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Linnea Ignatius

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TIMES UP!: THE HARSH REALITY OF THE POWER OF THE PERIOD OF LIMITATION
ON THE ENFORCEMENT OF AWARDS

By
Linnea Ignatius

I. INTRODUCTION

The victory of having an arbitral tribunal decide on your behalf starts a new process: the quest for recognition and enforcement of the arbitral award. In *Yugraneft Corporation v. Rexx Management Corporation*¹, the Supreme Court of Canada addressed the limitation period applicable to the recognition and enforcement of foreign arbitral awards in the province of Alberta.² Under international arbitration law, any limitation period is left to the procedural law of the jurisdiction in which the enforcement and recognition of the award is being sought.³ By holding that Yugraneft's claim to enforce the Russian arbitral award was brought after the expiry of the applicable local period of limitation, the Supreme Court of Canada upheld the decision of two lower courts.⁴

II. BACKGROUND

Yugraneft Corporation (hereinafter Yugraneft), the appellant, is a Russian corporation that develops and operates oil fields in Russia.⁵ Rexx Management Corporation (hereinafter Rexx), the respondent, is a Canadian (Alberta) corporation who at one time supplied materials to Yugraneft for its oil field

· Linnea Ignatius is a 2012 Juris Doctor Candidate at The Pennsylvania State University Dickinson School of Law.

¹ *Yugraneft Corp. v. Rexx Management Corp.*, 2010 SCC 19, [2010] 1 S.C.R. 649. 20 May 2010.

² *Id.* at ¶ 1.

³ *Id.*

⁴ *Id.* at ¶ 65.

⁵ *Id.*

operations.⁶ Following a contractual dispute, Yugraneft commenced arbitral proceedings before the International Commercial Court at the Chamber of Commerce and Industry of the Russian Federation (hereinafter Russian ICAC). The Russian ICAC tribunal rendered its final award on September 6, 2002⁷ and ordered Rexx to pay \$952,614.43 in damages to Yugraneft.⁸

In an effort to collect their award, Yugraneft applied to the Alberta Court of Queen's Bench for recognition and enforcement of the \$952,614.43 award on January 27, 2006.⁹ The arbitral tribunal rendered the award three years earlier. Rexx resisted the enforcement on two grounds.¹⁰ Rexx first argued that Yugraneft's application was time-barred under the Alberta Limitations Act.¹¹ Next, Rexx argued to stay the enforcement proceedings pending resolution of an ongoing criminal case in the United States.¹² Rexx claimed that waiting for the resolution of the criminal case in an American court would have shown that fraudulent activity led to the initial award.

III. PROCEDURAL HISTORY

At the Alberta Court of Queen's Bench, Yugraneft applied for enforcement of the award pursuant to the International Commercial Arbitration Act, R.S.A. 2000, clause 1-5 (hereinafter ICAA).¹³ The Alberta Court of Queen's Bench determined that the application was time-barred under the Limitations Act.¹⁴ The Act consists of two periods of limitation. The first, Section 3, is for "remedial orders" and the second, Section 11, is for the enforcement of "judgment[s] or

⁶ *Yugraneft Corp.* at ¶ 2

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at ¶ 3.

¹⁰ *Id.*

¹¹ *Yugraneft Corp.* at ¶ 3.

¹² *Id.*

¹³ *Id.* at ¶ 4.

¹⁴ *Id.*

order[s] for the payment of money”.¹⁵ Applications under Section 3 are subject to a two-year period of limitation and applications under Section 11 are subject to a ten-year limitation.¹⁶ The Alberta Court of Queen’s Bench disagreed with Yugraneft’s claim that foreign arbitral awards were to be considered “judgments” as per Section 11, leading to the ten-year limitation.¹⁷ Instead, the Alberta Court of Queen’s Bench found that the two-year limitation under Section 3 applied to the award.¹⁸ Upon these findings, the Alberta Court of Queen’s Bench dismissed the application.¹⁹ The Alberta Court of Appeals (hereinafter Court of Appeals), unanimously upheld the decision on appeal. The Court of Appeals also ruled that a foreign arbitral award did not fall under the auspices of Section 11 and could not be considered a “judgment” as defined by the section.²⁰ The Court of Appeals held that the term only encompassed domestic judgments.²¹ The Court of Appeals further stated that because the award was not considered a judgment, it must be considered under Section 3, and thus only had a two-year period of limitation. The appeal was therefore dismissed.²²

IV. STANCES OF THE PARTIES

A. *Yugraneft*

Yugraneft claimed that a foreign arbitral award, such as theirs, should be treated as a domestic judgment under Section 11.²³ Yugraneft claimed this under the theory that arbitration was an adjudication of a legal dispute, and accordingly

¹⁵ *Id.*

¹⁶ *Yugraneft Corp.* at ¶ 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at ¶ 5.

²¹ *Yugraneft Corp.* at ¶ 5.

²² *Id.*

²³ *Id.* at ¶ 6.

possessed all of the characteristics of a judgment.²⁴ Additionally, Yugraneft argued that foreign arbitral awards should at least be treated as being equal to a foreign judgment.²⁵ They felt that this was an important identifier because foreign judgments fell within the meaning of a “judgment” under Section 11 of the Limitations Act.²⁶ Yugraneft then pointed to various decisions to demonstrate that recent jurisprudence of the Supreme Court of Canada showed a trend of stepping away from the traditional concept of foreign judgments toward a more novel trend of granting them “full faith and credit”.²⁷ Lastly, Yugraneft pointed to the latent ambiguity of the Limitations Act, stating that such ambiguity should be resolved in its favor.²⁸ They concluded that statutory provisions that create periods of limitation must be interpreted strictly in favor of the plaintiff, thus providing Yugraneft the ten-year period of limitation.²⁹

B. Rexx

Rexx simply stated that the two-year limitation found under Section 3 should apply to the award.³⁰ Rexx claimed that the Limitations Act was intended to streamline the law of limitations by creating a single limitation period for most causes of action.³¹ Rexx further claimed that unless an action falls under one of the few exceptions set out in the Act, the Section 3 two-year bar will apply.³² Rexx concluded that because Yugraneft’s action was not excluded from the scope of Section 3, it was time-barred.³³

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Yugraneft Corp.* at ¶ 6.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at ¶ 7.

³¹ *Yugraneft Corp.* at ¶ 7.

³² *Id.*

³³ *Id.*

V. ANALYSIS BY THE SUPREME COURT OF CANADA

A. Overview

The Supreme Court of Canada (hereinafter the Court) began by stating that, in Alberta, the recognition of foreign arbitral awards is governed by the ICAA, which merges both the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the “Convention”³⁴) and the UNCITRAL Model Law on International Commercial Arbitration (hereinafter the “Model Law”³⁵) into Alberta law.³⁶ Because Alberta adopted both the Convention and the Model Law in 1986, the Court stated there was no doubt that Alberta was required to recognize and enforce eligible foreign arbitral awards.³⁷ Considering this, the Court found that the question before it was what limitation period applied to the recognition and enforcement of foreign arbitral awards.³⁸

Article III of the Convention stipulates that recognition and enforcement shall be “in accordance with the rules of procedure of the territory where the award is relied upon.”³⁹ Thus, the Court stated that the rules of procedure of the jurisdiction in which enforcement was sought should apply, so long as they did not directly conflict with express requirements of the Convention.⁴⁰ This conclusion brought the Court to its second question: Whether or not limitation periods fall

³⁴ The purpose of the Convention is to facilitate the cross-border recognition and enforcement of arbitral awards by establishing a single, uniform set of rules that apply worldwide. Over 140 countries have currently ratified the Convention.

³⁵ The United Nations Commission on International Trade created the Model Law and is a codification of international “best practices” intended to serve as an example for domestic legislation.

³⁶ *Yugraneft Corp.* at ¶ 8.

³⁷ *Id.* at ¶ 12.

³⁸ *Id.*

³⁹ *Id.* at ¶ 15.

⁴⁰ *Id.*

under the rubric of “rules of procedure” as the term is used in the Convention.⁴¹ The Court addressed this question because not all legal systems treated periods of limitation the same. The Court noted that systems built on common law traditions have tended to consider periods of limitation as procedural matters, whereas those following civil law traditions usually consider them to be a question of substantive law.⁴² This division was important because if periods of limitation are considered substantive in nature, then placing a time limit on the recognition and enforcement proceedings would seemingly violate the Convention because it would only allow local *procedural* rules to apply.⁴³

Both parties agreed that Article III of the Convention allowed states that are party to the Convention to impose a time limit on the recognition and enforcement of foreign arbitral awards.⁴⁴ But whether Alberta conformed to the Convention is not determined by the consent of the parties, thus it was necessary for the Court to determine whether there was a legal basis for the application of *local* limitation laws under the Convention.⁴⁵

B. The Court’s Reasoning

The Court held that Article III permits, but does not necessarily require Contracting States, or as in this case, a sub-national territory of a Contracting State, to subject the recognition and enforcement of a foreign arbitral award to a time limit.⁴⁶ The Court held that the phrase, “in accordance with the rules of procedure of the territory where the award is relied upon” should be read as indicating the

⁴¹ *Yugraneft Corp.* at ¶ 15.

⁴² *Id.* at ¶ 16 (citing *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022, at pp. 1068-1070).

⁴³ *Id.*

⁴⁴ *Id.* at ¶ 17.

⁴⁵ *Id.*

⁴⁶ *Yugraneft Corp.* at ¶ 18.

application of domestic law on such matters.⁴⁷ Further, the Court held that the courts of a Contracting State *may* refuse to recognize and enforce a foreign arbitral award on the basis that such proceedings are time-barred. The Court provided three reasons for its conclusion.⁴⁸

1. Vast Application of the Convention's Text

The Court's first line of reasoning for its conclusion drew from its interpretation of the Convention. The Court stated that, as a treaty, according to the Vienna Convention on the Law of Treaties, the Convention must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."⁴⁹ Relying on this language, the Court stated that the Convention's text was created to be applied in a large number of States, and therefore across a plethora of legal systems.⁵⁰ The Court plainly stated that the text of the Convention must be construed in a manner that respected the fact that it was intended to interface with a variety of legal traditions.⁵¹

The Court held that this notion was important when interpreting the Convention's effect on the applicability of local periods of limitation to the recognition and enforcement of foreign arbitral awards.⁵² Further, the Court stated that when the Convention was drafted, it was a well-known fact that various States defined limitation periods in different ways, and that common law States traditionally treated them as being procedural in nature.⁵³ The Court found it

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at ¶ 19 (citing Vienna Convention on the Law of Treaties art. 31(1), January 27, 1980, 1155 U.N.T.S. 331).

⁵⁰ *Id.* (citing NIGEL BLACKABY ET AL., REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION 868 (Oxford University Press 2007) (1986)).

⁵¹ *Yugraneft Corp.* at ¶ 19.

⁵² *Id.* at ¶ 20.

⁵³ *Id.*

extremely significant that the Convention's drafters did *not* include any restriction on a State's ability to impose time limits on recognition and enforcement proceedings.⁵⁴ The Court held that an omission such as this implied that the drafters of the Convention intended to take a permissive approach.⁵⁵

2. Common Practice of Contracting States

Second, the Court held that Article III should be viewed as permitting the application of local periods of limitation because that was the common practice of Contracting States. Basing its decision once again on the Vienna Convention on the Law of Treaties, the Court cited that when interpreting a treaty, a court must take into account "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".⁵⁶ Further, a recent study indicated that at least 53 Contracting States subject, or would subject, the recognition and enforcement of foreign arbitral awards to some sort of time limit.⁵⁷

3. A Lack of Controversy and Explicit Restriction

Lastly, the Court supported its holding by stating that leading scholars in the field appear to take for granted that Article III permits the application of local periods of limitation to recognition and enforcement proceedings.⁵⁸ Considering this, the Court held that this suggested that the application of local time limits is

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Yugraneft Corp.* at ¶ 21 (citing Vienna Convention on the Law of Treaties, art. 31(3)).

⁵⁷ *Id.* (citing UNCITRAL, *Report on the survey relating to the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 2-3, U.N. Doc. A/CN.9/656/Add.1 (2008)).

⁵⁸ *Id.* at ¶ 22.

not a controversial matter.⁵⁹ Further, the Court explained that the lack of any explicit restriction of a Contracting State's ability to impose a limitation period could mean that any limitation period that is applicable under domestic law to the recognition and enforcement of a foreign arbitral award is a "rule of procedure" pursuant to Article III.⁶⁰

C. *Interveners: The Canadian Arbitration Congress and the ADR Chambers*

The Canadian Arbitration Congress (hereinafter CAC) and the ADR Chambers argued that, on the facts of the present case, Article III of the Convention *prevented* the Court from applying Alberta period of limitation laws.⁶¹ Interestingly, each of the groups relied on different parts of Article III to support its claim.⁶² The CAC argued that the Alberta law could not apply to the recognition and enforcement of foreign arbitral awards since Canadian common law considers rules such as these to be substantive in nature.⁶³ Further, the CAC argued that the Limitations Act, or any other statute imposing a general limitation period, does not qualify as a "rule of procedure" under Article III.⁶⁴ The CAC then cited *Tolofson*, which the Court had referenced earlier in its decision (and which rejected the traditional common law approach to limitation periods), to support its claim.⁶⁵

The Court agreed that the majority in *Tolofson* held that, in a conflict of law context, periods of limitation should generally be treated as substantive in nature, so that a claim will be subject to the limitation period of the *lex loci delicti* or *lex loci contractus*.⁶⁶ The Court stated, however, that the question in this case was not whether Canadian law considered limitation periods to be substantive or

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Yugraneft Corp.* at ¶ 24.

⁶² *Id.* at ¶ 25.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at ¶ 26.

⁶⁶ *Yugraneft Corp.* at ¶ 27.

procedural in nature, but rather whether local time limits were meant to apply to recognition and enforcement and thus fall within the ambit of “rules of procedure” as that term is used in Article III of the Convention.⁶⁷ The Court held that the answer to the actual question must be yes, because, as noted above, the Convention takes a permissive approach to the applicability of local limitation periods.⁶⁸ Next, the Court stated that the only material question was whether a competent legislature intended to subject recognition and enforcement proceedings to a period of limitation and thus *Tolofson* was not relevant to the case at hand.⁶⁹ With this reasoning, the Court held that the CAC’s contentions were misplaced.⁷⁰ The Court held the contentions to be misplaced because even if it were to characterize a given statutory period of limitation, such as the one found in Section 3 of the Limitations Act, as substantive in nature, that would not in and of itself prevent the limitation period in question from being applicable to the recognition and enforcement of arbitral awards.⁷¹

In the same vein, the second intervener, the ADR Chambers, argued that Article III prevented the Limitations Act from applying to the Yugraneft’s action.⁷² The ADR Chambers argued that Article III of the Convention barred Alberta from imposing a limitation period shorter than the longest limitation period available anywhere in Canada for the recognition and enforcement of domestic arbitral awards.⁷³ The ADR Chambers read Article III⁷⁴ to say that a “domestic” arbitral

⁶⁷ *Id.*

⁶⁸ *Id.* at ¶ 28.

⁶⁹ *Id.*

⁷⁰ *Id.* at ¶ 29.

⁷¹ *Yugraneft Corp.* at ¶ 29.

⁷² *Id.* at ¶ 30.

⁷³ *Id.*

⁷⁴ Art. III of the Convention states, “[t]here shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”

award means any award rendered within the Contracting State.⁷⁵ Reading it as such, they stated that no Canadian province could impose a time limit more onerous than the most generous time limit available anywhere in Canada for domestic awards.⁷⁶ The ADR Chamber then noted that both Quebec and British Columbia provide a ten-year limitation period on the recognition of arbitral awards rendered in within the province.⁷⁷ Based on these notions, the ADR Chamber concluded that under the Convention, Alberta was prohibited from imposing a time limit shorter than 10 years on the recognition of foreign arbitral awards.⁷⁸

The Court rejected the claims of the ADR Chamber because the position it advanced was fundamentally at odds with Canada's federal constitution.⁷⁹ Under the Canadian federal constitution, the recognition and enforcement of arbitral awards is a matter that falls within provincial jurisdiction.⁸⁰ Further, the Court held that it would be against the Canadian constitution to allow the legislation of one province to dictate the range of legislative options available to another province about matters within each province's exclusive jurisdiction.⁸¹ The Court also stated that the Chamber's position rested on a misreading of the Convention, which intended to respect the internal constitutional order of Contracting States.⁸² For the reasons stated above, the Court concluded by stating that it disagreed with the ADR Chamber's contention that applying Section 3 of the Limitation Act to foreign arbitral awards would place Canada (or Alberta, for that matter) in any sort of violation of its international obligations.⁸³

Lastly, in response to the claims by the CAC and the ADR Chamber, the Court held that it must conclude that the New York Convention was meant to

⁷⁵ *Yugraneft Corp.* at ¶ 31.

⁷⁶ *Id.*

⁷⁷ *Id.* (citing CIVIL CODE OF QUEBEC, S.Q. 1991, c. 64, art. 2924; Limitation Act, R.S.B.C. 1996, c. 266).

⁷⁸ *Id.*

⁷⁹ *Id.* at ¶ 32.

⁸⁰ *Yugraneft Corp.* at ¶ 32 (citing the Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K)).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

allow Contracting States to impose local times limits on the recognition and enforcement of foreign arbitral awards if they wished to do so.⁸⁴ When dealing with federal states, as in this case, the law of the enforcing jurisdiction within the federal state determined such limitations.

D. What Period of Limitation, if Any, Applies to the Recognition and Enforcement of Foreign Arbitral Awards Under Alberta Law?

After addressing the issues brought up by the interveners, the Court turned to the issue of whether Alberta law subjected the recognition and enforcement of foreign arbitral awards to a period of limitation.⁸⁵ In answering this question, the Court determined that only one of the sources of law suggested by the parties and interveners applied to the case - the Limitations Act.⁸⁶ The Limitations Act contains Alberta's general law of limitations and it did not exclude Yugraneft's award from its scope.⁸⁷ Importantly, the Court noted that the purpose of the Limitations Act was to streamline the law of limitations by limiting the number of exceptions and providing a uniform limitation period for most actions.⁸⁸ The Court cited to the inclusive nature of the Act by looking to Section 2(1), which provides that the Act applied in all cases where a claimant seeks a "remedial order".⁸⁹ Article 1(i) defines a remedial order as "a judgment or an order made by a court in a civil proceeding requiring a defendant to comply with a duty or to pay damages for the violation of a right".⁹⁰ The Court found this "very broad" language included

⁸⁴ *Id.* at ¶ 34.

⁸⁵ *Yugraneft Corp.* at ¶ 35.

⁸⁶ *Id.*

⁸⁷ *Id.* at ¶ 36.

⁸⁸ *Id.*

⁸⁹ *Id.* at ¶ 37.

⁹⁰ *Yugraneft Corp.* at ¶ 37.

nearly any order that a court may grant in a civil proceedings.⁹¹ Further, the Act excluded only certain types of relief, none of which were involved in this case.⁹²

To bolster its ruling on the comprehensive nature of the Act, the Court continued by discussing Section 12.⁹³ Section 12 is a provision that was specifically designed to counteract the effects of the Supreme Court of Canada's decision in *Tolofson* in a conflict of laws situation.⁹⁴ Section 12 provides that, "[t]he limitations law of Alberta applies to any proceeding commenced or sought to be commenced in Alberta in which a claimant seeks a remedial order".⁹⁵ This phrasing ensured that all proceedings brought within Alberta were subject to the local period of limitation, regardless of any other limitation period that may also be applicable pursuant to a conflict of laws analysis similar to *Tolofson*.⁹⁶ The Court further opined that Section 12 ensured that Alberta's limitations law applied to claims subject to foreign law, thus indicating that the Limitations Act intended to apply to all claims for a remedial order not expressly excluded by statute.⁹⁷

VI. CONCLUSION BY THE SUPREME COURT OF CANADA

After delving through the arguments made by the two parties and three interveners (arguments by the London Court of International Arbitration are not addressed in this paper), the Court concluded by addressing the final issue: how to characterize an application for recognition and enforcement of a foreign arbitral award under the Limitations Act.⁹⁸ In answering this question, the Court stated that the Act essentially creates three avenues, each subject to a different period of

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at ¶ 38.

⁹⁴ *Id.*

⁹⁵ The Alberta Limitations Act, R.S.A., ch. L 12 (2000).

⁹⁶ *Yugraneft Corp.* at ¶ 38.

⁹⁷ *Id.* at ¶ 39.

⁹⁸ *Id.* at ¶ 42.

limitation: ten years, two years, or no period of limitation.⁹⁹ In this breakdown, an application for a remedial order based on a “judgment or order for the payment of money” is subject to a ten-year period of limitation.¹⁰⁰ All other applications for a remedial order fall under a two-year period of limitation.¹⁰¹ Lastly, all other judgments or orders that are not remedial as defined in Section 1(i) are not subject to a limitation period.¹⁰² Yugraneft’s key argument was that an arbitral award is akin to a judgment and that an application for recognition and enforcement of that award is therefore a “claim based on a judgment or order for payment of money” under Section 11 of the Act, and thus subject to the ten-year limitation period.¹⁰³

The Court rejected this position because an arbitral award is *not* a judgment or a court order, and Yugraneft’s application fell outside of the scope of Section 11.¹⁰⁴ Additionally, the Court held that applying the ten-year limitation to the recognition and enforcement of foreign arbitral awards would result in an incoherent limitations regime.¹⁰⁵ Specifically, in Alberta, arbitral awards from reciprocating jurisdictions are subject to a six-year time limit. The Court held that “it would be incongruous to accord foreign arbitral awards from *non-reciprocating* jurisdictions more favorable treatment than those from jurisdictions with which Alberta has deliberately concluded an agreement for the reciprocal enforcement of judgments”.¹⁰⁶

Finally, the Court stated that the limitation period set out in Section 3 was consistent with the overall scheme of Alberta limitation law. The Court found that this decision provided a more generous treatment for foreign arbitral awards than

⁹⁹ *Id.*

¹⁰⁰ *Id.* at ¶ 42 (citing The Alberta Limitations Act, § 11).

¹⁰¹ *Yugraneft Corp.* at ¶ 44 (citing The Alberta Limitations Act, § 3).

¹⁰² *Id.* at ¶ 42.

¹⁰³ *Id.* at ¶ 43.

¹⁰⁴ *Id.* at ¶ 44.

¹⁰⁵ *Id.* at ¶ 47.

¹⁰⁶ *Yugraneft Corp.* at ¶ 48.

for domestic awards and thus was consistent with Article III of the Convention.¹⁰⁷ Because the Court found that Yugraneft's application for recognition and enforcement was indeed subject to Section 3 of the Limitations Act, the Court was left with the final question of whether the application was time-barred when it was filed on January 27, 2006.¹⁰⁸ The two-year period of limitation is subject to a discoverability rule and the period of limitation only starts to run if the conditions for discoverability are met.¹⁰⁹ Also, under Section 3, "a claim for a remedial order must be brought within two years after the claimant first knew, or in the circumstances ought to have known, (i) that the injury for which the claimant seeks a remedial order had occurred, (ii) that the injury was attributable to conduct of the defendant, and (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding..."¹¹⁰ In this case, the injury is "non-performance of an obligation" - Rexx's failure to comply with the arbitral award and pay Yugraneft \$952,614.43.¹¹¹

In order to determine whether the enforcement has been time-barred, a court must ascertain when the injury occurred.¹¹² For the case at hand, the Court had to determine when the non-performance occurred.¹¹³ The Model Law provides that a party to an arbitration has three months to apply to the local courts to have an award set aside, starting on the day that it receives the award.¹¹⁴ The Court held that the limitation period under Section 3 of the Limitations Act would not be triggered until the possibility that the award might be set aside by the local courts in the country where the award was rendered has been totally exhausted.¹¹⁵

¹⁰⁷ *Id.* at ¶ 49.

¹⁰⁸ *Id.* at ¶ 50.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Yugraneft Corp.* at ¶ 50.

¹¹² *Id.* at ¶ 52.

¹¹³ *Id.*

¹¹⁴ *Id.* at ¶ 54.

¹¹⁵ *Id.*

Russia is a Model Law jurisdiction. Accordingly, the Court held that for the purposes of the Limitations Act, Rexx's obligations under the award did not solidify until three months after Yugraneft had received the award.¹¹⁶ The award was issued on September 6, 2002, and Yugraneft did not offer any indication that it received the award at a later date.¹¹⁷ Thus, adding three months to this date, Yugraneft would have had two years from December 6, 2002, to commence proceedings against Rexx in Alberta.¹¹⁸ The action was not brought until January 27, 2006, so it was clearly time-barred.¹¹⁹ The Court concluded that even taking into account the discoverability rule in Section 3(1)(a) of the Limitations Act, Yugraneft's proceedings were time-barred.¹²⁰

VII. CONCLUSION

In *Yugraneft Corporation v. Rexx Management Corporation*, the Supreme Court of Canada chose to resist enforcement and recognition of the award on the basis of a provincial limitation as opposed to any of the enumerated grounds for refusal found within the New York Convention or portions of the Model Law. This decision demonstrates the power of local and national courts over the arbitral process.

In conclusion, though victors of arbitral proceedings have some leeway in deciding where to have their award enforced and recognized, *Yugraneft v. Rexx Management Corp* sheds important light on the fact that the victors must be well aware of the statutory limitations of the area where they wish to enforce the award. Failing to pay careful attention to issues such as periods of limitation can truly spoil the potential to obtain the relief that has been afforded to a victor in an

¹¹⁶ *Yugraneft Corp.* at ¶ 56.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at ¶ 63.

arbitral ruling. International arbitration provides attractive qualities, such as the finality of decisions, but they come at a price. Those participating in the process must be vigilant from the beginning of arbitral proceedings until they have the award in the pockets; the loser in most cases will not simply hand the award over to the victor at the end of the arbitral proceedings.