CITATION: Fisher v. Danilunas, 2025 ONSC 4359
COURT FILE NO.: CV-24-00726512-00ES
DATE: 20250725

ONTARIO
SUPERIOR COURT OF JUSTICE
ESTATES LIST

BETWEEN:	)	
	)	
RICHARD ALEXANDER FISHER, in his capacity as Deputy for Marija Jurate Danilunas, and SALLY LOUISE KINSEY, in her capacity as Deputy for Marija Jurate Danilunas	)	
Applicants	)	*Arieh Bloom and James Dilworth*, lawyers for the Applicants
– and –	)	
MARIJA JURATE DANILUNAS, and EDWARD DANILIUNAS ~~and the OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE~~	)	
Respondents	)	*Edward Daniliunas* appearing in person
– and –	)	
PUBLIC GUARDIAN AND TRUSTEE and CORAL WILSON, in her capacity as Guardian for GLORIA LEW	)	
Intervenors	)	*Madison Randall*, lawyer for the Intervenor Public Guardian and Trustee
	)	*Daniel Walker*, lawyer for the Intervenor Coral Wilson in her capacity as Guardian for Gloria Lew

HEARD: July 17, 2025

FL MYERS J:

REASONS FOR DECISION

The Application

[1] The Applicants seek an order recognizing in Ontario the UK court order appointing them Joint and Several Deputies for the Property and Affairs of Marija Jurate Danilunas.

[2] Alternatively, the Applicants seek an order that entitles them to access and use the funds of Ms. Danilunas in a bank account and a pension plan in Ontario as ancillary enforcement of their UK appointment.

The UK Order

[3] Marija Jurate Danilunas lives in England.

[4] On September 12, 2023, the Court of Protection made the order that the Applicants ask this court to recognize. The court found that Marija Jurate Danilunas lacks capacity to make decisions for herself. It then deputized the Applicants to make decisions for Marija Jurate Danilunas concerning her property.

[5] Under the *Mental Capacity Act 2005*, 2005 c. 9, the Court of Protection is a superior court of record in England and Wales. Within its jurisdiction, it has the same powers, rights, privileges, and authority as the High Court of Justice.

The Parties

[6] Edward Daniliunas is the brother of Marija Jurate Danilunas (despite the slightly varied spellings of their surnames). Edward Daniliunas helped engage the UK Deputies through the social services processes in England.

[7] Mr. Daniliunas gave evidence about his sister's circumstances at the first hearing of this application in March of this year.

[8] Mr. Daniliunas supports the orders sought.

[9] The Applicants named the Public Guardian and Trustee as a Respondent initially out of an abundance of caution. The Public Guardian and Trustee asked and was previously granted status as an intervenor, as a friend of the court, to assist the court in dealing with the question of whether the UK order ought to be recognized in Ontario. I amend the Title of Proceeding accordingly above.

The Issue – Protecting the Competing Values Enshrined in the Law

[10] The issue is whether foreign *in rem* orders appointing legal representatives for incapacitated people ought to be recognized in Ontario.

[11] The law of Ontario provides special care for vulnerable people. The *Substitute Decisions Act, 1992*, SO 1992, c 30, provides processes to appoint people to care for those who cannot care for themselves.

[12] Proceedings under this statute are not regular lawsuits. The court is not considering whether one person owes money or has committed a tort upon another. Rather, there is wider policy at play as explained by Strathy J. (as he then was) in *Abrams v. Abrams*, 2008 CanLII 67884 (ON SC) at para. 48:

> These proceedings are not a *lis* or private litigation in the traditional sense. The interests that these proceedings seek to balance are not the interest of litigants, but the interests of the person alleged to be incapable as against the interest and duty of the state to protect the vulnerable.

[13] Justice Strathy held that the purpose of this statutory scheme is to protect the vulnerable. He quoted Justice Kiteley who explained the place of this statute in the public policy firmament of Ontario in *Re: Phelan*, (1999), 29 E.T.R. (2d) 82, [1999] O.J. No. 2465 (S.C.J.) at paras. 22 and 23:

> The *Substitute Decisions Act* is a very important legislative policy. It recognizes that persons may become temporarily or permanently incapable of managing their personal or financial affairs. It anticipates that family members or others will identify when an individual has lost such capacity. It includes significant evidentiary protections to ensure that declarations of incapacity are made after notice is given to all those affected or potentially affected by the declaration and after proof on a balance of probabilities has been advanced by professionals who attest to the incapacity. It requires that a plan of management be submitted to explain the expectations. It specifies ongoing accountability to the court for the implementation of the plan and the costs of so doing.
>
> The alternative to such a legislative framework is that incapable persons and their families might be taken advantage of by unscrupulous persons. The social values of protecting those who cannot protect themselves are of "superordinate importance".

[14] Viewed in this light, the law reflects the importance that the common law has always placed on the protection of vulnerable people. I will return to the common law doctrine of *parens patriae* below.

[15] But there is a competing policy at play as well. The law of Ontario recognizes individuals' autonomy and agency as vital considerations in proceedings under the *Substitute Decisions Act, 1992*.

[16] In discussing the law concerning consent to medical care under the *Health Care Consent Act, 1996*, SO 1996, c 2, Sch A, in *Starson v. Swayze*, 2003 SCC 32 (CanLII), the Chief Justice (dissenting but not on this point) explained the conflict among the competing policies as follows:

> 6. The *HCCA* confronts the difficult problem of when a mentally ill person may refuse treatment. The problem is difficult because it sets in opposition fundamental values which we hold dear. The first is the value of autonomy — the ability of each person to control his or her body and consequently, to decide what medical treatment he or she will receive. The second value is effective medical treatment — that people who are ill should receive treatment and that illness itself should not deprive an individual of the ability to live a full and complete life...
>
> 7. Ordinarily at law, the value of autonomy prevails over the value of effective medical treatment. No matter how ill a person, no matter how likely deterioration or death, it is for that person and that person alone to decide whether to accept a proposed medical treatment. However, where the individual is incompetent, or lacks the capacity, to make the decision, the law may override his or her wishes and order hospitalization. For example, young children generally lack capacity to make medical decisions because of their age; thus their parents or guardians, not they, decide what medical treatment they should receive. Where mental illness deprives a person of the ability to make a decision about medical treatment, the law may permit that person's wishes to be overridden. This result flows from s. 4(1) of the *HCCA*.
>
> 8. There is no easy answer to the question of when a mentally ill person should be held incapable of making decisions concerning his or her medical treatment. Different societies have drawn different lines at different times. The applicable law in Ontario permits a mentally ill person to be hospitalized without consent on grounds of public safety (*Criminal Code* and *Mental*

Health Act) and lack of capacity (s. 4(1) of the *HCCA*), defined as a lack of the ability "to understand the information that is relevant to making a decision about the treatment . . . and . . . to appreciate the reasonably foreseeable consequences of a decision or lack of decision". Moreover, as discussed in greater detail below, the definition of capacity offered in the *HCCA* is broad; incapacity is not confined to lack of rational ability to understand, but extends to lack of ability to "appreciate" or judge.

9. The Ontario legislature's decision to permit a mentally ill person's decision to refuse treatment to be overridden where public safety is not threatened reflects the value of promoting effective medical treatment of people suffering from mental illness. The *HCCA's* definition of capacity offers a way out of the dilemma that is created when treatment for an illness is dependent on consent, which in turn is not forthcoming because of the illness. The way out of the dilemma lies in recognizing that the focus should be not only on consent but on capacity to consent. The policy of the law is that where a person, due to mental illness, lacks the capacity to make a sound and considered decision on treatment, the person should not for that reason be denied access to medical treatment that can improve functioning and alleviate suffering. Rather, that person's incapacity should be recognized and someone else appointed to make the decision for him or her.

10. At the same time, the *HCCA* preserves the value of individual autonomy. Mental illness is not conflated with incapacity. Mental illness without more does not remove capacity and autonomy. Only where it can be shown that a person is unable to understand relevant factors and appreciate the reasonably foreseeable consequences of a decision or lack of decision can treatment be imposed.

11. The *HCCA* represents a careful and balanced response to the problem of accommodating the individual autonomy of the mentally ill person and the aim of securing effective treatment for mentally ill people. It says that when a mentally ill person lacks the capacity to sufficiently understand and appreciate his or her situation, authorized treatment may be imposed.

[17] The same clash of policies applies in appointing a guardian for a person's property under the *Substitute Decisions Act, 1992.* Like the *HCCA*, the *Substitute Decisions Act, 1992* adopted the concept of capacity as, "[t]he way out of the dilemma."

[18] The law starts with a presumption that everyone has capacity and hence the right to autonomy in managing his or her affairs. In Ontario people are presumed to have capacity and the freedom to manage their property as they choose. People do not have to spend their money in any particular way if they do not wish to do so. Yet there are cases, such as this one, where, due to cognitive deterioration, or other causes, an individual simply cannot manage her own property and needs the help of others to manage her money to provide for herself in the most basic ways.

[19] The *Substitute Decisions Act, 1992* takes great care to protect individuals' autonomy unless they are found to lack capacity as defined in s. 6 of the statute. In *Re: Phelan* above, Kiteley J. described some of the procedural protections that apply.

[20] In addition, s. 25 (1) of the *Substitute Decisions Act, 1992* brings home the importance of a finding of incapacity before an individual's autonomy over her property is displaced. It is an unusual section. It tells judges that they must make express findings that someone is incapable of managing their property prior to appointing a guardian who will be empowered to do so in her place. The subsection provides:

> **Finding of incapacity**
> 25 (1) An order appointing a guardian of property for a person shall include a finding that the person is incapable of managing property and that, as a result, it is necessary for decisions to be made on his or her behalf by a person who is authorized to do so.

[21] This is one of very few statutes in which a legislature has required that judges show their work. They must prove by their words that before making a decision they have considered the legislative criteria. The statute demands that judges show they have properly balanced individual autonomy against the need for care of the vulnerable person as reflected in the very definition of incapacity.

[22] The Public Guardian and Trustee submits that the dual policies of protecting the vulnerable and the protection of individual autonomy engage values enshrined in the *Charter of Rights*. She submits in her factum:

> 40. Moreover, the SDA is rooted in the *Charter of Rights and Freedoms*. The principle of fostering freedom, autonomy and independence is linked to issues of legal capacity and decision-making. A determination of incapacity may lead to unwanted intervention in the life of an individual, interfering with their section 7 Charter rights to "life, liberty and security of the person."
>
> ***Canadian Charter of Rights and Freedoms*, s. 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.**
>
> 41. The current legislative framework was designed with the goals of minimizing unwarranted interference and enhancing self-determination. The presumption of capacity for certain types of decisions, the various procedural protections, the provisions requiring the exploration of least restrictive alternatives prior to a guardianship order by the court have been designed to ensure that limitations on autonomy are only applied where necessary.
>
> ***Law Commission of Ontario Legal Capacity, Decision-making and Guardianship: Final Report* (Toronto: March 2017) at p. 40.**
>
> 42. Accordingly, adherence to the procedures set out in the SDA for the appointment of a guardian are of critical importance and must be a primary focus when considering enforcement of foreign guardianship orders.

[23] The Public Guardian and Trustee submits that the court should not enforce foreign orders appointing legal representatives for others. She submits that unless our statutory procedure is followed, we cannot be assured that the rights of vulnerable persons to autonomy and to protection from abuse by unscrupulous persons have been appropriately safeguarded.

[24] But the Public Guardian and Trustee is content that the court should give limited recognition to the foreign order to allow the UK Deputies to access Ms. Danilunas's money as they request in their alternative prayer for relief.

Ancillary or Full Recognition

[25] The Applicants, Mr. Daniliunas, and the PGT agree that there are precedent cases indicating that an order may be made in this court enforcing foreign representatives' entitlement to seize and remove funds from Ontario under

a foreign guardianship or similar order. See, for example: *Re Hickson*, 1927 CanLII 827 (ON SC) and *The Bank of Nova Scotia Trust Company v. Pernica*, 2020 ONSC 67.

[26] They all consent to this type of order being made. It has been referred to before me as an "ancillary" order rather than a full recognition of the UK order.

[27] The Public Guardian and Trustee opposes an order that would go further and recognize the foreign order. She submits that public policy precludes recognition of a foreign *in rem* order for appointment of a legal representative for a vulnerable person. She submits that common law principles for recognition of foreign judgments should not apply. Rather, the PGT submits that unless someone holds a proper power of attorney, the only way he or she can be recognized in Ontario as a legal representative of an incapacitated person is to bring a plenary application for guardianship under the *Substitute Decisions Act, 1992*, SO 1992, c 30.

[28] While the Applicants, Mr. Daniliunas, and the PGT all support the court making an ancillary order to enable the UK Deputies to use Ms. Danilunas's funds for her care in UK, if that is all that can be done for her, I am not content to make only that order in this case.

[29] Rather, I agree with Mr. Bloom's eloquent submission that the court cannot, "use a branch of a tree that arises from a guardianship/deputyship, without recognizing the root from which the guardianship/deputyship grows."

[30] That is, Mr. Bloom submits that enforcing the UK Deputies' right to seize and remove from Ontario personal property, money, owned by Ms. Danilunas must be premised on the court recognizing the validity of the order appointing the UK Deputies and empowering them to act on her behalf.

[31] Put in reverse, I ask rhetorically, if the court does not recognize the validity of the UK Deputies' appointment as Ms. Danilunas's legal representatives, then by what legal right does it let them take over $1 million of her money? No one has provided an answer to explain how or why an ancillary order is available when recognition of the UK court order is not.

[32] In *Hickson*, a foreign committee sought an order entitling him to receive a portion of a fund held in court as proceeds of a partition and sale order concerning a piece of land in which the foreign incapacitated person had an interest. Middleton JA held that the court *will* recognize a foreign order appointing a legal representative affecting personal property in Ontario but

it *will not* recognize a foreign order affecting land in Ontario. As the funds in court stood in the place and stead of a partitioned and sold piece of land, the court refused to recognize the foreign order. Middleton JA wrote:

> The foundation of this application is some supposed conflict between the English and Ontario cases, but I am not aware that any real conflict exists. The whole difficulty arises from the failure to recognize the wide distinction between the rights of a foreign committee with reference to personality [*sic*] and his rights with reference to realty.
>
> The cases of *Didisheim v. London and Westminster Bk*., [1900] 2 Ch. 15, and *Pélégrin v. Coutts & Co*., [1915] 1 Ch. 696, make it plain that with reference to personalty the rights conferred upon the committee by the Courts of the domicile are entitled to world-wide recognition. This principle is recognized in our own Court in the case of *Hanrahan v. Hanrahan* (1890), 19 0.R. 396.
>
> …
>
> With reference to realty, however, the case is widely different. The law of the place where the land is governs, and the foreign Courts cannot, by their decree, vest any rights with regard to it in any one other than the true owner.
>
> This distinction is clearly stated by Hall, V.-C., in *Grimwood v. Bartels* (1877), 46 L.J. Ch. 788, where he says, referring to authorities with reference to the right of a person over a lunatic's estate:— “None of the authorities which have been referred to are cases relating to real estate." Chilian [*sic*] law giving the curator complete control over the property of the lunatic "is necessarily controlled, as regards real estate in this country, by the laws of this country. The *curator* could neither have sold nor let the undivided share of the lunatic." The question there was with reference to money in Court, representing land which had been sold under partition proceedings, and which retained, according to the provisions of the Partition Act, 1868 (Imp.), c. 50, the character of realty.
>
> In case of land situate within Ontario, not only has a foreign committee no authority, but the provisions of the Lunacy Act, R.S.O. 1914, c. 68, authorizing the sale of land apply only where

> the lunatic has been so found by our own Courts. The powers conferred by the Act are exercisable only in such cases. This explains the Ontario cases referred to.

[33] *Hickson* does not tell us the basis on which the court will recognize the foreign order. The foreign order did not alter title to Ontario land. Rather, the order displaced the rights of the incapacitated person and appointed a legal representative who could sign title documents and manage all her property for her. Ontario law apparently recognizes that outcome at least for personal property. Ontario law did not recognize the appointment of the foreign legal representative to act for the incapacitated person in relation to his or her land or even money held in court derived from the land.

[34] While I understand that only this court can deal effectively with title to land in Ontario, the issue before the court is whether to recognize the legal displacement of an incapacitated person and allow her to be represented and bound by foreign representatives. This has little to do with whether the property owned by the incapacitated person in Ontario is land or personal property.

[35] In this case, Ms. Danilunas has over $1.2 million in cash or cash equivalents being held in Ontario in her name. Common law distinctions based solely on courts' jurisdiction over title to local land do not address the issue of whether we ought to be allowing people appointed under foreign court orders to act as legal representatives for allegedly incapacitated people with property in Ontario. I do not see how it matters whether the UK Deputies want to come here to sell a piece of land owned by Ms. Danilunas or to seize her pension or to empty her bank account. In each case they are acting as her legal representatives to convey her property in accordance with an order issued by a foreign court under a foreign regulatory scheme.

[36] The foreign court order is not directed at title to land in Ontario. It is appointing someone to act for another human being based on the need and vulnerability of the allegedly incapacitated other. The question is whether we should recognize a foreign legal representative for an incapacitated person who has not been appointed as guardian of the property of the person under the *Substitute Decisions Act, 1992.*

Section 86 of the *Substitute Decisions Act, 1992*

[37] Section 86 of the statute provides some direction concerning recognition of foreign orders akin to guardianships. It authorizes “resealing” or recognition of foreign orders, in part, as follows:

> **Foreign orders**
> 86 (1) In this section,
>
> "foreign order" means an order made by a court outside Ontario that appoints, for a person who is sixteen years of age or older, a person having duties comparable to those of a guardian of property or guardian of the person.
>
> **Resealing**
> **(2) Any person may apply to the court for an order resealing a foreign order that was made in a province or territory of Canada or in a prescribed jurisdiction**.
>
> …
>
> **Effect of resealing**
> (4) A foreign order that has been resealed,
>
> > (a) has the same effect in Ontario as if it were an order under this Act appointing a guardian of property or guardian of the person, as the case may be;
> >
> > (b) is subject in Ontario to any condition imposed by the court that the court may impose under this Act on an order appointing a guardian of property or guardian of the person, as the case may be; and
> >
> > (c) is subject in Ontario to the provisions of this Act respecting guardians of property or guardians of the person, as the case may be.
> > [Emphasis added.]

[38] Under s. 86 (4) a resealed order is treated as if it is a guardianship order made in Ontario. But it is subject to any conditions that the court may impose and it subjects the guardian to any limits that may be imposed on an Ontario guardian under the statute.

[39] Subsection 86 (2) provides a very simple test for recognition. An order will be recognized if it is made in Canada or in a jurisdiction that is prescribed by regulation. An order made in a recognized jurisdiction will be resealed

without further inquiry. Perhaps conditions can be sought if someone has a concern about the scope or effect of the order. But, *prima facie*, if the order is made in an acceptable place, it will be recognized: period.

[40] Perhaps it is due to the stark nature of the recognition granted by resealing that the Minister has yet to prescribe *any* jurisdiction as a recognized jurisdiction under s. 86 (2). Today therefore, only an order made by a provincial or territorial court in Canada can be resealed in Ontario.

[41] I agree with Mesbur J. in *Cariello v. Father Michele Perrella*, 2013 ONSC 7605, that one cannot tell whether the Minister has failed to undertake an analysis of acceptable foreign jurisdictions or, perhaps, none has met the regulatory criteria imposed internally by the Ministry.

[42] The PGT submits that without recognition in s. 86, the UK Deputies are left to apply to be guardians if the court is not content with an ancillary enforcement order discussed above. But this submission too falls short for me. If s. 86 is intended to be the sole form of recognition of foreign guardianship orders, then by what authority is a foreign order partially enforced by an ancillary order?

[43] Counsel for the PGT draws support from s. 22 (3) of the statute that provides:

> **Prohibition**
> (3) The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,
>
> > (a) does not require the court to find the person to be incapable of managing property; and
> >
> > (b) is less restrictive of the person's decision-making rights than the appointment of a guardian.

[44] Counsel for the PGT submits that ancillary recognition of a foreign order to allow the foreign representative to take an allegedly incapacitated person's money avoids the need to find the person incapacitated here. Therefore, s.22 (3)(a) precludes the court from requiring a guardianship proceeding where it can give ancillary enforcement to a foreign appointment.

[45] But doesn't that submission mean that for the purpose of allowing a foreign representative to take an allegedly incapacitated person's money, we will defer to the foreign holding of incapacity? Again, in my view, this just begs the key question of when should a court in Ontario enforce a foreign order in this area of law and fact?

[46] Moreover, Mr. Bloom effectively flips this submission around. If s. 22 (3) is intended to protect the incapable person from the indignity and potential harms of a capacity assessment and court ordered loss of her autonomy, then, he submits, that is all the more reason to recognize the foreign order. This court strives to avoid multiplicity of proceedings especially where an intrusive and potentially undignified process has already occurred once. If this subsection applies, Mr. Bloom submits, it supports recognition of the existing order rather than forcing Ms. Danilunas to undergo a capacity review here yet again.

[47] In my view however, s. 22 (3) is a red herring. It expresses the important goal of ensuring that guardianship is a last resort. It requires use of less restrictive alternatives to protect vulnerable people where possible. The subsection does not address foreign incapacity findings already made. It does not require us to recognize a decision that is without a legal basis nor to ignore a decision that should properly be enforced.

Enforcement of Orders *in rem*

[48] The UK order is an order *in rem*. That is, it is an order that creates a status for Marija Jurate Danilunas that applies to everyone who wishes to deal with her. Like a divorce, a foreclosure under a mortgage, or a quieting of title, the court's order directly affects or acts on its subject matter. The status of the subject matter applies to all who may then deal with the person, people, or thing(s) at issue.

[49] An order *in rem* is distinguished from an order *in personam*. An order *in personam* resolves an issue between two or more parties to litigation. It binds only them and affects the state of accounts between or among them.

[50] An order *in rem*, by contrast, can affect everyone in the world. A foreclosure, for example, affects everyone's ability to buy the property in future.

[51] It is common for this court to enforce orders *in personam* made by foreign courts. The applicable legal principles and rules are widely understood. See: *Beals v. Saldanha*, 2003 SCC 72 (CanLII), at paras. 37 to 42.

[52] The principles applicable to requests for enforcement of orders *in rem* are much less clear. The issue is not just whether a party ought to be bound by a court order arising from litigation conducted by the same party elsewhere. In the case of an order *in rem*, the question is whether everyone should be bound by a status declared by a court abroad in a legal proceeding in which no one whom the order presumptively binds had notice or any right to participate?

[53] In *Indyka v. Indyka*, [1969] 1 A.C. 33 the House of Lords recognized an *in rem* divorce order granted by a court in India. The petitioner was domiciled in India and the court held that this was a sufficient "real and substantial connection" to justify recognition for the foreign divorce order *in rem*.

[54] In the very recent case of *Dunmore v. Mehralian,* 2025 SCC 20 (CanLII) the Supreme Court of Canada referred to *Indyka* as the source of the "real and substantial connection" test that is adopted and built upon in *Beals*.

Recognition of Foreign Orders Generally

[55] As a matter of comity, or cooperation and goodwill among nations, the common law has long recognized the desirability of enforcing foreign court orders. In *Pro Swing Inc. v. Elta Golf Inc*., 2006 SCC 52 (CanLII), at para. 10, the Supreme Court of Canada expressed the old common law approach in this way:

> The traditional common law rule is clear and simple. In order to be recognizable and enforceable, a foreign judgment must be "(a) for a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); and (b) final and conclusive, but not otherwise" (*Dicey and Morris on the Conflict of Laws* (13th ed. 2000), vol. 1, Rule 35, at pp. 474-75 (footnotes omitted)). Similarly, J.-G. Castel and J. Walker, in *Canadian Conflict of Laws* (6th ed. (loose-leaf)), at para. 14.6, state that "[a] foreign judgment *in personam* given by a court of competent jurisdiction is enforceable provided that it is final and conclusive, and for a definite sum of money."

[56] At common law, courts recognized foreign court orders essentially only if the Canadian defendant was served with court process while within the territorial jurisdiction of the foreign court. There were exceptions that are not germane here. Under the old rules, even within Canada, courts of one province would not recognize the orders of a court of another province unless the common law technicalities of service of documents were met.

[57] In *Morguard Investments Ltd. v. De Savoye*, 1990 CanLII 29 (SCC), the Supreme Court of Canada held that the common law failed to recognize the federal nature of Canada. It required courts to recognize *in personam*, final orders made by courts in sister provinces if the plaintiff established that the other court had a "real and substantial connection" to the matters before it.

[58] In *Beals*, the Supreme Court of Canada widened the common law again. It held that the same rule that applies as between provinces should apply to all final, *in personam* foreign court orders for payment of money. If such a foreign court order is made in a proceeding with a "real and substantial connection" to the parties or the subject matter, the foreign court's order will be presumptively enforceable here.

[59] It is of note that in cases seeking enforcement of foreign court orders, the Supreme Court of Canada held that it is not the role of our courts to review the merits of the foreign court order. Whether the order correctly resolved the factual issues before the foreign court or correctly applied the applicable foreign law to the facts as found are issues for the foreign jurisdiction and foreign appellate courts.

[60] Rather, to show due comity to foreign courts, the only defences recognized in *Beals* to prevent enforcement of a final *in personam* foreign order for payment of money require a defendant here to prove one of the following defences:

a. the foreign order was obtained by an extrinsic fraud committed on the foreign court;

b. the foreign order was granted in violation of natural justice (i.e. without notice to the Ontario resident); or

c. that the foreign law applied in the foreign court proceeding violates fundamental morality as expressed in the public policy of Canada. See: *Beals* at paras. 37 to 42 and *Pro-Swing* at para. 12.

[61] The next question, raised in *Pro-Swing,* was whether to expand the law further to recognize foreign court orders other than orders for the payment of money? The issue in that case was whether an Ontario court would enforce an injunction granted by a US court in a proceeding in which the defendant was held to be in contempt of the US court.

[62] At para. 15 of *Pro-Swing*, the Supreme Court of Canada held that Canadian courts will enforce foreign orders that go beyond simple debt. Deschamps J., for the majority of the court, wrote:

> I agree that the time is ripe to revise the traditional common law rule that limits the recognition and enforcement of foreign orders to final money judgments. However, such a change must be accompanied by a judicial discretion enabling the domestic court to consider relevant factors so as to ensure that the orders do not disturb the structure and integrity of the Canadian legal system.

[63] The Court emphasized the need for flexibility and caution in expanding recognition of foreign orders. The Court expressed concern relating to the equitable nature of the relief sought in that case. In addition, the Court also considered the enforcement of a foreign penal order for contempt of court to be a non-starter.

[64] For present purposes, the most significant element of the decision is *Pro-Swing* is in the court's treatment of the public policy defence to enforcement of a foreign order.

[65] In the context of enforcement of simple debt, the public policy defence is so narrow as to be nearly non-existent. In *Boardwalk Regency Corp. v. Maalouf* (1992), 1992 CanLII 7573 (ON CA) the court enforced a gambling debt from a US casino although gambling was then illegal in Canada. The Court of Appeal held that to resist enforcement of a debt, enforcement must violate not just the law but fundamental "conceptions of essential justice and morality."

[66] In *Beals*, the majority of the Supreme Court of Canada confirmed the limited role of public policy in resisting foreign money judgments *in personam*. First, our concern is not with the facts of the case or how the foreign court applied the law to the facts in the case before it. Those are issues for the foreign appellate courts. Rather, in assessing whether enforcement of a foreign judgment offends Canadian public policy, we look only to the foreign law and consider whether the law itself offends a Canadian sense of justice and morality.

[67] The Supreme Court of Canada held:

> 75. The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application.

[68] But, in my view, it is important bear in mind the context in which the decision was written. The courts in *Beals* and *Boardwalk,* and virtually all earlier precedents, were dealing with enforcing foreign debts and money judgments. Our courts have not been moved to help Canadians hide behind the border using historical common law rules to resist payment of their foreign gambling debts or the damages they may be condemned to pay by the law of Florida in connection with a real estate deal freely conducted there (as in *Beals*).

[69] The law in the late 20th century was updated to recognize that people now routinely travel abroad for business and pleasure. Public policy has little application to preclude recognition of the normal incidents of doing so.

[70] But this case does not involve someone travelling to a casino and losing money. If foreign court orders beyond *in personam* money judgments are to be recognized, how are we to consider cases like this one in which important public policy issues enshrined in laws are engaged *in rem*?

[71] In *Pro-Swing*, the Supreme Court of Canada answered by widening the application of public policy considerations when courts are asked to enforce decisions that are not just final money judgments *in personam*. Deschamps J. put it this way:

> F. Public Policy Defence
>
> 59. Elta did not raise a public policy defence. However, public policy and respect for the rule of law go hand in hand. Courts are the guardians of Canadian constitutional values. They are sometimes bound to raise, *proprio motu*, issues relating to public policy. An obvious example of values a court could raise *proprio motu* can be found in *United States v. Burns*, [2001] 1 S.C.R. 283, 2001 SCC 7. In that case, the Court took Canada's international commitments and constitutional values into consideration in deciding to confirm a direction to the Minister to

> make a surrender subject to assurances that the death penalty would not be imposed. Public policy and constitutional requirements may also be at stake when the rights of unrepresented third parties are potentially affected by an order. In the case at bar, over and above the concerns articulated by the Court of Appeal and the defences raised by Elta, there are, in my view, concerns with respect to parts of the contempt order inasmuch as it requires the disclosure of personal information that may prima facie be protected from disclosure.
>
> 60. The quasi-constitutional nature of the protection of personal information has been recognized by the Court on numerous occasions: *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General),* [2006] 1 S.C.R. 441, 2006 SCC 13, at para. 28; *Lavigne v. Canada (Office of the Commissioner of Official Languages),* [2002] 2 S.C.R. 773, 2002 SCC 53, at para. 24; *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403, at paras. 65-66. In *Burns*, the Court required assurances that our constitutional protections would be extended to individuals found on Canadian soil; in the same way, courts should be mindful of the values that merit constitutional or quasi-constitutional protection. In light of the quasi-constitutional status attributed to privacy, the order enjoining Elta to provide all credit card receipts, accounts receivable, contracts, etc. could be problematic. The range of documents is wide and most of them contain personal information that might be protected.
>
> 61. Because no submissions were made on this point, we do not know if there is any information or evidence relevant to applicable exceptions. The documents contain personal information that may prima facie be protected for the benefit not of the person from whom disclosure is sought, but of the persons to whom the information belongs. ***This is but an example of public policy considerations that judges must consider before agreeing to recognize and enforce a judgment on a foreign country's behalf.*** [Emphasis added.]

[72] Given the nature of the interests at play, in my view, I am positively required to assess whether recognition of the foreign order in this case would violate fundamental aspects of applicable Canadian public policy.

Public Policy Balancing

[73] In my view, *Pro-Swing* requires that when asked to enforce an *in rem* order appointing legal representatives for a vulnerable person made by a foreign court, I must take a broader view of the applicable public policies than the narrow view set for *in personam* debt claims in *Beals*.

[74] In my view, in this context, the test is not simply whether the foreign law violates our fundamental conceptions of justice and morality. Instead, in assessing whether to enforce the foreign *in rem* order, I am to be mindful of the values that merit protection – especially constitutional or quasi-constitutional values.

[75] The context here requires that I consider whether it is appropriate to enforce the UK order with reference to applicable public policies. While considering enforcing *in personam* debt, I would not look at the factual merits of the foreign case nor assess details of the foreign legal regime closely.

[76] Here, the competing policies engaged are the protection of the vulnerable and the primacy of individual autonomy as mediated by concepts of capacity or incapacity. The parties invite me (and I am required *proprio motu* or on my own motion*)* to review the foreign proceeding and law to ensure that enforcing the UK order does not unduly undermine or impair these important statutory and perhaps quasi-constitutional policies.

[77] The PGT submits that recognizing the UK order violates public policy because the UK process does not share all the procedural protections of the *Substitute Decisions Act, 1992*. She notes expressly that the UK law does not require a management plan to be submitted to the PGT and updated as required under our statute.

[78] While our regulatory format of management plan is not required under the UK process, the evidence shows that under the UK law and the order before me, the UK Deputies are held fully accountable for their conduct. The Deputies are vetted and approved to serve in their roles by the regulator. They are required to post personal undertakings that mirror many of the obligations of guardians and attorneys set out in our statute.

[79] The UK Deputies are required to account to the UK Public Guardian each year. We only require guardians to amend management plans on material changes arising. As a matter of local practice, we typically only require formal accounting, by passing of accounts, every three years.

[80] Although the UK form of order says that service of notice of the proceeding on the allegedly incapacitated person was not required, on the evidence before me, Ms. Danilunas was served with court process prior to the order being made. Moreover, she was served again with the UK court order once it was entered.

[81] There is no suggestion that Ms. Danilunas objects or has invoked any appellate rights.

[82] The UK court's declaration of incapacity in this case is based on evidence of a psychiatrist rather than a certified capacity assessor. There is a finding that Ms. Danilunas is incapable of making decisions regarding her property. The psychiatrist found her to suffer from debilitating dementia that is progressive (i.e. will get worse). This is not a case where a foreign interim order was made based on a person being found to be merely "vulnerable" as confronted by my colleague Faieta J. in *James v. James*, 2024 ONSC 3991.

[83] It is not lost on me that this is a case emanating from the mother of parliaments England. While it does not get a free pass to a resealing under s. 86 of the statute, it is not surprising that the system bears similar policy approaches to our own. The fact that it has a specialized court dedicated to the protection of the vulnerable under its own regulatory scheme provides significant comfort in my view.

[84] It is important too that the PGT does not submit that there are defects in the UK regulatory scheme or on the facts that actually put Ms. Danilunas at risk of unscrupulous dealings or violate her autonomy. Rather, in her submission, counsel for the PGT expressed concern there are risks of abuse inherent in the nature of the subject matter.

[85] Perhaps the risks are alleviated in this case emanating from the UK. But, she submits, the court needs to guard against risks from other jurisdictions that perhaps do not share our *Charter* values or our public policy priorities. I agree. I expressed the same concern in para. 27 of my prior decision reported at 2025 ONSC 2061.

[86] I am trying to find an approach consonant with the applicable legal principles that ensures that this court is empowered and able to respond to the enhanced policy concerns inherent in increasing the scope of recognition of foreign court orders beyond those requiring payment of money *in personam*.

[87] Mr. Walker, for the intervenor Coral Wilson, submits that it is untenable to recognize a foreign court order to seize a person's property or money in Ontario without ensuring that the foreign court was properly empowered to do so and that the empowerment meets our standards of morality and justice.

[88] Mr. Walker refers to a decision of the UK Court of Protection in *SV, Re,* [2022] EWCOP 52 (08 December 2022). In that case, the UK court was asked to recognize an order enforcing protective measures imposed on a vulnerable person made by the High Court of the Republic of Ireland.

[89] The *SV* decision deals primarily with *The Hague Convention of 13 January 2000 on the International Protection of Adults* to which Canada is not a signatory. But one can see infused in the court's discussion many of the same issues of natural justice, public policy, and protection of vulnerable persons that are under consideration in this proceeding.

[90] The Court of Protection made use of a lengthy checklist that is appended to its judgment that appears to be a regulatory requirement. Mr. Walker commends the lengthy list of issues set out in the checklist as a helpful guide to the court's assessment of the types of procedural and substantive issues that should be considered in cases such as this.

[91] In all, everyone before the court expressed concern with ensuring that the court maintains the flexibility to protect the best interests of the incapable person. The court must be able to act to prevent abuse if it arises and to respect the autonomy of individuals who are capable of managing their own affairs.

[92] For example, in *The Bank of Nova Scotia Trust Company v. Pernica*, 2020 ONSC 67 (CanLII), Conway J. enforced an order granting a foreign representative access to the incapable person's funds while deferring consideration of whether to make the person's medical records available to the foreign representative. She did not deny recognition. Rather, she deferred recognition of privacy issues to a further hearing on a more complete record dealing expressly with those concerns.

Parens Patriae

[93] Finally, to the extent that the existing defences to enforcement of foreign judgments do not suffice, even with a more robust application of the public policy ground to defend against enforcement of a foreign order, the court retains the jurisdiction to act to protect vulnerable people *parens patriae.*

[94] The courts of British Columbia rely on the *parens patriae* doctrine to recognize foreign appointments rather than relying on the common law of enforcement of foreign judgments as it has evolved in *Morguard*, *Beals*, and *Pro-Swing*. In my view, I do not need to draw on the court's authority to act *parens patriae*. Rather, for the reason discussed above, I am satisfied that *Pro-Swing* provides the necessary framework for protection.

[95] However, if there is a gap in the law, the common law and equity empower the court to act to protect the vulnerable if need be. In my view, just as *parens patriae* may apply to recognize foreign judgments, the doctrine could be equally applicable to deny or limit recognition in appropriate cases. See for example: *Re Binder (Patients Property Act),* 2022 BCSC 990 (CanLII) and *Patients Property Act re Ungerer*, 2003 BCSC 1971 (CanLII).

Summary

[96] I do not see any basis to require the UK Deputies to bring a guardianship proceeding under Ontario law when they have already done so in the home jurisdiction of the person whose money is here.

[97] Provided that the foreign court order is final, was made with a real and substantial connection to the parties and issues, was not obtained by fraud or a breach of natural justice, and would not violate Canadian public policy, it should be enforced.

[98] In view of the extension of recognition in this case from *in personam* money judgments to an *in rem* appointment of a foreign legal representative for a vulnerable person, *Pro-Swing* directs the court to take a broader look at the public policies in issue in our law to ensure that the enforcement of the foreign order does not undermine public policy so conceived.

[99] As is apparent from my discussion above, not every single difference between a foreign regulatory regime and our own necessarily strikes at the *Charter* values reflected in our public policy choices. It is important that in this case no one asserts that the foreign law and the court proceeding that led to the foreign order exposes Ms. Danilunas to a real risk of abuse or inappropriately undermined her autonomy.

[100] In my view, this is a proper case in which to recognize and enforce the appointment of the applicants as the legal representatives of Ms. Danilunas.

[101] For greater certainty, at Mr. Bloom's request, I recognized specifically the rights of the applicant UK Deputies to make decisions on behalf of Ms. Danilunas in respect of her property in Ontario including, without limitation, exercising the same rights to take possession, manage, and invest her property as Ms. Danilunas has herself.

[102] While Canadian Imperial Bank of Commerce is not a party to this proceeding, if it has any concerns granting the UK Deputies' access to information and management over Ms. Danilunas's accounts listed at para. 14 of the affidavit of Sally Louise Kinsey sworn September 11, 2024, I respectfully suggest that its counsel speak to the applicants' counsel and, if necessary, arrange a case conference to discuss any concerns with a judge of the court.

[103] There are no costs sought or ordered in this proceeding. This does not affect in any way whatever rights the UK Deputies may have to seek indemnity for their legal expenses from Ms. Danilunas or her property under UK law and under the terms of their appointments.

.

FL Myers J

Released: July 25, 2025

Justice FL Myers Digitally signed by Justice FL Myers
Date: 2025.07.25 10:13:56 -04'00'

CITATION: Fisher v. Danilunas, 2025 ONSC 4359
COURT FILE NO.: CV-24-00726512-00ES
DATE: 20250725

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

RICHARD ALEXANDER FISHER, in his capacity as Deputy for Marija Jurate Danilunas, and SALLY LOUISE KINSEY, in her capacity as Deputy for Marija Jurate Danilunas

Applicants

– and –

MARIJA JURATE DANILUNAS, and EDWARD DANILIUNAS ~~and the OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE~~

Respondents

– and –

PUBLIC GUARDIAN AND TRUSTEE and CORAL WILSON, in her capacity as Guardian for GLORIA LEW

Intervenors

REASONS FOR DECISION

FL Myers J

Released: July 25, 2025