFJA. That report
concluded that registration under both the Reciprocal Enforcement Acts and the Canadian
UEFJA requires personal service. The rationales given for requiring personal service in Canada
are that registration is the commencement of a new action rather than a corollary to an existing
action in the enforcing jurisdiction, that because the judgment debtor can object to registration
and enforcement, the judgment debtor should receive personal notice of the intended action, and
that personal service is the best way to establish when the timelines in the registration process
commence. In light of the rationales behind the Canadian personal service requirement and the
desire to maintain parity between the Canadian and U.S. registration procedures, the Joint
Drafting Committee decided to retain the personal service requirement in subsection (b).

4. The term “complaint” is bracketed in Subsection 6(b) in recognition that some states may use
a different term to describe the initial pleading filed to commence a civil cause of action. The
term “registration” is bracketed in Subsection 6(c) in recognition that states may use different
terms to describe the docket in which the registration will be filed. The term “court clerk” is
bracketed in recognition that each state will need to indicate the official to handle the registration
process in that state. Legislative Notes to provide direction on these issues will be included in the
final draft of the Act.

SECTION 7. [PETITION] TO SET ASIDE REGISTRATION.

(a) A person against whom a Canadian judgment has been registered may [petition] the
court, not later than 30 days after being served with notice of registration under Section 6, to set
aside the registration. The court for good cause may provide for a shorter or longer time.

(b) The person may assert as a ground to set aside the registration any ground that could
be asserted to deny recognition to the judgment under [cite to the Uniform Foreign-Country
Money Judgments Recognition Act].

(c) A [petition] to set aside a registration of a Canadian judgment does not of itself stay execution of the judgment.

(d) If the court grants the petition to set aside the registration, the registration shall be void, and any enforcement action taken with regard to the registered judgment shall be reversed.

**Reporter’s Notes**

1. A primary consequence of a registration process for recognition of Canadian judgments is that it shifts the burden of invoking judicial scrutiny of the foreign judgment from the person seeking recognition of the judgment to the person seeking to avoid recognition. This section provides the procedure by which the person seeking to avoid recognition can invoke that judicial scrutiny. It provides that the person seeking to avoid recognition through registration may file a petition with the court within 30 days of service of notice of registration, stating its objections to recognition of the judgment by registration. The effect of filing a petition to set aside the effect of the registration is to invoke the judicial process for ultimate determination of whether the Canadian judgment will be recognized and enforced. From that point, the case will move forward as a matter to be determined by the court, much as though the case initially had been filed under Section 6 of the UF CMJRA.

2. Given the “plug in” relationship of this Act to the UF CMJRA, Section 7(b) references the grounds for refusing recognition under the UF CMJRA rather than restating them. The defenses to recognition of a foreign country judgment under the UF CMJRA are contained in UF CMJRA Section 4. Under this section, those defenses also are available to deny registration to the judgment. Another ground for denying recognition of a judgment under the UF CMJRA is that the judgment is not one to which the UF CMJRA applies under UF CMJRA Section 3. Section 3 of this Act provides that this Act applies to a Canadian judgment to the extent the judgment is within the scope of the UF CMJRA; therefore, if a judgment does not come within the scope of UF CMJRA Section 3, it also cannot be registered under this Act. (Canadian judgments not within the scope of the UF CMJRA, and thus not within the scope of this Act, of course, still can be recognized by a court under principles of comity or other applicable law. See UF CMJRA Section 11.) A third ground for denying recognition to a judgment under the UF CMJRA is that the action is barred by the statute of limitations found in UF CMJRA Section 9. This ground also would be available under this section as a basis to deny registration of the judgment. As these examples illustrate the intent of this section is to allow the person against whom registration is sought to raise as grounds for denying registration any grounds that would be available in this State as a basis for denying recognition to the judgment. The language of this section now clarifies that a request to set aside must be raised by a petitioner. This changes addresses a comment from the floor that the previous formulation might suggest that a court had a sua sponte right to so set aside. This issue may merit review at our November meeting.
The person seeking to set aside the registration, of course, also may raise a failure to comply with the requirements of this Act for registration of a Canadian money judgment. *See Sections 4 and 6.*

3. It should be noted that the UFCMJRA Section 4 defenses are the only defenses that may be raised to recognition. In particular, U.S. courts consistently have held that a person opposing recognition may not seek to relitigate the merits of the underlying case that lead to the judgment for which recognition is sought. Similarly, a person seeking to set aside registration of a Canadian judgment may not seek to relitigate the merits of the underlying case as a basis for denying registration.

4. This section is based in part on Section 6 of the Reciprocal Enforcement of Judgments Act of the Province of Alberta.

5. An issue considered at the March 9-10 Drafting Committee Meeting was what is the effect of filing a petition to set aside the effect of the registration on the ability of the person seeking to enforce the judgment to pursue enforcement? Section 5(b) provides a thirty day grace period after service of notice in which certain enforcement actions may not be taken. The thirty day period in Section 7 in which to object to the registration normally will coincide with the Section 5 period, although both are subject to being altered by the court. Does filing a motion to set aside the effect of the registration automatically stay any enforcement action or does the person seeking to set aside the registration also have to request a stay of enforcement while the motion is being determined? Differing views were expressed by the Joint Drafting Committee on this issue, and it will require further discussion by the Committee. For purposes of discussion, Subsection 7(c) states that filing a petition to set aside the effect of the registration does not automatically stay enforcement of the judgment. If this position is adopted by the Joint Drafting Committee, consideration will need to be given to the manner in which the person seeking to set aside the registration may request a stay of enforcement and the scope of that stay. Section 5(b) allows the court to extend the grace period provided in that subsection, but the grace period may not cover all forms of enforcement. It may be that a separate section authorizing a stay may be required. Similarly, if the Joint Drafting Committee adopts the position that filing the petition to set aside automatically stays enforcement, it will need to consider the means by which the judgment creditor may request that the stay be lifted. It also may be useful to determine Canadian practice with regard to this issue.

6. The term “petition” is bracketed in recognition that some states may choose to use a different term, such as “motion” to describe the pleading filed to set aside a registration. A Legislative Note will provide guidance on this issue in the final draft of the Act.

7. Section 7(d) states the effect of a court determination that the registration should be set aside — the registration is void, and any enforcement actions that have been taken to collect the registered judgment are reversed.
SECTION 8. RELATIONSHIP TO UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT; ELECTION OF PROCEDURE.

(a) This [act] supplements [cite to the Uniform Foreign-Country Money Judgments Recognition Act] and that [act], other than [cite to Section 6 of the Uniform Foreign-Country Money Judgments Recognition Act], applies to a registration under this [act].

(b) This [act] does not prevent a person from seeking recognition of a Canadian judgment under [cite to Section 6 of the Uniform Foreign Country Money Judgment Recognition Act] instead of by registration under this [act].

(c) A person may not seek recognition of the same judgment or portion of a judgment under both this [act] and [cite to Section 6 of the Uniform Foreign -Country Money Judgment Recognition Act].

Reporters Notes

1. Subsection (a) states the relationship between this Act and the UFCMJRA. The conceptual approach in drafting this Act is to create a “module” that will “plug in” to the provisions of the UFCMJRA. This approach means that the provisions contained in the UFCMJRA need not be restated in this Act, as those provisions will apply equally to this Act, with the exception of a provision in this Act that states a different rule from the comparable rule in the UFCMJRA. The obvious (and, potentially, only) example of the latter situation is that, unlike Section 6 of the UFCMJRA, this Act does not require that the person seeking recognition of a Canadian judgment file a court action. The March 9-10 Joint Drafting Committee Meeting Draft provided that the provisions of the UFCMJRA would apply unless the Act “expressly provides otherwise.” At its March 9-10 Joint Drafting Committee, the Joint Drafting Committee decided it would be better to list any specific provisions of the UFCMJRA that do not apply in Section 8, rather than stating a general principle.

2. This Act is intended to provide an alternative procedure to the filing of an action under UFCMJRA Section 6 with regard to Canadian judgments. It does not prevent a person seeking recognition of a Canadian judgment from choosing to file an action seeking recognition as provided in UFCMJRA Section 6 rather than using this Act. The import of Section 8(b) is that a person may seek recognition of a Canadian judgment either by registering it under this Act or by a court action under Section 6 of the UFCMJRA. Compare Section 6 of the ULC Revised Uniform Enforcement of Foreign Judgments Act, dealing with registration of sister state judgments – “[t]he right of a judgment creditor to bring an action to enforce his judgment instead
of proceeding under this Act remains unimpaired.”

3. Section 8(c) states the corollary to Subsection (b) – a person must choose one or the other means of seeking recognition of a Canadian judgment; both procedures may not be pursued at the same time with regard to the same judgment, or, in the case of a mixed judgment, the same portion of a judgment, in the same jurisdiction. To provide otherwise would lead to inefficiency and waste of judicial resources. Obviously, Subsection (c) does not prevent a creditor from using different means (registration or filing an action for recognition) in different states.

4. Section 3 of this Act provides that the Act applies to a Canadian judgment that is within the scope of the UFCMJRA. Thus, the registration procedure under this Act is available with regard to any Canadian judgment that could be considered for recognition through an action filed under the UFCMJRA, if the requirements for registration in Section 4 of this Act are met (including the Section 4(a) requirement that recognition of the judgment through registration is being sought for the purpose of enforcing the judgment). The corollary is that judgments not within the scope of the UFCMRA are not within the scope of this Act. Those judgments continue to be recognized and enforced as they have been prior to this Act. Section 11 of the UFCMJRA states with regard to judgments not within its scope (and thus not within the scope of this Act) that they may be recognized “under principles of comity or otherwise.”

SECTION 9. UNIFORMITY OF APPLICATION AND INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. TRANSITIONAL PROVISION. This [act] applies to the registration of a Canadian judgment entered in a proceeding commenced in Canada after the effective date of this [act].

Reporters Notes

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

SECTION 11. EFFECTIVE DATE. This [act] takes effect ....