

Ontario Enforcement of Extra-provincial and Foreign Orders

The purpose of this article is to provide some guidelines in the area of international debt collection, in particular, the collection of monies owing under extra-provincial and foreign support orders and judgments in the Province of Ontario.

Ontario enforcement of extra-provincial and foreign family law support/maintenance orders

The *Interjurisdictional Support Orders Act, 2002*¹ (the “Act”) allows for the enforcement of support orders made in a court outside of Ontario by registering it in Ontario.² This Act applies to all reciprocating jurisdictions, which include all provinces and territories in Canada, the United States of America, the United Kingdom, Australia, and New Zealand.³

Once an order is registered in Ontario, it will have the same effect as if it was made by a court in Ontario (s. 19(2) of the Act).

How to register

Orders made within Canada

1. Three certified copies of the order and the filing package⁴ must be sent to the Interjurisdictional Support Orders Unit⁵, who will forward the documents to a clerk of the Ontario court that sits nearest to the residence of the payor (s. 18(1) and (2) of the Act). There are no applicable fees.
2. The clerk will register the order and file a copy with the Director of the Family Responsibility Office (s. 19(6) of Act) in order to facilitate its enforcement.⁶ From the date of registration, the registered order shall have the same effect as a support order made by an Ontario court.

Orders made outside of Canada

Where an order is made outside of Canada, additional steps are required to facilitate enforcement of the registered order in Ontario.

3. After the order is registered, the clerk will give notice of its registration to the party who is believed to ordinarily reside in Ontario (s. 19(3), 20 of the Act, s. 10 of the Reg.⁷, and subrule 37(18) of the Family Law Rules)

¹ *Interjurisdictional Support Orders Act, 2002*, S.O. 2002, c. 13.

² Please note that the Act does not provide for the registration of provisional orders or provisional variation orders. Also note that this Act does not apply to orders made under the federal *Divorce Act*.

³ Other reciprocating jurisdictions include: Austria, Finland, Germany, Fiji, Papua New Guinea, etc.

⁴ The filing package can be found at the website for the Family Responsibility Office, at <http://www.cfcs.gov.on.ca/CFCS/en/programs/SCS/FamilyResponsibilityOffice/Forms/FP-Adobe.htm>.

⁵ The mailing address for the Interjurisdictional Support Orders Unit is P.O. Box 640, Toronto, Ontario, M3M 3A3.

⁶ Where the claimant does not wish the Family Responsibility Office to enforce the order, he or she can include a notice to this effect in the package sent to the clerk.

⁷ O. Reg. 55/03.

4. The clerk must also wait 30 days after registration before filing with the Director of the Family Responsibility Office (s. 19(7) of Act).

Ontario Enforcement of Extra-provincial Judgments

The *Reciprocal Enforcement of Judgment Act*⁸ (the “Act”) allows for the registration of extra-provincial judgments in Ontario.⁹

The Act applies to judgments where a sum of money is made payable¹⁰, and there is a limitation period of six years from the date of the judgment (s. 2(1) of the Act).¹¹

How to register

Registration is done by court order, upon application by the judgment creditor. Applications should be made to a court in Ontario that has jurisdiction over the subject-matter of the judgment, or to the Ontario Superior Court of Justice, and the court may order the judgment to be registered (s. 2(1) of the Act).

The application may be made without notice, unless the judgment debtor was not personally served with the original process in the original action and did not appear, in which case reasonable notice is required (s. 2(2) of the Act).

The judgment creditor should file a notice of application, one certified copy of the judgment and three copies of a draft order for registration with the registrar. Fees are standard pursuant to the *Administration of Justice Act*¹². The judgment shall then be entered as a judgment of the registering court (s. 2(3) of the Act).

Costs of registration are recoverable; such sums must first be taxed by an officer of the registering court, who will then endorse his or her certificate on the order for registration (s. 4(c) of the Act).

Requirements for registering a judgment from a reciprocating jurisdiction include (s. 3 of the Act):

- The original court must have acted with jurisdiction (s. 3(a) of the Act), or the judgment debtor voluntarily appeared or made submissions to the jurisdiction of that court (s. 3(b) of the Act);
- The judgment debtor was properly served with the notice of the original court (s. 3(c) of the Act);
- The judgment was not obtained by fraud (s. 3(d) of the Act);
- The judgment is final; there is no appeal pending and no indication that the judgment debtor intends to appeal (s. 3(e) of the Act);
- The enforcement of the judgment would not be contrary to public policy (s. 3(f) of the Act); and
- The judgment debtor would not have a good defence if an action were brought on the original judgment (s. 3(g) of the Act).

⁸ *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R. 5.

⁹ The Act applies to all provinces and territories except Quebec.

¹⁰ Includes an award in arbitration proceedings if the award has become enforceable in the same manner as a judgment given by a court.

¹¹ There is no provision under the Act to apply for an extension of time beyond six years.

¹² *Administration of Justice Act*, R.S.O. 1990, c. A.6 and Ontario Regulation 293/92 Amended to O. Reg. 272/05.

Once the judgment is registered, it has the same force and effect as if rendered by a court in Ontario (s. 4(a) of the Act).

Ontario Enforcement of U.K. Judgments

The *Reciprocal Enforcement of Judgments (U.K.) Act*¹³ (the “Act”) allows for the enforcement within Ontario of foreign judgments granted in a court in the United Kingdom.

How to register

Registrations are done by court order, upon application of the judgment creditor. There is a limitation period of six years from the date of judgment or the date of the last judgment if there were appeal proceedings.

Rule 73 of the *Rules of Civil Procedure* applies and the judgment creditor must use Form 73A of the *Rules of Civil Procedure*. A sworn affidavit should be included (Rule 73.02(2)) and it may be based on the deponent’s information and belief (Rule 73.02(4)). A certified copy of the judgment and original proof of service of the originating process must be included as exhibits (Rule 73.02(3)).

Applications should be made to the Ontario Superior Court of Justice, unless the subject-matter of the judgment falls within the competence of the Federal Court of Canada, in which case the application should be made to that court.

Requirements for the registration of a U.K. judgment include:

- The judgment has not been satisfied (Article IV, s. 1(a) of the Act);
- The judgment was enforceable in the territory of origin (Article IV, s. 1(b) of the Act);
- The original court had jurisdiction (Article IV, s. 1(c) of the Act);
- The judgment was not obtained by fraud (Article IV, s. 1(d) of the Act);
- Enforcement of the judgment would not be contrary to public policy (Article IV, s. 1(e) of the Act);
- The judgment is not a judgment of a country or territory different from the territory of origin which has been registered in the original court (Article IV, s. 1(f) of the Act);
- The registering court in Ontario is not of the view that the judgment debtor is entitled to immunity from the jurisdiction of that court or from the jurisdiction of the original court (Article IV, s. 1(g) of the Act);
- The judgment debtor was properly served in the original proceedings (Article IV, s. 2(a) of the Act);
- No other judgment was given by a court having jurisdiction in the matter prior to the date of judgment in the original court (Article IV, s. 2(b) of the Act); and
- The judgment is final and there is no pending appeal (Article IV, s. 2(c) of the Act).

Once registered, the judgment will be of same force and effect as if rendered by an Ontario court for the purposes of enforcement (Article III, s. 4).

¹³ *Reciprocal Enforcement of Judgments (U.K.) Act*, R.S.O. 1990, c. R.6.