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.