MODERNIZING CANADA'S "MODERN APPROACH" TO FOREIGN JUDGMENTS

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1. Overview

> ...judicial comity should not be allowed to become the enemy of justice.[1]

Since its 2003 decision in *Beals*,[2] the Supreme Court of Canada has adopted a "generous and liberal" approach to the recognition and enforcement of foreign judgments,[3] one that is rooted in the principle of international comity. But in today's world economy, is Canada's approach now too generous at the expense of the rights of Canadians?

In his dissent in *Beals*,[4] Justice LeBel expressed the concern that liberalizing the jurisdiction side of enforcement while retaining the narrow, strictly construed categories of enforcement defences "is not a coherent approach".[5] He warned that "an excessively generous test would be unduly burdensome for defendants" in Canada[6] and that unless the traditional enforcement defences were recalibrated,

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1. Adrian Briggs, "Crossing the River by Feeling the Stones: Rethinking the Law on Foreign Judgments" (2004) 8 Sybil 1 at p. 22.
2. *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, 234 D.L.R. (4th) 1 (S.C.C.) ["*Beals*"].
3. *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, 388 D.L.R. (4th) 253 (S.C.C.) at para. 27 ["*Chevron*"].
4. *Beals*, *supra* note 2.
5. *Beals*, *supra* note 2 at para 135.
6. *Beals*, *supra* note 2 at para 173.

Canada's approach would increase the vulnerability of Canadians to opportunistic lawsuits abroad. Justice LeBel's warnings were prescient and have more resonance 20 years later as Canadians expand their business footprints abroad, including in countries with radically different legal systems and values.

It is time to heed Justice LeBel's warning and for Canada's common law approach[7] to enforcing foreign judgments to shift from focusing primarily on deference to the judicial acts of another nation[8] to protecting "the rights of its own citizens or of other persons who are under the protection of its laws".[9]

An evolution of Canada's private international law is needed, one that is based on enlightened self-interest and protects Canadians from parasitic lawsuits brought in foreign jurisdictions that do not share our conceptions of the rule of law or international comity. The 2022 decision of Justice Myers in *Qingdao Top Steel Industrial Co. Ltd. v. Fasteners & Fittings Inc.*[10] opened the door for such an evolution by inviting the expansion of the enforcement defences in unique circumstances.

In this paper, we review the modern approach to enforcing foreign judgments in Canada and make the case for a much-needed expansion of the defences.

2. Modern Approach

(a) Real and Substantial Connection Test

The modern approach to recognizing and enforcing foreign judgments started in 1990 with *Morguard*,[11] where the Supreme Court expanded the traditional grounds for enforcing foreign judgments (of presence and attornment)[12] by holding that

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7. We focus on the common law in Canada. We do not address *Court Jurisdiction Proceedings and Transfer Act*, which has been enacted in British Columbia, Saskatchewan, Nova Scotia and Yukon, the Civil Code in Quebec or the enforcement of foreign judgments pursuant to bi-lateral treaties between Canada and other countries.
8. *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 76 D.L.R. (4th) 256, 46 C.P.C. (2d) 1 (S.C.C.) at 1096 [S.C.R.] ["*Morguard*"].
9. *Morguard*, *supra* note 8 at p 1096, citing the US Supreme Court in *Hilton v. Guyot*, 40 L.Ed. 95, 16 S.Ct. 139, 159 U.S. 113 (N.Y. Sup., 1895).
10. 2022 ONSC 279, 2022 A.C.W.S. 1838, 2022 CarswellOnt 674 (Ont. S.C.J.) ["*Fasteners & Fittings*"].
11. *Morguard*, *supra* note 8.
12. As notably illustrated in *Emmanuel v. Symon* (1907), [1908] 1 K.B. 302, 77 L.J.K.B. 180, 98 L.T. 304 (C.A.).

judgments from sister provinces could also be enforced if there was a real and substantial connection[13] between the original court and the subject matter of the litigation or the defendants.

In *Beals*, the Supreme Court extended the real and substantial connection test in *Morguard* to foreign judgments, holding that foreign judgments may be enforced in Canada if there was a real and substantial connection between the foreign court and the action or defendant. In so doing, the Court re-affirmed the principle of international comity that underlay *Morguard*. Since *Morguard*, the Supreme Court has consistently affirmed that the goal of comity is to "facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner"[14] and "to facilitate exchanges and communications between people in different jurisdictions that have different legal systems".[15]

No one can reasonably dispute that facilitating the flow of wealth, skills and people across state lines is necessary and desirable in the modern world economy. But what limits should be imposed on Canada's generous and liberal approach? The answer lies in the limits to the doctrine of comity itself.

(b) The Limits of Comity

In *Morguard*, Justice La Forest adopted this description of comity:[16]

> "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws . . .[17]

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13. For the leading decision on the real and substantial connection test in Canada, see *Van Breda v. Village Resorts Ltd.*, 2012 SCC 17, (*sub nom.* Club Resorts Ltd. v. Van Breda) [2012] 1 S.C.R. 572, 343 D.L.R. (4th) 577 (S.C.C.) ["*Van Breda*"].
14. *Morguard*, *supra* note 8 at p 1096; *Beals*, *supra* note 2 at paras 20, 27 and 28; *Chevron*, *supra* note 3 at paras 51-53.
15. *Van Breda*, *supra* note 13 at para 74.
16. *Morguard*, *supra* note 8 at p 1096, citing the US Supreme Court in *Hilton v. Guyot*, 40 L.Ed. 95, 16 S.Ct. 139, 159 U.S. 113 (N.Y. Sup., 1895).
17. *Morguard*, *supra* note 8 at p 1096. This statement has been accepted in subsequent Supreme Court decisions in *Beals*, *supra* note 2 at para 20, *Pro Swing Inc. v. ELTA Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612, 273 D.L.R. (4th) 663 (S.C.C.) at para. 26 ["*Pro Swing*"], *Van Breda*, *supra* note 13 at para 74 and *Chevron*, *supra* note 3 at para 51.

But comity is not a legally enforceable obligation. States choose to defer to the acts of other states out of "duty and convenience" based on its self-interest in reciprocity - that it is "sensible for State A to recognize the acts of State B if it expects State B to recognize its own acts".[18] Comity should thus be viewed foremost as a principle of enlightened self-interest.[19]

In *Pro Swing*[20], the Supreme Court emphasized the limits of comity and the importance of balancing competing interests:

> Comity is a balancing exercise. The relevant considerations are respect for a nation's acts, international duty, convenience and protection of a nation's citizens.[21]
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> [...] courts must take care not to emphasize the factor of respect for a nation's acts to the point of imbalance.[22]
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> [...]
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> Comity does not require receiving courts to extend greater judicial assistance to foreign litigants than it does to its own litigants [...] [Emphasis added.][23]

Twenty years after *Beals*, the enforcement jurisprudence has reached a point of imbalance where deference for a foreign nation's acts may take precedence over the rights of Canadians facing parasitic lawsuits in foreign jurisdictions. This imbalance has its roots in the majority's decision in *Beals* to liberalize the rules of enforcement but maintain the rigid impeachment defences.[24]

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18. *Beals*, *supra* note 2 at paras 167-168, per LeBel J. See also Major J. at para 29.
19. *Beals*, *supra* note 2 at para 174.
20. *Pro Swing*, *supra* note 17.
21. *Pro Swing*, *supra* note 17 at para 27. While Justice Deschamps' statements were made in the context of expanding the enforcement of foreign judgments from monetary judgments to include equitable orders, the importance of balancing competing interests (including the protection of the rights of Canadians) applies to all enforcement proceedings.
22. *Pro Swing*, *supra* note 17 at para 30. In his dissent in *Beals*, Justice LeBel wrote: "At the same time, the receiving court has both the authority and the responsibility to uphold the essential values of the domestic legal system and to protect citizens under the protection of its laws from unfairness": *Beals*, *supra* note 2 at para. 210.
23. *Pro Swing*, *supra* note 17 at para. 31.
24. Academics and practitioners have long since emphasized the need to redefine the approach to comity and to expand the traditional defences to compensate for the expansion of the grounds for enforcing foreign judgments: Professor Adrian Briggs, "Crossing the River by Feeling the

Justice LeBel observed, in his dissent in *Beals*, that "[i]n our enthusiasm to advance beyond the parochialism of the past, we should be careful not to overshoot this goal".[25] He sought to expand the enforcement defences as a counterweight to the expansion of the grounds for enforcing foreign judgments. Unless the defences were recalibrated, Justice LeBel feared that under Canada's generous approach to enforcement, "Canadian residents may become attractive targets for opportunistic plaintiffs' lawyers in other jurisdictions."[26]

(c) Traditional Impeachment Defences

In *Beals*, the majority of the Supreme Court adopted a narrow approach to the three traditional defences of fraud, lack of natural justice and public policy, which had been established prior to *Morguard*. Writing for the majority, Justice Major stated that:

> These defences were developed by the common law courts to guard against potential unfairness unforeseen in the drafting of the test for the recognition and enforcement of judgments. The existing defences are narrow in application. They are the most recognizable situations in which an injustice may arise but are not exhaustive.[27]

The defence of fraud is only available in limited circumstances where the foreign judgment was obtained by fraud undetectable by the foreign court. The defendant must establish new and material facts of fraud that were not put forward to the foreign court and could not have been discovered by the defendant through reasonable diligence.[28] The lack of prior discoverability is essential to the fraud defence. An enforcing court will not permit a respondent to merely relitigate the merits of the foreign judgment under the guise of alleged fraud.[29]

Stones: Rethinking the Law on Foreign Judgments" (2004), 8 SYBIL 1, Jeffrey Talpis and Joy Goodman, "A comity of errors", Law Times, vol. 14, No. 2, January 20, 2003; Professor Janet Walker, "*Beals v Saldanha: Striking the Comity Balance Anew*" (2002), 5 Can. International Law 28. See *Pro Swing*, *supra* note 17 at para. 18.

25. *Beals*, *supra* note 2 at para. 173.
26. *Beals*, *supra* note 2 at paras. 215-216, per LeBel J.
27. *Beals*, *supra* note 2 at para. 41.
28. *Beals*, *supra* note 2 at paras. 50-54. The Supreme Court abolished the distinction between extrinsic fraud (misleading the court into believing it has jurisdiction) and intrinsic fraud (fraud going to the merits of the case). "It is simpler to say that fraud going to jurisdiction can always be raised before a domestic court": *Beals*, *supra* note 2 at para 51.

To successfully raise the natural justice defence, the defendant must demonstrate that a foreign judgment is contrary to Canadian notions of fundamental justice, which usually means adequate notice and an adequate opportunity to defend or to be heard.[30] The natural justice defence is restricted to the form of the foreign procedure, to due process. It does not relate to the merits of the case or substantive justice.[31]

The defence of public policy turns on whether the foreign law is repugnant and contrary to Canadians' views of basic morality.[32] The focus is on "repugnant laws and not repugnant facts".[33] The bar for designating a foreign law as repugnant is high.[34] For example, a judgment from a biased court would be contrary to Canadian notions of public policy. However, there must be evidence of actual bias, not just a reasonable apprehension of bias.[35]

Since *Beals*, courts have applied these defences narrowly. Defendants have only seldom succeeded in invoking the natural justice[36] and public policy[37] defences, and then in only limited

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29. *Zaidenberg v. Hamouth*, 2002 BCSC 1619, 9 B.C.L.R. (4th) 303, [2002] B.C.J. No. 2834 (B.C. S.C.) at para. 78.
30. *Beals*, *supra* note 2 at paras 61-63; *Pro Swing*, *supra* note 17; *Chevron*, *supra* note 3 at paras 43-45 and 48; *Lonking (China) Machinery Sales Co. Ltd. v. Zhao*, 2019 BCSC 1110, 307 A.C.W.S. (3d) 729, 2019 CarswellBC 1996 (B.C. S.C.) at para. 42; *Ontario v Mar-Dive Corp.*, 1996 CanLII 8103 *Ontario v. Mar-Dive Corp.* (1996), 141 D.L.R. (4th) 577, 67 A.C.W.S. (3d) 1055, 1996 CarswellOnt 4888 (Ont. Gen. Div.) at paras. 110-116.
31. In contrast, the English Court of Appeal has refused to enforce foreign judgments that would conflict with the principle of substantive justice in England that unliquidated damages be assessed based on the proof of loss suffered by each plaintiff: *Adams v. Cape Industries Plc* (1989), [1991] 1 All E.R. 929, [1990] B.C.C. 786, [1990] 1 Ch. 433 (C.A.), leave to appeal refused (1990), [1991] 1 All E.R. 1054n, [1990] 2 W.L.R. 676 (U.K. H.L.).
32. *Beals*, *supra* note 2 at paras 71-73.
33. *Beals*, *supra* note 2 at para 71.
34. See *Society of Lloyd's v. Saunders*, [2002] O.J. No. 692 (Ont. Sup. Ct.) where enforcement of a foreign judgment was permitted despite concerns that it would conflict with local securities legislation. See also *Kaveh v. Keveh Samnani*, [2019] O.J. No. 721 (Ont. Sup. Ct.) where the court enforced a foreign judgment with a higher interest rate than would be permitted under Canada's *Interest Act*.
35. *Oakwell Engineering Ltd. v. EnerNorth Industries Inc.* (2006), 19 B.L.R. (4th) 11, 30 C.P.C. (6th) 253, 2006 CarswellOnt 3477 (Ont. C.A.) at paras. 22-29, leave to appeal refused (2007), 229 O.A.C. 394 (note), 2007 CarswellOnt 266, 2007 CarswellOnt 267 (S.C.C.).
36. For example, the defence was successfully applied in *Corte´s v. Yorkton Securities Inc.*, 2007 BCSC 282, 278 D.L.R. (4th) 740, 155 A.C.W.S. (3d) 825 (B.C. S.C.) where the defendant received a lack of notice of a foreign proceeding in Chile. The plaintiff had provided the defendants with notice at

circumstances. But this narrow approach has attracted criticism from commentators who cogently argue that comity provides little guidance on whether to enforce a foreign judgment[38] and the traditional defences are outdated because they were developed hand in glove with the traditional presence and consent-based rules of jurisdiction.[39] Commentators have also argued that public policy defence should be wide enough to include foreign judgments that are manifestly unreasonable under the laws of the forum.[40]

3. The Need For An Evolution Of The Traditional Defences

Justice Major did not close the category of defences. He left open the option of creating new defences in unusual situations that may arise in the future:

> Unusual situations may arise that might require the creation of a new defence to the enforcement of a foreign judgment.[41]

(a) South Pacific Import

The unusual situation faced by the British Columbia Court of Appeal in the 2009 case of *South Pacific Import, Inc. v Ho*[42]

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their Chilean office address knowing that the office had been closed, and made no effort to serve the defendants at their Canadian office (which the plaintiff was aware of). The court refused to enforce the Chilean judgment, finding that the defendants had no knowledge of the foreign proceeding.

37. For example, the defence was recently applied in *V. v. S.*, 2022 ONSC 7311, 2022 CarswellOnt 19030 (Ont. S.C.J.) to refuse to enforce a judgment recognizing a divorce decree in Russia, which had been finalized two months after the couple had separated. In refusing to enforce the judgment, the court found that the applicant had been attempting to use the divorce as a back- door method of escaping his legal obligations, such as spousal support, contrary to the objectives under the Ontario *Divorce Act*.
38. Jeffrey Talpis and Joy Goodman, "A Comity of Errors", Law Times, January 20, 2003.
39. Adrian Briggs, "Crossing the River by Feeling the Stones: Rethinking the Law on Foreign Judgments", 2004, Singapore Year Book of International Law and Contributors.
40. *Ibid*.
41. *Beals*, *supra* note 2 at para 42. Justice LeBel wrote: "In my opinion, the impeachment defences, particularly the defences of fraud and natural justice, ought to be reformulated. The law of conflicts needs to take these new possibilities into account and ensure an appropriate recalibration of the balance between respect for the finality of foreign judgments and protection of the rights of Canadian defendants": para 217. He would also have allowed for a "residual category of judgments...that should not be enforced...because their enforcement would shock the conscience of Canadians": at para 218.

highlighted the inadequacy of the traditional defences and the need for a new defence.

In this case, Guilbert Go and South Pacific Import (a California company) obtained a judgment in California against Theresa Ngo (Mr. Go's sister) to set aside the sale of property in California which Ms. Ngo had completed as SPI's former director. Central to the claim in California was the question of who controlled SPI. Ms. Ngo said she was the majority owner while Mr. Go claimed that he controlled SPI through a holding company in the Philippines called Mintrade.

After the trial in California, Ms. Ngo travelled to the Philippines and obtained evidence that demonstrated that Mr. Go had lied about Mintrade owning shares of SPI. The California trial court, however, refused to admit this new evidence as it had been available to Ms. Ngo with the exercise of reasonable diligence at trial. The trial judgment was affirmed by the California Court of Appeal. There was no question that Ms. Ngo had been given adequate notice of the claims and an opportunity to defend them in California.

When Mr. Go registered the California judgment in British Columbia against her, Ms. Ngo applied unsuccessfully to the British Columbia court to set it aside. In a subsequent, separate proceeding in British Columbia, Ms. Ngo obtained a declaration from the British Columbia court that she was the majority shareholder of SPI, which undermined the basis of the California judgment.

On appeal, the British Columbia Court of Appeal refused to enforce the California judgment because it would conflict with the ruling of the British Columbia court, even though the traditional impeachment defences were not available. Madam Justice Levine for the Court wrote:

> In my opinion, the findings of the British Columbia courts with respect to the conduct of Mr. Go in the proceedings giving rise to the California judgment, and in respect of proceedings in British Columbia, must govern the decision concerning the enforceability of the California judgment in British Columbia. The British Columbia proceeding confirmed Ms. Ngo's allegations of essential unfairness in the result of the California proceedings. While Ms. Ngo's allegations in respect of the California proceedings, standing on their own, may not satisfy the tests set out in *Beals*, in light of the later findings of the British Columbia courts, and the resulting uncertainty in the amount of the California judgment to which Mr. Go is entitled, I would order that the registration of the California judgment by Mr. Go be set aside. (emphasis added)[43]

42. 2009 BCCA 163, 53 C.B.R. (5th) 169, 453 W.A.C. 165 (B.C. C.A.) ["*South Pacific Import*"].

The Court in effect accepted Justice LeBel's dissenting opinion in *Beals* that the defence of natural justice should be broadened to include substantive justice as it refused to enforce the foreign judgment in part because of the "essential [substantive] unfairness in the result of the California proceedings."[44] At the very least, *South Pacific Import* represents a new defence by barring the enforcement of a foreign judgment that would conflict with the ruling of a Canadian court.[45] This is consistent with the jurisprudence that prohibits abuses of process, discourages multiple proceedings from the same facts or series of occurrences and abhors inconsistent judicial results.[46]

In late 2021, the Ontario Superior Court faced an even more unusual situation in an application to enforce the judgment of a Chinese court in *Fasteners & Fittings.*[47]

(b) Fasteners & Fittings

Fasteners & Fittings imported and distributed fasteners throughout Ontario. In 1999, F&F hired an employee, then a recent immigrant from China, to source fasteners from China. For over 13 years, that employee purchased virtually all F&F's inventory of fasteners from one export company in China called Qingdao Top Steel Industrial Co., Ltd.

In May 2017, F&F discovered that the employee was a founding shareholder of Top Steel. After dismissing the employee, F&F commenced an action in Ontario in December 2017 against the employee, Top Steel and others for fraud and conspiracy claiming losses of over US $15 million from an alleged fraudulent scheme to

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43. *South Pacific Import*, *supra* note 42 at para 56.
44. *Ibid*.
45. While the holding in *South Pacific Import* could be viewed as an example of the public policy defence, it is difficult to reconcile this view with Justice Levine's statement that the facts before her do not satisfy the tests for the traditional defences as set out in *Beals* or the view that this defence is limited to repugnant foreign laws, not facts.
46. *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*CJA*"), s 107; *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, rr 6.1.01, 21.01(3)(c). See *Catalyst Fund Ltd. Partnership II v. IMAX Corp.* (2008), 67 C.P.C. (6th) 35, 92 O.R. (3d) 430, 2008 CarswellOnt 5700 (Ont. S.C.J.) at para. 31 [*Catalyst*] and *SVB Underwriting Ltd. v. Fairfax Financial Holdings Limited*, 2007 CanLII 3680 (ONSC) at para 10 [*SVB Underwriting*]; *SVB Underwriting Ltd. v. Fairfax Financial Holdings Ltd.* (2007), 155 A.C.W.S. (3d) 578, 2007 CarswellOnt 749, [2007] O.J. No. 518 (Ont. S.C.J.) at para. 10 [*SVB Underwriting*], affirmed 2008 ONCA 7, 2008 CarswellOnt 10148 (Ont. C.A.).
47. *Fasteners & Fittings*, *supra* note 10.

overcharge F&F for fasteners. F&F also claimed set-off of all amounts it owed to Top Steel for unpaid invoices totalling US $3 million.

While F&F was delayed in the service of its Statement of Claim on Top Steel by the Ministry of Justice in China, Top Steel commenced an action in Qingdao, China in August 2018 against F&F for its unpaid invoices. F&F challenged the jurisdiction of the Qingdao court over the dispute as the unpaid invoices were part of the broader fraud claims in Ontario. But the Qingdao court denied this challenge and, in December 2019, granted judgment against F&F for the RMB equivalent of US $3 million, ruling that the case was a purely contractual dispute with no relationship to the lawsuit in Ontario for fraud.

In May 2021, Top Steel commenced an application in Ontario to enforce the Chinese judgment against F&F. It sought to benefit from Canada's "generous and liberal approach" to foreign judgments by enforcing the Chinese judgment before the Ontario fraud action could be determined. If granted, Top Steel would likely escape any adverse rulings in the Ontario fraud action as Canadian civil judgments had, to that date, never been enforced in China, the Chinese law provided that a foreign judgment on a matter that the People's Court has previously ruled on will not be enforced[48] and Top Steel could deregister after it collected on the judgment.

Citing *South Pacific Import*, F&F asked the Ontario court not to enforce the Chinese judgment as doing so could conflict with the findings of the Ontario court in the fraud action. F&F also argued that Top Steel's litigation strategy was the type of unusual situation foreseen in *Beals* that cried out for a new defence as enforcement would shock the conscience of Canadians and bring the administration of justice into disrepute.

Justice Myers elected to convert the application to enforce the Chinese judgment into an action and consolidate it with the Ontario fraud action. In so doing, Justice Myers contemplated the need for a new defence:

> I am asked to determine if the respondent was denied the right to answer and defend the claim in China. If that was the case, then might the law that allows this also be morally repugnant to our law? Might it be the

48. Article 533 of Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of PRC provided that "...Where the foreign court or a party applies to the people's court for recognition and enforcement of the judgment and ruling of the case which is made by the foreign court after the people's court renders its judgment of the case, such application shall not be approved".

> product of a legal system that protects local vendors from accountability for foreign purchasers' just claims despite participation of both in global commerce? If so, is that a situation that is repugnant to our laws and conception of justice? Even if not, is it an outcome that is so unfair as to raise a prima facie case for consideration of a new or revised defence?[49]
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> ...The issues for trial are the defences of natural justice and public policy that I find to be sufficiently raised on a prima facie basis, and the possibility of a new defence applying where the processes of a foreign court and the system of foreign law are so different from our law as to create a race to judgment or an overall result that might appear to be intolerably unjust. (emphasis added)[50]

Conclusion

Canadians who may be the targets of opportunistic lawsuits abroad continue to face difficult choices, particularly in forums with radically different legal systems. Under Canada's modern approach, ignoring the foreign lawsuit would be perilous where the real and substantial connection test would be met. But there is a strong case to re-balance Canada's approach to enforcement. Canadian courts should, in "unusual situations", redefine their approach to comity by shifting their focus from deference to the acts of foreign nations, especially where such nations are not willing to reciprocate the courtesy, and give due weight to their duty to protect Canadians. This recalibrated approach is consistent with the view that comity is a principle of enlightened self-interest and the Supreme Court's direction that our courts should not extend greater judicial assistance to foreign litigants than they do to their own.

South Pacific Import is an interstitial evolution of the law, which provides Canadian courts with the basis to decline enforcing a foreign judgment that would contravene the rulings of a Canadian court on substantially the same set of facts or occurrences. In *Fasteners & Fittings*, Justice Myers appears to be the first jurist since *Beals* to expressly recognize the potential need for a new defence, where the unusual circumstances of that case could lead to an overall result that is intolerably unjust.

South Pacific Import and *Fasteners & Fittings* provide a foundation in the jurisprudence for a cautious but much needed evolution of the defences to enforcement of foreign judgments. With the principle of enlightened self-interest as a guide, it is time to

49. *Fasteners & Fitting*, *supra* note 10 at para 18.
50. *Fasteners & Fittings*, *supra* note 10 at para 27.

modernize Canada's "modern approach" to enforcing foreign judgments.