

Supreme Court of Canada confirms generous and liberal approach to the recognition and enforcement of foreign judgments

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In *Chevron Corp. v Yaiguaje*, 2015 SCC 42, the Supreme Court of Canada confirms that Canadian courts should take a generous and liberal approach to the recognition and enforcement of foreign judgments. Although such process was once technical and challenging, the last twenty years has seen significant streamlining of and openness towards the process of enforcing foreign judgments in Canada: *Yaiguaje* continues this trend, and offers great assistance to parties who wish to seek to enforce a foreign judgment in Canada, whether or not:

- the judgment debtor/defendant is located in Canada;
- the judgment debtor/defendant has assets in Canada; or
- the original underlying dispute that led to the foreign judgment has any connection to Canada.

There is no need for the applicant to prove a real and substantial connection between the Canadian province where the foreign judgment is sought to be registered and the original underlying dispute that led to the foreign judgment, or between the Canadian province and the judgment debtor/defendant. So long as a real and substantial connection existed between the foreign court and the original action, and so long as the defendants were properly served with the original claim, the enforcing Canadian court has jurisdiction to recognize and enforce the judgment.

The decision further reiterates Canadian courts' commitment to the principles of comity to and respect of foreign legal systems, and upholds the principles outlined in previous authorities, including *Club Resorts Ltd. v Van Breda*, 2012 SCC 17 and *Beals v Saldanha*, 2003 SCC 72. By taking a strong position with respect to the rights of the plaintiffs, the Court confirmed that there are few circumstances in which a Canadian court will not have jurisdiction to recognize and enforce a foreign judgment.

Facts of the case

From 1972 until 1990, Texaco (which was later acquired by Chevron) was involved in the exploration and extraction of oil from the Lago Agrio region of Ecuador. Indigenous Ecuadorian villagers claimed that Texaco's operations had caused severe environmental damage to the region, and brought an action against Chevron Corp. in Ecuador. The trial judge awarded the villagers \$17.2 billion in damages, which was reduced to \$9.51 billion by Ecuador's Court of Cassation. After finding that Chevron Corp. had no assets left in Ecuador, the villagers sought to have the judgment recognized and enforced in Ontario against both Chevron Corp. (based in the United States) and its subsidiary, Chevron Canada Limited ("**Chevron Canada**") (which was not a defendant in the Ecuadorian action).

The rule for jurisdiction in enforcement proceedings

After being served with an Ontario statement of claim in the enforcement proceedings, Chevron Corp. applied to set aside the service on the basis that Ontario courts had no jurisdiction to hear the action because there was no “real and substantial connection” between the subject matter of the dispute or Chevron Corp. itself and the province of Ontario.

The “real and substantial connection” test is the usual standard for establishing a Canadian court's jurisdiction to hear an action; however, previous decisions of the Supreme Court of Canada suggested the test might be different in an action to enforce a foreign judgment.

The Supreme Court of Canada found that Ontario courts had jurisdiction over the enforcement action: the real and substantial connection test only applied to hearings on the merits, not to action for recognition and enforcement of foreign judgments. In an action to enforce a foreign judgment, the only prerequisite is that the foreign court properly took jurisdiction over the original dispute. Accordingly, as long as the defendants were properly served on the basis of the foreign judgment, Ontario courts could properly adjudicate the dispute.

The Court explained that in an enforcement action, there are no concerns about jurisdiction because the court is merely facilitating the payment of a debt; the facts underlying the original dispute are irrelevant. Reasoning that Chevron Corp.'s failure to satisfy the judgment was reason enough to call upon them to fulfill those obligations in Canada, the Court concluded that the principle of comity, which directs courts to respect legitimate actions taken by foreign states, was too important to allow Chevron Corp.'s arguments to succeed.

The Court also rejected Chevron Corp.'s argument that the plaintiffs were required to prove that a defendant has assets in the enforcing jurisdiction. Acknowledging that modern commerce was fast-moving and largely electronic, the Court held that such a rule would only assist debtors trying to escape their liabilities.

Enforcement proceeding does not end with a finding of jurisdiction

The Court emphasized that its analysis only goes to the gatekeeper issue of whether the court has jurisdiction to hear an application for recognition and enforcement. Establishing jurisdiction merely means that the alleged debt merits the assistance and attention of the Canadian court. Once the parties move past the jurisdiction hearing, it may still be open to the defendant to argue that the enforcement and recognition order not be granted. The defendant may argue, for example, that the proper use of judicial resources justifies a stay of the enforcement proceeding. The defendant may also argue that recognition and enforcement should be denied because the original foreign judgment was obtained through fraud or denial of natural justice, or that the foreign judgment is contrary to public policy. But the case law has confirmed that such defences are to be applied narrowly, and in rare circumstances.

Jurisdiction over a defendant's subsidiary

Chevron Canada argued that a company carrying on business in Ontario, as opposed to a company headquartered in Ontario, cannot be brought before the courts unless there is a relationship between the claim and that province.

The Supreme Court of Canada disagreed, holding that jurisdiction over Chevron Canada was established simply because it had a business presence in Ontario. Notably, however, the Court declined to opine on whether Chevron Canada's assets would ultimately be available to the plaintiffs to satisfy the debt of its parent Chevron Corp., or the extent to which, if at all, a future court might cut through the corporate veil to allow collection on the

registered judgment against the affiliated Canadian company. The eventual decision on these points will be an important one for clients with complicated corporate structures.

Importance of the decision

With this decision, the Supreme Court has made it clear that judgment creditors are entitled to commence proceedings to enforce foreign judgments in Canada regardless of whether or not the underlying dispute has any connection to Canada, the defendant operates in Canada, or the defendant has assets in Canada. Further, although it remains to be seen whether their assets will be available to satisfy a judgment, judgment creditors are entitled to join local subsidiaries of their creditors to such an action.

For companies operating internationally, this decision signals the willingness of Canadian courts to enforce foreign judgments. It should also, however, serve as a warning that obligations incurred in foreign states cannot be avoided simply by segregating assets in other jurisdictions.

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