

## *limitations unlimited: foreign judgments are subject to two-year limitations period in Ontario*

### introduction

Whether you're buying a home, opening a restaurant, or enforcing a court judgment, you must be guided by the same mantra: "location, location, location." An Ontario court recently confirmed that some extra-provincial plaintiffs may have less time than they realize to enforce a judgment in that province.

Litigants must be mindful of limitations periods. This well-worn advice applies not only to instigating a claim, but also to the enforcement of a foreign judgment. In *Commission de la Construction du Québec v Access Rigging Services Inc.*<sup>1</sup> ("**Access Rigging**"), the applicant, having successfully obtained a judgment against the respondent in the Quebec courts, sought to enforce its judgment in Ontario. However, since the applicant had waited too long to enforce its judgment, the court ruled that the applicant was statute-barred. It was not allowed to take advantage of the unlimited enforcement period available to plaintiffs whose judgments were obtained in Ontario.

### facts and issues

The dispute in *Access Rigging* was factually unremarkable. The applicant had originally launched an action in Quebec for amounts paid under an employment plan. It won a default judgment in November 2005. In July 2010, it brought an application before the Ontario Superior Court of Justice to enforce the judgment in Ontario. The respondent (who had been found liable in the Quebec action) argued that the applicant's enforcement proceeding was barred by the basic two-year limitations period in the *Limitations Act, 2002*<sup>2</sup>.

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<sup>1</sup> 2010 ONSC 5897.

<sup>2</sup> *Limitations Act, 2002*, SO 2002, c 24, Sch B [*Limitations Act*].

The applicant argued that no limitation period should apply to the enforcement of the Quebec judgment. The *Limitations Act* sets out an unlimited period for the enforcement of judgments made by Ontario courts. It states that “[t]here is no limitation period in respect of ... a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court.”<sup>3</sup> The applicant argued that this clause applies both to Ontario judgments and foreign judgments.<sup>4</sup>

Under common law, a foreign judgment is treated as a simple contract debt between the parties; a proceeding must be brought to enforce that debt in Ontario, and that proceeding must be brought within the applicable limitations period. Although the Ontario Court of Appeal had previously ruled on a similar question under the predecessor to the *Limitations Act*<sup>5</sup>, no court had yet ruled on whether the unlimited enforcement period applies to foreign judgments under the current statute.

### **Access Rigging: the basic limitation period applies to foreign judgments**

Justice McLean followed the Court of Appeal’s approach under the previous legislation, holding that proceedings to enforce foreign judgments are subject to the basic two-year statutory limitations period.

In coming to his decision, McLean J. considered earlier rulings in which courts had attempted to achieve some “parity” between foreign and domestic judgments (i.e., to remedy the apparent unfairness created by the differing limitations periods). The Court of Appeal ultimately overruled those decisions as legislating from the bench. On a plain reading of the statute, there is no reason to believe that the legislature intended the unlimited limitations period to apply to foreign judgments. Justice McLean found that the purpose of the *Limitations Act* is “to simplify an otherwise complex scheme of limitations,” not to modify the law’s treatment of foreign judgments.

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<sup>3</sup> *Limitations Act*, s 16(1)(b).

<sup>4</sup> All decisions of extra-provincial courts are considered “foreign,” including those rendered in other Canadian provinces and territories.

<sup>5</sup> *Lax v Lax* (2004), 70 OR (3d) 520 (Ont CA).

## practical impact on extra-provincial judgments

*Access Rigging* is not likely to have a significant effect on the enforcement of judgments made in Canadian jurisdictions other than Quebec. The *Reciprocal Enforcement of Judgments Act*<sup>6</sup> sets out a system where judgments rendered in reciprocating provinces and territories can be enforced in Ontario through a simple registration system. Such judgments can be registered in Ontario within six years of the date the judgment was given. Quebec is the only province or territory that does not have reciprocating legislation in place.

The upshot of *Access Rigging* is a confirmation of the different limitations periods that apply to enforcement proceedings in Ontario, depending on where the original judgment was rendered:

- **Ontario:** There is no limitation period on “domestic” enforcement proceedings<sup>7</sup> (i.e., those where the judgement to be enforced was originally rendered by the Ontario courts).
- **Provinces and territories other than Quebec:** A judgment for a sum of money can be enforced in Ontario within six years of the judgment being made. Enforcement is accomplished by a simple registration system under the *Reciprocal Enforcement Act*.
- **Quebec and other jurisdictions:** Except as modified by other legislation<sup>8</sup>, proceedings to enforce judgments rendered in Quebec and other foreign jurisdictions are subject to the basic two-year limitation period set out in the *Limitations Act*.

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<sup>6</sup> RSO 1990, c R5 [*Reciprocal Enforcement Act*]

<sup>7</sup> *Limitations Act*, s 16(1)(b).

<sup>8</sup> Some legislation provides for the enforcement in Ontario of limited types of orders given in Quebec and other jurisdictions (e.g., support orders, certain environmental orders). Also, some international jurisdictions have reciprocal enforcement treaties in place that are effective in Ontario.

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[a cautionary note](#)

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