

1978

## Recognition of Foreign Country Money Judgments: The Quebec-United States Position

Ethel Groffier Atala

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Ethel Groffier Atala, *Recognition of Foreign Country Money Judgments: The Quebec-United States Position*, 47 Fordham L. Rev. 132 (1978).

Available at: <https://ir.lawnet.fordham.edu/flr/vol47/iss1/8>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## Recognition of Foreign Country Money Judgments: The Quebec-United States Position

### Cover Page Footnote

Associate Professor of Law, McGill University.

## CORRESPONDENCE

### RECOGNITION OF FOREIGN COUNTRY MONEY JUDGMENTS: THE QUEBEC-UNITED STATES POSITION

To the Board of Editors:

Mr. Eric D. Ram, in a recent issue of this Law Review,<sup>1</sup> describes the plight of an American driver who has had a car accident in Canada and is unable to enforce a United States judgment against a reckless Canadian driver. In the course of a complete and accurate survey of the foreign money judgment recognition rules of the common-law provinces of Canada, the writer mentions that the Quebec rules of recognition are outside the scope of his Comment.<sup>2</sup> He posits, however, that "[t]he differences between the rules of foreign money judgment recognition in Quebec and in the common-law provinces are not fundamental."<sup>3</sup> Because this last statement seems exceedingly generous toward Quebec private international law, and because many American families are vacationing in Quebec every year, a brief description of the Quebec recognition rules is in order.

Initially, it is important to note that recognition of foreign judgments is a matter of Quebec provincial law and not of Canadian federal law.<sup>4</sup> Moreover, Quebec has not enacted the Reciprocal Enforcement of Judgments Act,<sup>5</sup> as have all other Canadian provinces and territories.<sup>6</sup> The Quebec rules of recognition are derived from old French customary law<sup>7</sup> and differ sig-

---

1. Comment, *Reciprocal Recognition of Foreign Country Money Judgments: The Canada-United States Example*, 45 Fordham L. Rev. 1456 (1977) [hereinafter cited as *Canada-U.S. Example*].

2. *Id.* at 1459 n.16.

3. *Id.*

4. *Id.* at 1459. For purposes of recognition, each province is considered a separate foreign country. Moreover, the Constitution of Canada, the British North America Act, 1867, 30 & 31 Vict., c. 3, contains no faith and credit clause. *Canada-U.S. Example, supra* note 1, at 1459-61. Judgments from other Canadian provinces, however, are given preferential treatment in Quebec as far as defenses are concerned. Code of Civil Procedure §§ 179-180 (1965); see notes 31-32 *infra* and accompanying text.

5. For a description of the Reciprocal Enforcement of Judgments Act, see *Canada-U.S. Example, supra* note 1, at 1477-78, 1492-94.

6. Quebec has made a limited exception by providing for the reciprocal enforcement of maintenance judgments. See Reciprocal Enforcement of Maintenance Orders Act, Que. Rev. Stat. c. 23 (1964). This Act applies to most Canadian provinces but to no other jurisdiction. See Swan, *Reciprocal Enforcement of Maintenance Orders in Canada*, in 2 *Studies in Canadian Family Law* 875 (D. Mendes da Costa ed. 1972); Groffier, *La Loi Quebecoise D'Execution Reciproque D'Ordonnances Alimentaires*, 51 Can. B. Rev. 419 (1973).

7. See French Ordinance of 1629 (Code de Marillac), art. 121, 1 Edits, Ordonnances Royaux, Declarations et Arrêts du Conseil d'État du Roi, concernant le Canada 38 (Quebec 1854). This provision was partially modified in 1860 by an "Act respecting Foreign Judgments and Decrees," Can. Stat. c. 24 (1860), and then enacted in the Code of Civil Procedure in 1888. See W.S. Johnson, *Conflict of Laws* 766 (2d ed. 1962) [hereinafter cited as *Conflicts*]; Castel, *Reciprocal Enforcement of Judgments in the Province of Quebec*, 21 *Revue de Barreau de la Province de Québec* [R.B.] 128, 132 (1961); Johnson, *Foreign Judgments in Quebec*, 35 Can. B. Rev. 911, 912 (1957) [hereinafter cited as *Foreign Judgments*]; Mackay, *Execution des jugements étrangers*, *Revue du Droit* 464, 465 (1933).

nificantly from the rules applicable in other North American jurisdictions. J.-G. Castel has described the difficulty of executing a foreign money judgment in Quebec:

Not only are foreign judgments not directly enforced in the absence of special statutory provisions to that effect, but in the Province of Quebec the law gives them little weight, especially when they are rendered outside Canada, to the prejudice of creditors in whose favour the judgments lie.<sup>8</sup>

What is unique to Quebec, and what accounts for the enormous difficulty in obtaining the recognition of foreign money judgments, is the policy which allows a complete rehearing of the merits.<sup>9</sup>

### I. GENERAL CONDITIONS

The following general conditions must be met for a foreign money judgment to be declared executory: (a) the foreign court must have had jurisdiction; (b) the proceedings must not offend Quebec notions of natural justice; (c) the judgment must be final and conclusive; and (d) the judgment must be for a definite or easily ascertainable sum.

#### A. *Jurisdiction of the Foreign Court*

The foreign court must have been a court of competent jurisdiction in accordance with its local law. If it was not, a defense may be raised under section 178 of the Code of Civil Procedure.<sup>10</sup> The jurisdiction of the foreign court must also meet three basic requirements of Quebec private international law: (1) the defendant must be domiciled within the jurisdiction of the court; (2) the cause of action must arise within the jurisdiction of the court and the defendant must be personally served with the action within such jurisdiction; and (3) the defendant must be possessed of property, not merely illusory, within the jurisdiction of the court.<sup>11</sup>

The first requirement is clear and does not need elaboration. The second requirement, however, presents two problems: the definition of the cause of action and the determination of the place where it arises. According to Quebec law, a cause of action has been defined as

every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.<sup>12</sup>

8. Castel, *supra* note 7, at 128. See also Nadelmann, *Enforcement of Foreign Judgments in Canada*, 38 Can. B. Rev. 68, 83 (1960).

9. See pt. II *infra*.

10. "Any defence which was or might have been set up to the original action may be pleaded to an action brought upon a judgment rendered out of Canada." Code of Civil Procedure § 178 (1965).

11. Stacey v. Beaudin, [1886] 9 Legal News [L.N.] 363, 363 (Que. Super. Ct.). See also Howie v. Stanyar, [1944] Rappports Judiciaires, Cour Superieure [Que. C.S.] 305; Bank of Montreal v. O'Hagan, [1890] 13 L.N. 202 (Que. Super. Ct.); Kerr v. Lanthier [1890] 19 La Revue Légale [R.L.] 170 (Que. Super. Ct.); May v. Richie, [1871] 16 Lower Canadian Jurist [L.C.J.] 81 (Que. Super. Ct.). These jurisdictional predicates, based essentially on territorial notions, are quite similar to those imposed in recognition actions by courts in the common-law provinces of Canada. See *Canada-U.S. Example, supra* note 1, at 1463-64.

12. Trower & Sons, Ltd. v. Ripstein, [1944] A.C. 254, 263 (P.C.), *rev'g* [1942] Can. S. Ct. 107.

This definition creates considerable problems in the case of a product that is manufactured in one jurisdiction and causes damage in another jurisdiction.<sup>13</sup>

Although service is made according to local rules, the defendant must be served personally within the foreign jurisdiction. Service in Quebec pursuant to American long-arm<sup>14</sup> or other jurisdictional statutes is not equivalent to personal service within the jurisdiction and is, therefore, not acceptable.<sup>15</sup> In the same manner, a United States judgment founded upon statutory service on the Secretary of State would go unrecognized in Quebec.<sup>16</sup>

With respect to the third requirement, property, not merely illusory, has been defined as "[p]roperty of the type that could have been seized in satisfaction of the judgment that plaintiff seeks."<sup>17</sup>

The lack of jurisdiction in accordance with Quebec rules must be proved by the defendant:

[A] properly sealed and certified copy of the foreign judgment sued upon makes *prima facie* proof of its "contents"—that is, that the foreign court had jurisdiction, that it decided in accordance with the relevant foreign law, and that it came to a proper conclusion on the merits. The burden is on the Quebec defendant to allege and prove the contrary.<sup>18</sup>

Although one authority doubts the accuracy of this interpretation of a provision which, in his opinion, only establishes a presumption of the authenticity of the copy of the foreign judgment,<sup>19</sup> the principle is almost invariably followed.<sup>20</sup>

#### B. *The Proceedings Must Not Offend Quebec Notions of Natural Justice*

Incompatibility with natural justice, or public order as it is called in Quebec, is a defense to the foreign judgment. Public order, however, is limited to the effects in Quebec of a situation validly created outside of Quebec.<sup>21</sup> Recognition will be denied only if the foreign judgment offends a

13. See, e.g., *Moran v. Pyle*, [1975] 1 Can. S. Ct. 393; Comment, *Conflict of Laws—Jurisdiction—Service Ex Juris—Place of Tort*, 52 Can. B. Rev. 470 (1974). Although *Moran* is a Saskatchewan case, the problem is the same in Quebec.

14. See, e.g., N.Y. Civ. Prac. Law § 302 (McKinney 1972).

15. See, e.g., *Kerr v. Lanthier*, [1890] 19 R.L. 170 (Que. Super. Ct.). The rule is the same in the common-law provinces. See *Canada-U.S. Example*, *supra* note 1, at 1468.

16. The same situation exists in the common-law provinces. *Canada-U.S. Example*, *supra* note 1, at 1461-68.

17. *First National Bank v. La Sarchi Co.*, [1961] Rappports Judiciaires, Cour du Banc du Roi [Que. C.B.R.] 702, 704.

18. *Foreign Judgments*, *supra* note 7, at 911-12.

19. *Id.* at 949.

20. *Bauron v. Davies*, [1897] 6 Que. C.B.R. 547, 553, *rev'g* [1896] 11 Que. C.S. 123; see *Schatz v. McEntyre*, [1935] Can. S. Ct. 238; *Spohn v. Bellefleur*, [1956] Que. C.B.R. 608; *Ryan v. Pardo*, [1957] R.L. 321 (Que. Super. Ct.); *McDowell v. McDowell*, [1954] Que. C.S. 319; *Haney v. Mahaffy*, [1921] 23 Rappports de Pratique [R.P.] 225 (Que. Super. Ct.); *Carsley v. Humphrey*, [1910] 12 R.P. 133 (Que. Super. Ct.); *Dunbar v. Almour*, [1887] 3 Montreal L.R. 142 (Que. Super. Ct.); *May v. Ritchie*, [1871] 16 L.C.J. 81 (Que. Super. Ct.); *Nadeau & Ducharme, La preuve en matières civiles et commerciales* in 9 *Traité de droit civil du Québec* 262, No. 339 (1965).

21. *Stevens v. Fisk*, [1885] 8 L.N. 42, 46 (Can. Sup. Ct.); *Ryan v. Pardo*, [1957] R.L. 321, 322 (Que. Super. Ct.); *Gauvin v. Rancourt*, [1953] R.L. 517, 532 (Que. Super. Ct.). See also

basic concept of justice.<sup>22</sup>

No clear case exists where the court refused to recognize a foreign judgment on the ground of public policy. Perhaps the defense would stand if the defendant had not been given proper notice and an opportunity to be heard in the foreign jurisdiction. A strong possibility exists, however, that in Quebec this situation would be handled under the requirement that the foreign court have jurisdiction or under the defenses on the merits.

### C. *The Judgment Must Be Final and Conclusive*

One authority has defined "finality" as follows:

What is meant [by finality] is perhaps best conveyed by saying that, between the parties *so far as the foreign jurisdiction is concerned*, the judgment is there regarded as final and conclusive; it is not merely interlocutory, liable to be reviewed, modified or set aside by another judgment of the *court pronouncing it*; it is binding upon and is the law between the parties, though it may be appealable to a higher court; but it should be alleged and proved that such is the case under the foreign law.<sup>23</sup>

The requirement of finality only creates difficulty in matters of maintenance and alimony. A maintenance decree is not a final judgment because it is always modifiable should the circumstances of the parties change.<sup>24</sup> This is true even if the maintenance judgment is accessory to a final divorce. Hence, United States maintenance judgments are not executable in Quebec unless the arrears have been consolidated in a nonrevisable judgment.<sup>25</sup> The justification for this often harsh rule is that rubberstamping "a vague foreign judgment ordering payments for an indefinite future . . . confirm[s] a judgment which unknown to [the court] may be modified or desisted from and over which [the court has] no control."<sup>26</sup>

### D. *The Judgment Must Be for a Definite Sum*

"[A] sum is sufficiently certain if it can be ascertained by a simple arithmetical process."<sup>27</sup> Even if a United States judgment meets the above requirements, however, the case may be reopened on the merits in the Quebec courts.

Johnson, *Recognition of Foreign Divorce of Consorts Domiciled in Quebec at Marriage*, 14 R.B. 301 (1954).

22. See Crepeau, *La reconnaissance judiciaire des jugements de divorce étrangers dans le droit international privé de la Province de Québec*, 19 R.B. 310, 323 (1959).

23. Conflicts, *supra* note 7, at 758; see Northern Ry. v. Patton, [1867] 17 L.C.R. 71 (Que. Super. Ct.). There is some authority, however, that a judgment is not final if the time for appeal has not yet expired. Hitchcock v. Nadeau, [1925] 31 R.L. 407 (Que. Super. Ct.); Conflicts, *supra* note 7, at 835; Nadeau & Ducharme, *supra* note 20, at 452.

24. Chapat v. Delrue, [1971] Recueils de Jurisprudence [R.J.] 648 (Que. Super. Ct.); Ellenberger v. Robins, [1940] 78 Que. C.S. 1.

25. See Ryan v. Pardo, [1957] R.L. 321 (Que. Super. Ct.).

26. Conflicts, *supra* note 7, at 845. A few decisions, however, have recognized a judgment in which the defendant was required to pay a pension in the future. See McDowell v. McDowell, [1954] Que. C.S. 319; Archambault v. Riopelle, [1934] 72 Que. C.S. 176.

27. Conflicts, *supra* note 7, at 758.

## II. DEFENSES

Section 178 of the Code of Civil Procedure gives a Quebec judge the power to review and revise a United States judgment at the request of a Quebec defendant. This fact makes recognition in Quebec more difficult than in the common-law provinces because the Quebec judge may form an opinion on the facts and on the applicable United States law different from that of the United States judge. The defenses which can be raised are only those which could have been raised successfully under the law of the jurisdiction in which the original action was instituted.<sup>28</sup> The defendant has the burden of proving the applicable United States law,<sup>29</sup> and if he fails to do so the United States law will be presumed to be identical to the Quebec law.<sup>30</sup> The law of the foreign court must be proven by experts.

Canadian judgments rendered outside Quebec, as distinguished from judgments rendered outside Canada, cannot be revised under section 178 of the Code of Civil Procedure. A defense can be raised to Canadian judgments only if "the defendant was not personally served with the action in such other province or did not appear in such action."<sup>31</sup> Thus, Canadian judgments are res judicata in Quebec if there has been personal service or appearance.<sup>32</sup>

## III. PROCEDURE

To have a foreign judgment declared executory, the judgment creditor must institute an action in Quebec upon exemplification, that is, an action based on the foreign judgment, and not a new action based on the damages suffered.<sup>33</sup> Plaintiff must produce an authentic copy of the foreign judgment in conformity with Civil Code article 1220. The action upon exemplification must comply with the general jurisdictional rules of the Quebec courts.<sup>34</sup> Non-resident plaintiffs may be required to post security for costs.<sup>35</sup>

The problem of exchange rates has yet to be solved in Quebec. Canadian courts cannot execute a judgment for an amount expressed in foreign cur-

28. *Ryan v. Pardo*, [1957] R.L. 321, 322 (Que. Super. Ct.); *Binns v. Jekill*, [1957] Que. C.S. 49, 51; *McDowell v. McDowell*, [1954] Que. C.S. 319, 321. The fact that the defendant did not personally appear in that jurisdiction does not prevent him from raising the defenses. *Id.* at 319. See generally *Binns v. Jekill*, [1957] Que. C.S. 48.

29. *Spohn v. Bellefleur*, [1956] Que. C.B.R. 608.

30. *Orsi v. Irving Samuel Inc.*, [1957] Que. C.S. 209, 215; *Howie v. Stanyar*, [1944] Que. C.S. 305, 308-09.

31. Code of Civil Procedure § 179 (1965).

32. See *Rabinovitch v. Chechik*, [1929] Can. S. Ct. 400; *Canadian Conveyors Ltd. v. Heakes*, [1955] Que. C.S. 416; *Maxwell v. McNamara*, [1946] Que. C.S. 191; *Blackwood v. Percival*, [1902-1903] 5 R.P. 110 (Que. Super. Ct.); *Salaman v. Blackley*, [1898] 4 R.L. 312 (Que. Super. Ct.); *Kerr v. Lanthier*, [1890] 19 R.L. 170 (Que. Super. Ct.); *Bates v. Lauzon*, [1879] 2 L.N. 117 (Que. Super. Ct.); *Alcock v. Howie*, [1878] 22 L.C.J. 145 (Ct. Review); *Foreign Judgments*, *supra* note 7, at 927.

33. A new action would not necessarily fail. Plaintiff may sue defendant directly in Quebec in tort or on a legal relationship and produce the foreign judgment as a mere element of evidence. See *Knox Bros. v. Lingle*, [1925] 38 Que. C.B.R. 325, *aff'd*, [1925] Can. S. Ct. 659; *Morrier v. Ronalds*, [1965] Que. C.S. 481; *Kerr v. Lanthier*, [1890] 19 R.L. 170 (Que. Super. Ct.). *But see Canadian Conveyors Ltd. v. Heakes*, [1955] Que. C.S. 416.

34. Code of Civil Procedure art. 68 (1965).

35. *Id.* art. 65.

rency,<sup>36</sup> and, therefore, must convert the amount into Canadian dollars. In the present period of economic uncertainty, the rate of exchange of United States and Canadian dollars varies daily. Thus, it may make a substantial difference whether one selects the rate in force on the date of the breach of the obligation which was the cause of the original action, the date of the foreign judgment, or the date of the Quebec judgment. Although in the common-law provinces the date of the foreign judgment is preferred,<sup>37</sup> there seems to be no established practice in Quebec. The law of Quebec concerning the execution of foreign judgments does not take into account the dynamics of international exchange and is badly in need of reform.

#### IV. PROPOSED REFORMS

The Civil Code Revision Office has published a proposed codification of Quebec private international law.<sup>38</sup> The proposed codification, based on the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters,<sup>39</sup> contains several improvements. The proposal suggests that the international jurisdiction of the foreign court would exist if:

1. the defendant was domiciled [40] in the jurisdiction of the court of origin at the time the proceedings were instituted or, if the defendant is not a physical person, had there its place of incorporation or its head office;
2. the defendant possessed a commercial, industrial or other business establishment, or a branch office in the jurisdiction of the court of origin at the time the proceedings were instituted, and was cited there in proceedings relating to their activity;
3. the action had as its object a dispute relating to immovable property situated in the place of the court of origin;
4. [in the case of injuries to the person or damage to tangible property] the act which caused the damage upon which the action is based occurred in the jurisdiction of the court of origin, and the author of the [injury or] damage was present at that time;
5. by a written agreement, the parties have agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of Quebec would, in this case, give exclusive jurisdiction to its courts;
6. the defendant has contested on the merits without challenging the jurisdiction of the court or making reservation to it; however, the jurisdiction will not be recognized if the defendant has contested on the merits in order to resist the seizure of property or to obtain [its release], or if the law of Québec would, in this case, give exclusive jurisdiction to its courts; or
7. the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings,

---

36. Currency and Exchange Act, Can. Rev. Stat. c. C-39, § 11 (1970).

37. J.-G. Castel, *Canadian Conflict of Laws* 531 (1975).

38. Civil Code Revision Office, *Report on Private International Law, XXXII* (1975). This draft forms the ninth and last book of the Draft Civil Code. See Civil Code Revision Office, *Report on the Quebec Civil Code, 1 Draft Civil Code, Book 9* (1978) [hereinafter cited as *Draft Code*].

39. See Permanent Bureau of the Hague Conference, *Recueil des Conventions de la Haye* 106 (1973).

40. "Domicile" must be understood as meaning "habitual residence." See Civil Code Revision Office, *Report on the Domicile of Human Persons, XXXIV* (1975).

unless the law of Quebec would give, in this case, exclusive jurisdiction to its courts.<sup>41</sup>

Should these provisions be adopted, Quebec's rules as to the personal jurisdiction of the foreign tribunal would be significantly broader than those currently existing in the common-law provinces.<sup>42</sup> The jurisdictional competence of the court of origin, however, would not be recognized when "the law of Québec, either because of the subject matter or by virtue of an agreement between the parties, gives exclusive jurisdiction to its courts to hear the claim which gave rise to the foreign decision."<sup>43</sup>

If the foreign court had jurisdiction the Quebec defendant could assert the following defenses:

1. that the original authority had no jurisdiction in accordance with [the above seven jurisdictional predicates];
2. that the foreign decision may be subject to normal forms of review according to the law of the place where it was rendered;
3. that the foreign decision is not enforceable at the place where it was rendered;
4. that the foreign decision orders provisional or conservatory measures;
5. that the foreign decision was obtained by fraud in the procedure;
6. that proceedings between the same parties, based on the same facts and having the same purpose, either resulted in a decision rendered in Québec, whether having the force of *res judicata* or not, or are pending before a Québec court, first to be seized of the matter.<sup>44</sup>

Although public policy is not mentioned specifically, recognition of any foreign judgment could be refused if it is "manifestly incompatible with public order as understood in international relations."<sup>45</sup>

On the whole, the proposal greatly simplifies the enforcement of foreign money judgments.<sup>46</sup> In addition to specifying when a foreign court has jurisdiction, it removes the necessity for personal service in the case of liability. Perhaps most importantly, the proposed codification prohibits Quebec courts from examining the merits of the foreign judgment.<sup>47</sup> The merits have been dealt with in the foreign court and should not be disturbed by Quebec courts. By eliminating this possibility, the proposal would introduce modern judgment-recognition rules in Quebec.

Ethel Groffier Atala  
Associate Professor of Law  
McGill University

---

41. Draft Code, *supra* note 38, art. 65.

42. See *Canada-U.S. Example*, *supra* note 1, at 1462-73.

43. Draft Code, *supra* note 38, art. 67(1).

44. *Id.* art. 60.

45. *Id.* art. 5.

46. The conditions for recognition of a default judgment, however, would be more stringent. A default judgment would not be recognized "unless the plaintiff proves that the defaulting party received notice of the institution of proceedings in accordance with the law of the place where the decision was rendered." *Id.* art. 61.

47. *Id.* art. 63.