



The Canadian approach to enforcement of insolvency-derived foreign judgments

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Enforcement of Foreign Judgments at Common Law

- In 1990, The Supreme Court of Canada, in *Morguard*, expanded upon the traditional common law rules for recognition and enforcement.
- Judgments from another province enforced where the court granting judgment had a **real and substantial connection** with either the subject matter of the action or the defendant.

Enforcement of Foreign Judgments at Common Law

- In 2006, the Supreme court in *Beals v. Saldanha* extended the “Real and Substantial Connection” test to the case of foreign (international) judgments.
- There are three defences to enforcement: fraud, public policy, and lack of natural justice.

The “Real and Substantial Connection” Test

- In *Beals*, the Supreme Court held:
 - A substantial connection **with the subject matter of the action** will satisfy the real and substantial connection test even in the absence of such a connection with the defendant to the action.
 - There will be a sufficient connection **between the foreign jurisdiction and the defendant** where
 - he or she has participated in something of significance or was actively involved in that foreign jurisdiction.

Application to Insolvency-Derived Judgments

- An open question in context of “*Rubin*”-esque avoidance judgments.
- In 2012, the Supreme Court released *Van Breda*, which considered the meaning of “Real and Substantial Connection”.
- “Real and Substantial Connection” only where **objective, “presumptive connecting factors”** are identified
- Courts have only begun to identify these factors in context of insolvency judgments.

Application to Insolvency-Derived Judgments

- Some factors would focus on the relation between the defendant and the jurisdiction of the insolvency proceeding
- *Possible* that even for defendant without personal connection to jurisdiction, courts might decide that the connection between the cause of action and the forum is strong enough for enforcement.