



RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

RECENT DECISION PROVIDES CLOSURE ON PRESCRIPTION PERIODS IN QUEBEC, BUT LAWYERS STILL MUST BE AWARE OF THE DIVERSITY IN LIMITATION PERIODS ACROSS JURISDICTIONS – INCLUDING PROVINCE TO PROVINCE IN CANADA

OVER TIME, the legal community has come to recognize the value of arbitration, including, through the adoption of the international Convention on the Recognition and Enforcement of Foreign Arbitral Awards, establishing some uniformity on the recognition of foreign arbitral awards in signatory districts. The Convention also allows for diversity across jurisdictions in various procedural matters, including in terms of how long a party can wait before having these arbitral awards executed, but those limitation periods – or, in Quebec, prescription periods – have presented somewhat of a sticking point, says Justina Di Fazio, associate with Woods LLP.

The matter was first highlighted for her in 2015, when a lawyer filed in Quebec for the recognition of a foreign judgment that itself recognized an arbitral award rendered in a foreign district. There were only two reference points for Di Fazio at the time: a doctoral student's opinion as laid out in their PhD paper on how to recognize and enforce arbitral awards and a 2010 Supreme Court of Canada decision from Alberta that interprets the province's Limitations Act and imposes a two-year period on arbitral awards.

"The arc of moving towards the legitimacy of arbitral proceedings and awards has been a long one and it's more or less complete – but this was a controversial point in that 2015 case I worked on and is still controversial today," says Di Fazio. "But now, seven years later, a

Quebec Court of Appeal decision falls within that arc and closes the book on the subject."

Itani v. Société générale de Banque au Liban SAL deals with the prescription period applicable to arbitral awards and reflects the Court's interpretation of what the Quebec legislature stipulates in arts. 652 and 653 of the Code of Civil Procedure: if a party has an arbitral decision rendered somewhere outside of Quebec, as long as it follows the other rules for recognition and enforcement, they can wait up to ten years before having it executed. While it's not new law, the decision reaffirms that enforcement of foreign arbitral awards should come with a level of certainty on par with, or at least approaching, that of judgments. The decision notes that there is still a distinction between the two, but the legislature equates them for certain procedural points including limitation periods.

The decision also highlights that the work doesn't end with the arbitral award: you've got to know where your party's assets are and how quickly you need to act to have access to them for the purposes of execution. You can't sit on an arbitral award or have it enforced in different places and think you're well-protected, Di Fazio warns, adding that lawyers "need to have the instinct to look into it, and rather quickly, if you want to have any recourse or access to people's assets."

If somebody gets an arbitral award in Europe, for example, and wants it enforced in

WOODS LLP is the foremost litigation, arbitration, and insolvency firm in Canada, recognized nationally and internationally for its expertise and success. The firm acts in all manner of disputes where the stakes are high and the outcome is of vital importance to its clients and their businesses. The firm's team of formidable attorneys – multilingual, trained in the civil law and common law, dedicated to understanding its clients' interests, and devoted to successful advocacy – is known for its winning strategies and concrete results in high-stakes disputes.

Canada, they must be aware that in Quebec the prescription period is 10 years, whereas in Alberta it's two years – a big difference. And if it's been recognized in one jurisdiction and they want it enforced in another, the clock is ticking from the date the arbitral award was rendered and not the date it was first recognized by a court in another jurisdiction.

"The decision provides closure, but even though it seems like settled law at this point, the legislature could change it tomorrow if they decide 10 years is too much, and we as lawyers need to be live to that issue," Di Fazio says. "With both judgments and arbitral awards, execution is often secondary in terms of focus – but it can be a huge issue if you want them to have any impact at all. You must know those time periods; otherwise, your clients' rights are extinguished." ■

Justina Di Fazio, a member of the Quebec Bar since 2015, practises in civil and commercial litigation, including in class action matters, and in international arbitration. She has advised and represented clients in various domains, including construction, pharmaceuticals, franchise and retail, renewable energy and pipelines, real estate, government enterprises, manufacturing, banking, and credit cards. Justina has also acted in matters relating to private international law, constitutional and public law, consumer law, and securities law. She has represented parties in matters before all levels of the Quebec courts, including administrative tribunals.

JUSTINA DI FAZIO
Associate at Woods LLP

