

DRAFT
FOR DISCUSSION ONLY

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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1 **REGISTRATION OF CANADIAN MONEY JUDGMENTS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Registration of Canadian

3 Money Judgments Act.

4
5 **Reporter’s Notes**

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

11
12 **SECTION 2. DEFINITIONS.** In this [act]:

13 (1) “Canada” means the sovereign nation of Canada and its provinces and territories.

14 “Canadian” has a corresponding meaning.

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

17 **Reporter’s Notes**

18
19 1. These definitions are analogs to the definitions of “Foreign country” and “Foreign-country
20 judgment,” which are the only two defined terms in the UFCMJRA.

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

30
31 **SECTION 3. APPLICABILITY.**

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

34 (b) A Canadian judgment that both grants recovery of a sum of money and provides other

1 relief may be registered under this [act], but only to the extent of the grant of monetary relief.

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

6 **Reporter’s Notes**

7
8 1. The charge of the Joint Drafting Committee is to draft a registration act for final and
9 conclusive Canadian money judgments that come within the scope of both the UFCMJRA and
10 the Canadian UEFJA. Section 3 of the UFCMJRA sets out the scope of that Act. The limit in
11 the Joint Drafting Committee’s charge to final and conclusive money judgments derives from
12 that section, which states that the UFCMJRA applies to a foreign-country judgment to the extent
13 the judgment (1) grants or denies recovery of a sum of money; and is (2) final, conclusive and
14 enforceable under the law of the rendering jurisdiction. (Canada’s UEFJA applies more broadly
15 to a final order or judgment in a civil proceeding.) UFCMJRA section 3 also excludes (1)
16 judgments for taxes; (2) a fine or other penalty; and (3) a judgment for divorce, support, or
17 maintenance, or other judgment in connection with domestic relations. Canada’s UEFJA section
18 3 contains analogous exclusions for (1) recovery of taxes; (2) maintenance or support; and (3)
19 recovery of monetary fines or penalties. At its October 27-28, 2017 meeting, the Joint Drafting
20 Committee determined that these exclusions in the U.S. and Canadian Acts were sufficiently
21 similar as to not present a problem with regard to harmonization of the scope of Canada’s
22 UEFJA registration procedure and that to be developed for the United States by the Joint
23 Drafting Committee.

24
25 Canada’s UEFJA, however, does contain three additional exclusions that are not in Section 3 of
26 the UFCMJRA – (1) foreign judgments “arising out of bankruptcy and insolvency proceedings
27 as defined in Part XIII of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended;”
28 (2) “that recognize the judgment of another foreign State;” and (3) “rendered in proceedings
29 commenced before the coming into force of this Act.”

30
31 A subcommittee of the Joint Drafting Committee was appointed at the October 27-28, 2017
32 Drafting Committee meeting to study the first of these exclusions, and determined that there was
33 no need to provide an exclusion from this Act for that type of judgment. The Subcommittee
34 determined that two categories of money judgments could be implicated in connection with
35 bankruptcy proceedings – (1) orders allowing or disallowing a claim against the debtor or its
36 estate, and (2) orders adjudicating a claim by the debtor or its estate against a non-debtor. The
37 Subcommittee concluded that the Canadian UEFJA exclusion was intended to address the first
38 category of judgments. Under Canadian law, both bankruptcy and non-bankruptcy matters are
39 heard in the provincial courts. The UEFJA exclusion thus serves as a jurisdictional provision that
40 directs the provincial courts to apply the recognition rules of its bankruptcy law rather than those

1 of the Canadian UEFJA to this type of judgment. A similar exclusion is not needed under U.S.
2 law because, under U.S. bankruptcy law, the first category of judgments (money judgments
3 against the debtor or its estate) is required to be filed in connection with the bankruptcy
4 proceedings. The Subcommittee further determined that the second category of judgments --
5 money judgments against non-debtors -- would not come within the Canadian UEFJA exclusion
6 for those “arising out of bankruptcy and insolvency proceedings”, and also would be a type of
7 judgment subject to the UFCMJRA. Therefore, current law provides parity with regard to
8 recognition of bankruptcy-related judgments without the need to provide an exclusion in this
9 Act.

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

15
16 2. The Joint Drafting Committee determined at its October 27-28, 2017 Drafting Committee
17 Meeting that it was important to provide guidance with regard to so-called “mixed judgments” –
18 judgments that contain aspects that are in the scope of the registration act and others that are not.
19 The UFCMJRA deals with this question by providing in UFCMJRA section 3 that the
20 UFCMJRA applies to mixed judgments “*to the extent*” they are within its scope. This section
21 also uses the “to the extent” formulation in order to track the scope of the UFCMJRA. In
22 addition, subsections 3(b) and (c) make it clear that mixed judgments may be registered to the
23 extent that they involve the type of relief and subject matter that is within the scope of this Act.
24 Subsections (b) and (c) originally were contained in Section 4, but the Joint Drafting Committee
25 determined at its March 9-10 Drafting Committee Meeting that it would be more logical to place
26 them in Section 3.

27
28 3. A Canadian judgment could contain elements that are within the scope of this Act, and others
29 that are not, in one of two ways. First, the judgment could combine a monetary award (which
30 would be within the Act’s scope) with a non-monetary award, such as an injunction (which
31 would not be within its scope). Second, the judgment could relate to both a subject matter within
32 the scope of the Act and one that is excluded. Subsection (b) addresses the first situation,
33 providing that a judgment that grants both monetary and non-monetary damages may be
34 registered, but only to the extent of the grant of monetary relief. Subsection (c) addresses the
35 second situation, providing that a judgment that is issued with regard to both a subject matter
36 within the scope of the Act and one that is outside its scope may be registered, but only to the
37 extent the judgment relates to the subject matter within the scope of this Act.

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

39
40 (a) A person seeking recognition of a Canadian judgment in order to enforce the
41 judgment may register the judgment in the office of the [court clerk] of a court in which an
42 action for recognition of the judgment could be filed under [cite to Section 6 of the Uniform

1 Foreign-Country Money Judgments Recognition Act].

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

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

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

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

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

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

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

15 [(4) a registration fee of \$ [_____]].

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

19 **Reporter's Notes**

20
21 1. Section 3 states the scope of this Act in terms of *type* of judgment – this Act applies to a
22 judgment to the extent the judgment is a type of judgment to which the UFCMJRA applies.
23 Subsection 4(a) further limits the availability of the registration procedure based on the *purpose*
24 for which recognition is sought. It provides that a person may register a Canadian judgment if
25 recognition is sought in order to enforce the judgment (i.e. to use available procedures in the
26 state to collect the amount of the judgment from the assets of a person against whom it was
27 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
2 dispute (or issues in the dispute) by the rendering court. The decision to limit the Act to
3 recognition for the purpose of enforcement was made by the Joint Drafting Committee at its
4 March 9-10 Drafting Committee Meeting. The Joint Drafting Committee believed that the issue
5 of recognition of a foreign judgment solely to establish its preclusive effect inevitably will be
6 raised in the course of an already-initiated court proceeding, and, thus, is best dealt with under
7 the procedures of Section 6 of the UFCMJRA. Limiting the registration procedure established
8 by this Act to situations when recognition is sought for purposes of enforcement also brings this
9 Act more closely into alignment with the registration procedure in the Canadian UEFJA, which
10 focuses on enforcement of judgments. *See* UEFJA § 12(1) (“[a] foreign judgment that is
11 enforceable under this Act may be registered ...”).
12
- 13 2. The term “court clerk” is bracketed in this Section and Section 6 in recognition that each state
14 will need to insert the officer who will handle the registration process in that state. A Legislative
15 Note to that effect will be required in the final draft.
16
- 17 3. Subsection (b)(1) is based on Canadian UEFJA §12(4)(a), which provides that the appropriate
18 certification is that of the court of origin.
19
- 20 4. Subsection (b)(2) (A) and (B) are in effect a requirement that the person seeking registration
21 provide a statement that the judgment sought to be registered is of a type to which the
22 UFCMJRA (and thus this Act) applies. Under UFCMJRA Section 3(c), the party seeking
23 recognition has the burden to establish that the UFCMJRA applies to the foreign-country
24 judgment. *Cf.* The Hague Convention on Choice of Court Agreements of 30 June 2005, Art. 13
25 1. d) (requiring person seeking recognition of a judgment to produce “any documents necessary
26 to establish that the judgment has effect or, where applicable, is enforceable in the State or
27 origin”); Uniform Choice of Court Agreements Implementation Act (2012), §19(a)(4) (same).
28
- 29 5. As discussed in the notes to Section 3, the limited scope of this Act means it is possible for a
30 Canadian judgment to contain elements that are within the scope of this Act, and others that are
31 not. First, the judgment could combine a monetary award (which would be within the Act’s
32 scope) with a non-monetary award, such as an injunction (which would not be within its scope).
33 Second, the judgment could relate to both a subject matter within the scope of the Act and one
34 that is excluded. UFCMJRA Section 3 addresses this issue by providing that the Act applies to a
35 foreign country judgment “*to the extent* that the judgment” is within its scope and that the Act
36 does not apply “*to the extent*” that a judgment falls within one of the excluded subject matters.
37 Comments 2 and 5 to UFCMJRA explain that this language means that in both these instances
38 the UFCMJRA applies to the portion of the judgment within its scope. Section 3 of this Act also
39 uses this “to the extent” language for the same purpose. In addition, Subsections 3(b) and (c)
40 make it clear that the portion of a mixed judgment within the scope of the Act can be registered.
41 Subsection (b)(2)(C) of this section requires the person seeking registration of a mixed judgment
42 to expressly indicate the portion of the judgment that may be registered under the Act.
43
- 44 6. The word “signed” in subsection 4(b)(2) is bracketed to flag for the Joint Drafting Committee
45 the issue of whether there should be a separate signature requirement with regard to the required

1 statement, or whether signature of the registration by the person seeking recognition by
2 registration or that person’s attorney is sufficient. Although the Joint Drafting Committee
3 discussed this issue at its March 9-10 Drafting Committee Meeting, it did not completely resolve
4 the question.

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

14
15 8. Subsection (c) makes filing of all the items listed in subsection (b) a requirement for the Clerk
16 of Court to register the judgment, issue a docket number (required to give notice to the person
17 against whom registration of the judgment is sought) and enter the registration in the Court’s
18 registration docket. The term “registration” is bracketed in this subsection, as well as in Section
19 6 in recognition that different states may use different terminology to describe the docket where
20 registrations will be filed. A Legislative Note will provide guidance on this issue in the final
21 draft of the Act.

22
23 9. Section 4 does not require that the information required for registration be provided in any
24 particular form, although the Drafting Committee has briefly considered the possibility of
25 providing a form that could be used on a voluntary basis as a means of providing guidance and
26 encouraging uniformity.

27
28 **SECTION 5. EFFECT OF REGISTRATION.**

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

32 **[Alternative A]**

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

1 judgment.

2 **[Alternative B]**

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

9 **[Alternative C]**

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

13 **End of Alternatives**

14 **Reporter's Notes**

15
16 1. The Joint Drafting Committee reached consensus that the effect of registration should be that
17 the judgment is considered recognized, subject to a grace period during which the judgment
18 could not be enforced (at least to some extent), in order to provide the person against whom the
19 judgment has been registered an opportunity to raise any defenses that would cause recognition
20 to be set aside. Subsection (a) states the basic rule that a registered judgment is given the same
21 effect as a judgment that has been determined by a court to be entitled to recognition under
22 Section 7 of the UFCMJRA. Thus, once registered, (and subject to the grace period provided in
23 subsection (b)), a Canadian judgment is (1) conclusive between the parties to the same extent as
24 the judgment of a sister-state entitled to full faith and credit and (2) enforceable in the same
25 manner and to the same extent as a judgment rendered in the recognizing state. *See* UFCMJRA
26 §7. Section 14 of the Canadian UEFJA contains similar provisions, providing that, "[o]n
27 registration, a foreign judgment is enforceable as if it were a judgment of the enforcing court,"
28 and the enforcing court "has the same jurisdiction and control over a registered foreign judgment
29 as it has over its own judgments and may order enforcement in respect of one or more of its
30 parts."
31

1 2. Subsection (b) provides a grace period during which a person against whom a judgment has
2 been registered can take action to have the registration set aside before being subject to the
3 consequences of registration. Section 14(3) of the Canadian UEFJA contains an analogous
4 provision, which states that a registered judgment “may not be enforced by the sale or other
5 disposition of any property of the judgment debtor before the expiry of 30 days after the
6 judgment debtor has received notice of the proceedings to register the foreign judgment, or any
7 longer period that the enforcing court may allow.”
8

9 3. The Joint Drafting Committee has not yet reached consensus as to the appropriate scope of
10 the stay of execution provided by subsection (b). There was discussion at the October 27-28,
11 2017 Drafting Committee Meeting as to whether the limitation in the Canadian UEFJA section
12 14(3) to sales or other disposition of property was too narrow, as it leaves the judgment debtor
13 subject to other potentially harmful consequences, such as those resulting from garnishment or
14 freezing of bank accounts. For purposes of discussion, subsection (b) of the March draft
15 prohibited all enforcement efforts during the grace period. At the March 9-10 Drafting
16 Committee Meeting, considerable discussion ensued as to whether the blanket prohibition on
17 enforcement activities during the 30 day period was too broad. The discussion centered around
18 finding the right balance between protection of a judgment debtor who may have a valid defense
19 to recognition and the ability of a judgment creditor to effectively and efficiently enforce its
20 judgment, including avoiding disposition of assets during the grace period. The Joint Drafting
21 Committee agreed that preliminary discovery measures aimed at obtaining information about
22 assets that might be available to satisfy the judgment should be allowed during the grace period.
23 There was also consensus on the length of the grace period (30 days from service of notice,
24 subject to the ability of the court to lengthen or shorten the period for good cause). There was a
25 lack of consensus, however, with regard to the basic issue of the extent of collection actions
26 permissible during the grace period, and the Joint Drafting Committee ultimately decided the
27 best way to proceed was to draft three alternatives based on views that had gained some support
28 in order to help focus future discussion.
29

30 Alternative One prohibits all enforcement activity during the grace period, other than discovery
31 designed to obtain information about property that may be available to satisfy the judgment.
32 Alternative Two expands on the permissible activity to allow both discovery and the use of
33 prejudgment remedies. The status of a registered judgment cannot be described literally as
34 “prejudgment”, as under subsection 5(a), once registered it is given the effect of a recognized
35 judgment; nevertheless there was some feeling among the Joint Drafting Committee that
36 extending prejudgment remedies to the registration situation could provide an appropriate
37 balance between protection of the interests of the judgment creditor and the judgment debtor.
38 Alternative Three is closest to section 14(3) of the Canadian UEFJA. Like section 14(3), it
39 prohibits disposition of property, with the bracketed language indicating that other specific
40 enforcement activity that might cause considerable harm to the judgment debtor, such as
41 garnishment and attachment, also might be prohibited. Alternative Three differs from the other
42 two alternatives in that it allows all enforcement activity during the grace period other than that
43 specifically excluded, while Alternatives One and Two prohibited all enforcement activity other
44 than that specifically allowed.
45

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

9
10 3. The Joint Drafting Committee considered whether a less stringent notice requirement – for
11 example, service of notice by registered mail – would be adequate. Keeping in mind the
12 Committee’s charge to harmonize the Act with Canadian law, a subcommittee composed of the
13 Canadian members of the Joint Drafting Committee was asked to determine the manner of
14 service in Canadian jurisdictions under both the Reciprocal Enforcement of Judgment Acts still
15 in force in a number of Canadian provinces and the more modern Canadian UEFJA. That report
16 concluded that registration under both the Reciprocal Enforcement Acts and the Canadian
17 UEFJA requires personal service. The rationales given for requiring personal service in Canada
18 are that registration is the commencement of a new action rather than a corollary to an existing
19 action in the enforcing jurisdiction, that because the judgment debtor can object to registration
20 and enforcement, the judgment debtor should receive personal notice of the intended action, and
21 that personal service is the best way to establish when the timelines in the registration process
22 commence. In light of the rationales behind the Canadian personal service requirement and the
23 desire to maintain parity between the Canadian and U.S. registration procedures, the Joint
24 Drafting Committee decided to retain the personal service requirement in subsection (b).

25
26 4. The term “complaint” is bracketed in Subsection 6(b) in recognition that some states may use
27 a different term to describe the initial pleading filed to commence a civil cause of action. The
28 term “registration” is bracketed in Subsection 6(c) in recognition that states may use different
29 terms to describe the docket in which the registration will be filed. The term “court clerk” is
30 bracketed in recognition that each state will need to indicate the official to handle the registration
31 process in that state. Legislative Notes to provide direction on these issues will be included in the
32 final draft of the Act.

33
34 **SECTION 7. [PETITION] TO SET ASIDE REGISTRATION.**

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

38 (b) The person may assert as a ground to set aside the registration any ground that could
39 be asserted to deny recognition to the judgment under [cite to the Uniform Foreign-Country

1 Money Judgments Recognition Act].

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

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

6 **Reporter's Notes**

7
8 1. A primary consequence of a registration process for recognition of Canadian judgments is that
9 it shifts the burden of invoking judicial scrutiny of the foreign judgment from the person seeking
10 recognition of the judgment to the person seeking to avoid recognition. This section provides the
11 procedure by which the person seeking to avoid recognition can invoke that judicial scrutiny. It
12 provides that the person seeking to avoid recognition through registration may file a petition with
13 the court within 30 days of service of notice of registration, stating its objections to recognition
14 of the judgment by registration. The effect of filing a petition to set aside the effect of the
15 registration is to invoke the judicial process for ultimate determination of whether the Canadian
16 judgment will be recognized and enforced. From that point, the case will move forward as a
17 matter to be determined by the court, much as though the case initially had been filed under
18 Section 6 of the UFCMJRA.

19
20 2. Given the “plug in” relationship of this Act to the UFCMJRA, Section 7(b) references the
21 grounds for refusing recognition under the UFCMJRA rather than restating them. The defenses
22 to recognition of a foreign country judgment under the UFCMJRA are contained in UFCMJRA
23 sSection 4. Under this section, those defenses also are available to deny registration to the
24 judgment. Another ground for denying recognition of a judgment under the UFCMJRA is that
25 the judgment is not one to which the UFCMJRA applies under UFCMJRA Section 3. Section 3
26 of this Act provides that this Act applies to a Canadian judgment to the extent the judgment is
27 within the scope of the UFCMJRA; therefore, if a judgment does not come within the scope of
28 UFCMJRA Section 3, it also cannot be registered under this Act. (Canadian judgments not
29 within the scope of the UFCMJRA, and thus not within the scope of this Act, of course, still can
30 be recognized by a court under principles of comity or other applicable law. *See* UFCMJRA
31 Section 11.) A third ground for denying recognition to a judgment under the UFCMJRA is that
32 the action is barred by the statute of limitations found in UFCMJRA Section 9. This ground also
33 would be available under this section as a basis to deny registration of the judgment. As these
34 examples illustrate the intent of this section is to allow the person against whom registration is
35 sought to raise as grounds for denying registration any grounds that would be available in this
36 State as a basis for denying recognition to the judgment. The language of this section now
37 clarifies that a request to set aside must be raised by a petitioner. This changes addresses a
38 comment from the floor that the previous formulation might suggest that a court had a sua sponte
39 right to so set aside. This issue may merit review at our November meeting.

40

1 The person seeking to set aside the registration, of course, also may raise a failure to comply
2 with the requirements of this Act for registration of a Canadian money judgment. *See* Sections 4
3 and 6.

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

11
12 4. This section is based in part on Section 6 of the Reciprocal Enforcement of Judgments Act of
13 the Province of Alberta.

14
15 5. An issue considered at the March 9-10 Drafting Committee Meeting was what is the effect of
16 filing a petition to set aside the effect of the registration on the ability of the person seeking to
17 enforce the judgment to pursue enforcement? Section 5(b) provides a thirty day grace period
18 after service of notice in which certain enforcement actions may not be taken. The thirty day
19 period in Section 7 in which to object to the registration normally will coincide with the Section
20 5 period, although both are subject to being altered by the court. Does filing a motion to set
21 aside the effect of the registration automatically stay any enforcement action or does the person
22 seeking to set aside the registration also have to request a stay of enforcement while the motion
23 is being determined? Differing views were expressed by the Joint Drafting Committee on this
24 issue, and it will require further discussion by the Committee. For purposes of discussion,
25 Subsection 7(c) states that filing a petition to set aside the effect of the registration does not
26 automatically stay enforcement of the judgment. If this position is adopted by the Joint Drafting
27 Committee, consideration will need to be given to the manner in which the person seeking to set
28 aside the registration may request a stay of enforcement and the scope of that stay. Section 5(b)
29 allows the court to extend the grace period provided in that subsection, but the grace period may
30 not cover all forms of enforcement. It may be that a separate section authorizing a stay may be
31 required. Similarly, if the Joint Drafting Committee adopts the position that filing the petition to
32 set aside automatically stays enforcement, it will need to consider the means by which the
33 judgment creditor may request that the stay be lifted. It also may be useful to determine
34 Canadian practice with regard to this issue.

35
36 6. The term “petition” is bracketed in recognition that some states may choose to use a different
37 term, such as “motion” to describe the pleading filed to set aside a registration. A Legislative
38 Note will provide guidance on this issue in the final draft of the Act.

39
40 7. Section 7(d) states the effect of a court determination that the registration should be set aside –
41 the registration is void, and any enforcement actions that have been taken to collect the registered
42 judgment are reversed.

1 of proceeding under this Act remains unimpaired.”

2
3 3. Section 8(c) states the corollary to Subsection (b) – a person must choose one or the other
4 means of seeking recognition of a Canadian judgment; both procedures may not be pursued at
5 the same time with regard to the same judgment, or, in the case of a mixed judgment, the same
6 portion of a judgment, in the same jurisdiction. To provide otherwise would lead to inefficiency
7 and waste of judicial resources. Obviously, Subsection (c) does not prevent a creditor from
8 using different means (registration or filing an action for recognition) in different states.

9
10 4. Section 3 of this Act provides that the Act applies to a Canadian judgment that is within the
11 scope of the UFCMJRA. Thus, the registration procedure under this Act is available with regard
12 to any Canadian judgment that could be considered for recognition through an action filed under
13 the UFCMJRA, if the requirements for registration in Section 4 of this Act are met (including the
14 Section 4(a) requirement that recognition of the judgment through registration is being sought for
15 the purpose of enforcing the judgment). The corollary is that judgments not within the scope of
16 the UFCMRA are not within the scope of this Act. Those judgments continue to be recognized
17 and enforced as they have been prior to this Act. Section 11 of the UFCMJRA states with regard
18 to judgments not within its scope (and thus not within the scope of this Act) that they may be
19 recognized “under principles of comity or otherwise.”

20
21 **SECTION 9. UNIFORMITY OF APPLICATION AND INTERPRETATION.** In

22 applying and construing this uniform act, consideration must be given to the need to promote
23 uniformity of the law with respect to its subject matter among states that enact it.

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

27 **Reporter’s Notes**

28
29 1. The Joint Drafting Committee’s charge is to draft a registration statute for final and
30 conclusive Canadian money judgments that come within the scope of both the UFCMJRA and
31 the Canadian UEFJA. The Canadian UEFJA does not apply to foreign judgments “rendered in
32 proceedings commenced before the coming into force of [the] Act.” Canadian UEFJA §3(f).
33 This section places a comparable limitation in this Act.

34
35 **SECTION 11. EFFECTIVE DATE.** This [act] takes effect