

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

**THE DETERMINATION OF JURISDICTION IN CROSS-BORDER BUSINESS-
TO-CONSUMER TRANSACTIONS: A CONSULTATION PAPER**

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Introduction

[1] Electronic commerce, or the buying and selling of goods and services online, is changing the marketplace. Although estimates of electronic commerce vary considerably, growth has been exponential.¹ With cross-border transactions increasing, it is important that the legal framework supporting commercial transactions on the Internet be governed by consistent principles that lead to predictable results regardless of the jurisdiction in which a particular buyer or seller resides.

[2] Whenever a dispute crosses over borders, involving more than one territory, questions arise concerning which court has jurisdiction to hear the dispute (choice of forum) and which territory's laws govern the resolution of the dispute (choice of law).

[3] Although commercial transactions, whether carried out electronically or otherwise, are subject to traditional rules relating to jurisdiction, traditional rules have been based on territorial principles.

[4] Electronic commerce is breaking down the concept of necessarily having a physical presence in a territory to provide goods or services to consumers in that territory. The Internet greatly diminishes or eliminates the need for physical contact between the parties. Goods and services are being provided across jurisdictional lines.

The Need for a New Approach

[5] Electronic commerce has the potential to bring benefits to both consumers and businesses. However, without a sound legal framework, consumers will have less confidence in shopping on the Internet and the Internet will not develop to its potential. Trust and confidence are important to the growth of electronic commerce. There is a need for both consumers and businesses to have legal certainty regarding jurisdictional rules for Internet transactions.

[6] The choice of forum and choice of law have practical consequences for consumers and businesses doing business on the Internet. If a consumer receives defective goods, the consumer needs to know where to sue the supplier and which law will govern his or her right of action. Vendors, on the other hand, want to know in which jurisdictions they may be subject to court proceedings and which consumer protection laws they must comply with.

[7] Electronic commerce involves all the risks and benefits of traditional commerce complicated by the use of computer and communications technology. Uncertainty is an impediment to economic activity. Given the unique challenges that are presented by transactions that take place over the Internet, it is important to consider as a matter of policy whether the traditional jurisdictional rules should be used or adapted for Internet disputes.

Traditional Jurisdictional Rules under Canadian Law

1. Choice of Forum

[8] In Canada, jurisdiction depends upon the existence of defined connections between:

- a) the territory or legal system of a jurisdiction; and
- b) a party to the proceeding or the facts on which the proceeding is based.²

[9] Traditional principles involve considering, firstly, on what basis a court has jurisdiction and secondly, the circumstances in which a court may decline to exercise its jurisdiction on the basis that it would be more appropriate for another jurisdiction to hear a case.

Jurisdiction to hear a dispute

Civil Law

[10] In the province of Québec, the *Civil Code of Québec* sets out rules governing whether a court has jurisdiction to hear a case.

[11] Article 3148 of the *Civil Code of Québec* reads as follows:

3148. In personal actions of a patrimonial nature, a Québec authority has jurisdiction where

- (1) the defendant has his domicile or his residence in Québec;
- (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
- (3) a fault was committed in Québec, damage was suffered in Québec, an injurious act occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
- (4) the parties have by agreement submitted to it all existing or future disputes between themselves arising out of a specified legal relationship;

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(5) the defendant submits to its jurisdiction.

[12] However, a Québec authority has no jurisdiction where the parties, by agreement, have chosen to submit all existing or future disputes between themselves relating to a specified legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authority.

[13] Article 3149 of the *Civil Code of Québec* reads as follows:

3149. A Québec authority also has jurisdiction to hear an action involving a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker may not be set up against him.

Common law

[14] Although the grounds for determining if a court has jurisdiction to hear a dispute currently differ from province to province, courts regularly assert jurisdiction outside their territory.³ In general, courts in the common law jurisdictions have jurisdiction in a proceeding that is brought against a person if:

- the person submits to the court's jurisdiction during the course of the proceeding;
- the person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim;
- there is an agreement between the plaintiff and the defendant to the effect that the court has jurisdiction in the proceeding;
- the person is ordinarily resident in the province or territory at the time of the commencement of the proceedings; or
- there is a real and substantial connection between the province or territory and the facts on which the proceeding against that person is based.

Real and substantial connection

[15] For a court to have jurisdiction over a person, who is not ordinarily resident in its territory and does not consent to the court's jurisdiction, a real and substantial connection must exist.⁴ The Supreme Court of Canada has held that there are constitutional limits to the exercise of jurisdiction against persons outside the province.⁵

[16] The real and substantial connection requirement is essentially designed to provide a reasonable balance between the rights of the parties. It affords some protection against being pursued in jurisdictions having little or no connection with the transaction or the parties.

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[17] In determining whether or not an action concerning contractual obligations has a real and substantial connection to a jurisdiction, courts have traditionally considered factors such as: the respective residences of the parties, the place where the contract was signed or where the contractual obligations were to be performed, whether the defendant conducted business or had other dealings in the province and other similar connecting factors.⁶ The traditional indication of carrying on business in a particular geographic territory is often tested by examining physical connections to the jurisdiction.⁷

Choice of Jurisdiction Clauses

[18] While forum selection clauses are generally treated with a measure of deference by Canadian courts, the mere existence of a jurisdictional clause, particularly when a consumer contract is involved is not determinative of the issue.⁸ Courts are not bound to give effect to an exclusive jurisdiction clause if there is a reason to override the agreement.⁹

[19] Factors that courts have considered in determining whether they should refuse to enforce forum selection clauses in agreements include: whether the agreement was unreasonable because the clause in question was not negotiated at arm's length, how the assent to the contract was obtained, whether the court perceives the party is seeking to contract out of the jurisdiction with the closest connection to the parties and whether the law of the foreign country applies and its differences from the domestic law in any respect.¹⁰

[20] It should be noted that consumer legislation in some jurisdictions provides that a consumer may not waive his or her rights, including the consumer's right to bring proceedings in his or her home jurisdiction.

Forum non conveniens

[21] However, notwithstanding that a court concludes that it has jurisdiction to hear a dispute, the court is not obliged to assume jurisdiction. Under the doctrine of *forum non conveniens*, a court may decline to exercise its jurisdiction, on the basis that another jurisdiction would be more appropriate to hear the dispute. Although all Canadian provinces and territories recognize the principle of *forum non conveniens*, the rules respecting doctrine's application are not elaborated in any detail in governing legislation.¹¹

[22] Article 3135 of the Quebec *Civil Code*, for example, simply provides that a court may decline jurisdiction "if it considers that the authorities of another country are in a better position to decide".

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[23] In deciding the question of whether it or a court in another jurisdiction is the more appropriate forum in which to hear a proceeding, the court must consider factors such as:

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
- (b) the law to be applied to issues in the proceeding;
- (c) the desirability of avoiding multiplicity of legal proceedings;
- (d) the desirability of avoiding conflicting decisions in different courts;
- (e) the enforcement of an eventual judgment; and
- (f) the fair and efficient working of the Canadian legal system as a whole.¹²

Internet Disputes

[24] In cases where Internet activities are involved, the traditional factors for determining whether or not an action has a real and substantial connection to a jurisdiction are less than satisfactory. Courts have noted that modern business transactions are increasingly being conducted so that the parties do not have to leave their respective places of business to conclude contracts and carry out many business and service functions. It is recognized that this can make it difficult to determine whether an action has a real and substantial connection to a jurisdiction.¹³

[25] Courts have applied various tests to determine whether they have jurisdiction over Internet disputes. Some courts have simply applied traditional rules, while others have tried to develop new tests to accommodate the uniqueness of the electronic commerce.¹⁴

[26] As a result, it is difficult to find consistency in the application of rules to determine whether a particular court has jurisdiction over an Internet dispute. For example, courts have reached differing, and in some cases inconsistent, conclusions as to the level of interactivity that must be found to exist before a court will conclude that the defendant has a sufficient connection with the jurisdiction. Many commentators have concluded that the current case law is “inconsistent, irrational and irreconcilable”.¹⁵

[27] Given the unique jurisdictional issues created by the Internet, concerns have been expressed that relying upon these traditional rules to determine jurisdiction is problematic for electronic commerce.¹⁶

2. Choice of Law

[28] The determination of which province or territory's laws will be applied to a contractual dispute can also be very important. As legal provisions for consumer protection vary between provinces and territories,¹⁷ applicable law can mean the difference between a breach and no breach of the law.

Civil Law

[29] Book Ten of the *Civil Code of Quebec* sets out rules governing conflicts of laws. In the case of a consumer contract, article 3117 reads as follows:

3117. The choice by the parties of the law applicable to a consumer contract does not result in depriving the consumer of the protection to which he is entitled under the mandatory provisions of the law of the country where he has his residence if the formation of the contract was preceded by a special offer or an advertisement in that country and the consumer took all the necessary steps for the formation of the contract in that country or if the order was received from the consumer in that country.

The same rule also applies where the consumer was induced by the other contracting party to travel to a foreign country for the purpose of forming the contract.

If no law is designated by the parties, the law of the place where the consumer has his residence is, in the same circumstances, applicable to the consumer contract.

Common Law

[30] In the absence of an express choice of law by the parties, the courts have generally held that the proper law of the contract is the law of the jurisdiction in which the transaction has its closest and most real connection.¹⁸ While parties are generally free to choose any law as the governing law of the contract, an express choice of law made in contravention of a statute will not be recognized. In addition, the courts have also held that parties should not be allowed to evade mandatory provisions of the law of the jurisdiction with which the transaction has its closest and most real connection.¹⁹

[31] In determining the jurisdiction that has the most real and substantial connection with the transaction, the court has traditionally considered factors such as the place of contracting, the place of performance, the legal terminology in which the contract is drafted, the currency in which the payment is to be made, the nature and location of the subject matter of the contract, the residence of the parties or the head office of a corporate party to the contract.

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[32] The issue of choice of law also raises considerable controversy in the context of consumer transactions over the Internet. Determining when and where an electronic contract is formed and the law governing it can raise many complex issues. Online sellers need to know which laws they need to comply with and what consumer protections apply to the sale of their products and services. Consumers also need to have a clear understanding of which jurisdiction's laws will apply to online transactions.

3. Conclusion

[33] The current Canadian framework results in legal uncertainty for consumers and businesses alike as to what which court has jurisdiction to hear the dispute and which province or territory's laws should govern the resolution of a dispute.

International Developments

[34] Given the global nature of electronic commerce, jurisdictional rules are not only a concern at the national level. While international jurisdictional issues existed prior to the emergence of electronic commerce, the borderless nature of Internet and its dramatic growth have raised the importance of jurisdictional issues to a much higher level.

[35] In recent years, a number of international initiatives have been undertaken to review potential jurisdictional conflicts and their resolution.²⁰ These initiatives underscore the novelty and complexity of the policy and technical issues surrounding electronic commerce and in determining internationally acceptable rules for jurisdiction.

Approaches considered

[36] Although there is widespread support in principle that what electronic commerce needs is certainty and predictability, there is a general lack of consensus regarding which approach should be adopted.²¹

[37] The subject has generated worldwide interest and ongoing debate. For a more detailed review of some of the international and national initiatives, please see attached Appendix I. In general, these initiatives have considered the following approaches to address Internet jurisdictional issues in relation to consumer contracts:

1. Country-of-Destination Approach (or Rule of Destination Approach)

[38] One approach is to allow consumers to always sue in their home jurisdiction and to allow consumers to rely on the protection of their own laws. Under this approach, jurisdiction is only exercisable by the courts of the territory in which the goods or services are received.

[39] Consumer advocates promote this approach as the best way to ensure that consumers have effective protection and access to redress.²²

[40] Businesses, on the other hand, have expressed concern that under this approach they would be forced to defend themselves against actions in a multitude of jurisdictions with no ability to narrow the scope of such expansive jurisdictional claims.²³

2. Country-of-Origin Approach (or Rule of Origin Approach)

[41] Another approach is to allow jurisdiction to always rest with the seller. This rule would subject businesses only to the laws and courts of their own country. Jurisdiction is only exercisable by the courts in which the source of the transaction is located.

[42] This approach addresses key concerns of businesses, most notably the need for a predictable legal environment and reduced compliance costs.²⁴

[43] However, this approach raises serious concerns from the consumer perspective. Consumer groups argue that adopting a country-of-origin approach would risk undermining consumer protection. Consumer groups note that this approach would create incentives for businesses to operate from jurisdictions with lax consumer protections. The result, a “race to the bottom”, would harm consumers and ultimately undermine consumer confidence in electronic commerce.²⁵

3. Prescribed Seller Approach

[44] A variation of the country-of-origin involves businesses only being subject to the laws or courts as prescribed in the contract. This approach would allow contractual choice of law and choice of forum provisions dictated by the seller to override substantive protections afforded to consumers in their home country or their right to sue in a local court.

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[45] While again this approach is favoured by businesses, consumers argue that this approach would undermine consumer confidence in electronic commerce.

4. Deference Approach

[46] A further variation of the country of origin approach involves deferring to the laws selected by the business, as long as they provide an adequate overall level of protection and would not take away a consumer's fundamental protections.

[47] However, this approach appears difficult, if not impossible, to implement. It would require reaching agreement on benchmark "deference standards". A court or governing body would need to analyze the laws of each of the jurisdictions. The task would be extremely burdensome and would require ongoing evaluation.²⁶

5. Targeting Approach

[48] Another approach is to adopt a compromise rule that incorporates a targeting-based analysis.²⁷ The targeting approach assumes that if a vendor specifically targets a purchaser in a particular jurisdiction, the courts of that jurisdiction should exercise jurisdiction.

[49] One of the difficulties with this approach is determining or agreeing upon "what constitutes targeting". For example, should efforts to prevent access by a consumer to a site through the use of disclosures or disclaimers and other technological blocking or screening mechanisms shield the online vendor from an assertion of jurisdiction?

The Approach adopted in the European Union

[50] While a number of international initiatives are currently under consideration, the European Union has recently adopted new rules relating to jurisdictional issues in the context of electronic commerce.

Brussels Regulation

[51] For legal proceedings commenced after March 1, 2002, the Brussels Regulation will replace the Brussels Convention on Jurisdiction and Recognition of Enforcement of Judgments in Civil and Commercial Matters (1968).

[52] The changes introduced by the Brussels Regulation provide for uniform rules that address which court has jurisdiction to hear disputes regarding contracts concluded over the Internet. The basic jurisdictional rule set out in the Brussels Regulation is that a defendant shall be sued in the state it is domiciled. However, the Regulation provides for special rules for consumer contracts which provide that in the case of consumer contracts, the relevant test is whether an online vendor “directs activities” in the consumer’s home state.

[53] Where an online vendor directs activities in the consumer’s home state, the consumer will be entitled to sue the vendor in the consumer’s home domicile, unless the consumer chooses to sue the vendor in the vendor’s domicile.

[54] The Brussels Regulation has been criticized by business groups. In opposition to the Regulation, business groups have argued that the Regulation will lead to online vendors finding themselves involved in disputes governed by the laws of countries that have more onerous laws and that this will lead to businesses being paralyzed by the legal risk presented by being subject to the laws of all of the member states.

[55] At the time the Regulation was passed, a joint declaration was issued by the European Parliament and Commission, which states that:

the mere fact that an Internet site is accessible is not sufficient for Article 15 [the provision dealing with consumer contracts] to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a web site uses does not constitute a relevant factor.

Competing Policy Objectives

[56] Reforming jurisdictional rules raises difficult questions about balancing the need for certainty while at the same time protecting consumers effectively.

[57] In attempting to establish jurisdictional rules to determine which court should hear a dispute and which laws should apply, it is worthwhile to reflect on the following policy considerations:

- consumer protection online should be no less effective than through traditional means of communication;

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- consumers should be able to benefit from the protection normally afforded to them by local consumer protection laws;
- the law should be technology neutral so that it does not discriminate between different forms of technology (recognizing that using tests that reflect the current state of the Internet technology is a risky proposition because of rapid rate at which technology is changing);
- there should be certainty about rules that apply to the participants and their transactions so that they are able to predict their legal situation before engaging in commerce;
- the legal risk of operating online should not be disproportionate to a business' connection to the relevant forum's laws and courts;
- business should be able to choose whether or not to operate under a particular jurisdiction's legal framework; and
- the rules should not be an impediment to the continued growth of electronic commerce.

Proposal

[58] The challenge is to develop a workable framework for jurisdictional issues that protects consumers and is fair and predictable for businesses. Clearly, a balanced approach is needed.

[59] Considering the general policy objectives above and in light of international developments, the following set of jurisdictional rules that incorporate the “targeting approach” to both choice of forum and choice of law is proposed.

[60] The proposed rules were drafted with a view to combining the advantages of the international and Quebec approaches noted above. In particular, the proposed rules draw on the following:

- The Brussels Regulation which provides for a targeting approach for choice of forum. Therefore, where an online vendor directs activities in the consumer's home state, the consumer will be entitled to sue the vendor either in the consumer's home state or the vendor's home state;
- The Hague Conference on Private International Law. The October 1999 Preliminary Draft Convention also provides for a targeting type approach for choice of forum. In particular, it refers to circumstances where an online vendor directs activities in the consumer's home state by soliciting business through means of publicity;

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- The Brussels Regulation and the October 1999 Preliminary Draft Convention do not define “directing activities” or “soliciting”. The Hague Conference Draft Text, June 2001 is of assistance in this regard because it provides a negative description. Article 7, paragraph 3 states that a vendor’s activities will not be regarded as “directed” to a state if the vendor demonstrates that it took reasonable steps to avoid contracting with consumers habitually resident in that state;
- The Brussels Regulation also provides that:
 - where an online vendor directs activities in the consumer's home state, the consumer has the right to bring proceedings against the vendor either in the consumer's home state or in the vendor’s home state;
 - the vendor is only entitled to sue the consumer in the consumer’s home state;
 - the consumer and vendor can enter into an agreement regarding choice of forum which departs from the jurisdictional rules set out, only if the agreement is entered into after the dispute has arisen or if it allows the consumer to bring proceedings in the courts of jurisdictions other than those provided for in the rules.
- The 1980 EC Convention on the Law Applicable to Contractual Obligations (“Rome I Convention”) which deals with applicable law in contractual disputes. The Rome I Convention was set up by the European Union and establishes that a choice of law provision in a consumer contract does not deprive the consumer of the protection of the mandatory rules of the law of the country of his or her habitual residence. To qualify for this protection, however the contract must satisfy any one of the following three conditions:
 - the consumer contract was solicited by the vendor in the consumer’s domicile and the consumer completed all contract formation steps there;
 - the vendor received the consumer’s order through an agent in the consumer’s country;
 - the consumer traveled to another country and gave the order in that country, provided that the consumer’s journey was arranged by the vendor to induce the consumer to buy.

As noted earlier, Book Ten of the *Civil Code of Quebec*, article 3117 sets out rules governing conflicts of laws which are similar to rules established in the Rome I Convention.

[61] For a more detailed discussion of the international and national initiatives, please see Appendix I to this paper.

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Rules governing Choice of Forum in consumer contracts

[62] This rule would be used to determine when a court may assert jurisdiction to hear a dispute arising in respect of a consumer contract:

1. In circumstances where :

- (a) the consumer contract resulted from a solicitation of business in the consumer's jurisdiction by or on behalf of the vendor and the consumer took all the necessary steps for the formation of the consumer contract in the consumer's jurisdiction; or
- (b) the consumer's order was received by the vendor in the consumer's jurisdiction; or
- (c) the consumer was induced by the vendor to travel to a foreign jurisdiction for the purpose of forming the contract and the consumer's travel was assisted by the vendor;

the consumer has the option to bring proceedings against the vendor either in the courts of consumer's jurisdiction or in the courts of the vendor's jurisdiction.

- 2. For the purposes of subsection 1(a), if a vendor clearly demonstrates that it took reasonable steps to avoid concluding contracts with consumers resident in a particular jurisdiction, it is deemed not to have solicited business in that jurisdiction.
- 3. A vendor may bring proceedings against the consumer only in the courts of the consumer's jurisdiction.
- 4. The provisions of section 1 may be varied by agreement only if the agreement:
 - (a) is entered into after the dispute has arisen; or
 - (b) allows the consumer to bring proceedings in courts other than those provided for in section 1.

Rules governing Choice of Law in consumer contracts

[63] This rule would be used to determine which jurisdiction's laws should apply to determine the rules applicable to a dispute in respect of a consumer contract.

1. The parties to a consumer contract may agree that the law of a particular jurisdiction will apply to the consumer contract.
2. No agreement as to the law applicable to the consumer contract will deprive a consumer of the protection to which he or she is entitled under the law of the consumer's jurisdiction provided that:
 - (a) the consumer contract resulted from a solicitation of business in the consumer's jurisdiction by or on behalf of the vendor and the consumer took all the necessary steps for the formation of the consumer contract in the consumer's jurisdiction; or
 - (b) the consumer's order was received by the vendor in the consumer's jurisdiction; or
 - (c) the consumer was induced by the vendor to travel to a foreign jurisdiction for the purpose of forming the contract and the consumer's travel was assisted by the vendor.

(Note: This provision recognizes that the parties cannot contract out of the essential elements of a consumer contract. Similarly, parts of the process of forming and enforcing a consumer contract may be essential. The appropriateness of contracting out of this process by way of mediation or dispute resolution provisions in consumer contracts should be addressed in the future.)

3. If there is no agreement as to the applicable law in a consumer contract, the law of the consumer's jurisdiction shall apply provided that at least one of the conditions set out in section 2 is met.
4. For the purposes of subsection 2(a), if a vendor clearly demonstrates that it took reasonable steps to avoid concluding contracts with consumers resident in a particular jurisdiction, it is deemed not to have solicited business in that jurisdiction.

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Conclusion

[64] In summary, clear rules of jurisdiction and choice of law are required for the protection of consumers and to assist businesses contracting in both the online and offline environment. Although a number of international initiatives are currently under review, international solutions appear to be far away. In light of this, it is important to consider whether adopting the above rules would provide a sound legal framework for resolving jurisdictional issues in Canada.

[65] The above rules are intended to develop a co-ordinated approach to answer both:

- (a) which court has jurisdiction to hear the dispute; and
- (b) which province or territory's laws govern the resolution of the dispute.

[66] Interested parties are invited to consider the following questions:

- Will the adoption of the above rules as general principles provide guidance and greater legal certainty for online consumer transactions conducted within Canada?
- Would the application of the rules work in the offline environment?
- Would the rules assist in ensuring that transactions on the Internet are governed by consistent principles – leading to predictable results regardless of the jurisdiction in which a particular buyer or seller resides?

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¹ American Bar Association. "London Meeting Draft: Achieving Legal and business Order in Cyberspace - A Report on Global Jurisdiction Issues Created by the Internet." American Bar Association Global Cyberspace Jurisdiction Project. [n.d.] p. 1. American Bar Association Network. Online. Available at <http://www.abanet.org/buslaw/cyber/initiatives/draft.rtf>; and Tasse, p 1.

²Uniform Court Jurisdiction and Proceedings Transfer Act, Uniform Conference of Canada. Online Available at <http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1c4>

³ The Uniform Court Jurisdiction and Proceedings Transfer Act proposes to replace these different jurisdictional rules with a uniform set of standards for determining jurisdiction. The Uniform Act would "give the rules of jurisdiction an express statutory form instead of leaving them implicit in each province's rules for service of process. In the vast majority of cases this Act would give the same result as existing law, but the principles are expressed in different terms." See: Introductory comments, paragraph 0.2. Online Available at <http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1c4>

⁴ Uniform Court Jurisdiction and Proceedings Transfer Act, see paragraph 3.2, which suggests that the existing rule that a court has jurisdiction over any person that is served with process in the forum province or territory and which permits a court to take jurisdiction on the basis of the defendant's presence alone, is of doubtful constitutional validity

⁵ In *Hunt v. T & N* [1993] 4 S.C.R. 289, [1993] S.C.J. No. 125, the Supreme Court of Canada held at page 20:

"...courts are required, by constitutional restraints, to assume jurisdiction only where there are real and substantial connections to that place." and in *Morguard v. De Savoye* [1990] S.C.J. No. 135 (1990), the Supreme Court of Canada held properly restrained jurisdiction is a precondition for the recognition and enforcement of a default judgment throughout Canada.

⁶ Sookman, Barry B. Sookman: Computer, Internet, and Electronic Commerce Law, Vol.3. Toronto: Carswell. 2002. P.11-33.

⁷ *Hunt v. T & N* [1993] 4 S.C.R. 289.

⁸ *Rudder v. Microsoft Corp.* [1999] O.J. No. 3778.

⁹ *Rudder v. Microsoft Corp.* [1999] O.J. No. 3778; and *Geist*, pp 45-50.

¹⁰ *Id.*, para, 18, 19 and 20; and *Geist* pp. 45-50.

¹¹ Ogilvy Renault Internet Group. "Jurisdiction and the Internet: Are Traditional Rules Enough?". July 1998. Uniform Law Conference of Canada. Online. 12 December 2001. Available at <http://www.law.ualberta.ca/alri/ulc/current/ejurisd.htm>.

¹² See Uniform Court Jurisdiction and Proceedings Transfer Act, subsection 11(2);

¹³ *Craig Broadcast Systems Inc. v. Frank N. Magid Associates Inc.* (1998), 123 Man. R. (2d) 252.

¹⁴ *Geist*.

¹⁵ For example, Stravitz, Howard B. "Personal Jurisdiction in Cyberspace: Something More is required on the Electronic Stream of Commerce." 49 S.C.L. Rev 925, 939 (1998); and Tasse, page 10.

¹⁶ Chissick, Michael and Alistair Kelman. Electronic Commerce: Law and Practice. 3rd Ed. London: Sweet & Maxwell. 2002. P. 122.

¹⁷ For a detailed review of consumer protection legislation in Canada see Tasse, Roger and Kathleen Lemieux. "Consumer Protection Rights in Canada in the Context of Electronic Commerce. March 1998. Office of Consumer Affairs. Online. Available at <http://strategis.ic.gc.ca/SGG/ca010031e.html>.

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¹⁸ Castel, J.G., Canadian Conflict of Laws. 4th Ed. Toronto: Butterworths. 1997. P.596-98.

¹⁹ Sookman page 10-35. Bank of Montreal v. Snoxell (1982), 143 E.L.R. (3d) 349.

²⁰ For example, the Hague Conference on Private International Law, The American Bar Association, the Internet Law and Policy Forum, the International Chamber of Commerce, the Global Business Dialogue, the United Nations Commission on International Trade Laws, the World Intellectual Property Organization and others are studying Internet jurisdictional issues.

²¹ Kessedjian, Catherine. "Summary of discussions ." Ottawa meeting on Electronic Commerce and International Jurisdiction, February 28 – March 1, 2000. Paper prepared with the co-operation of the private international law team of the Ministry of Justice of Canada. Preliminary Document No 12 of August 12 of August 2000, for the attention of the Nineteenth Session, p. 11. Online. Available at <http://www.cptech.org/ecom/jurisdiction/hague.html>.

²² See, for example, Consumers International <http://www.consumersinternational.org>

²³ See, for example, International Chamber of Commerce. "Jurisdiction and Applicable Law in Electronic Commerce. June 6, 2001. International Chamber of Commerce. Online. Available at <http://www.iccwbo.org/>.

²⁴ United States. Federal Trade Commission. Bureau of Consumer Protection. "Consumer Protection in the Global Electronic Marketplace: Looking Ahead." September 2000.

²⁵ Consumers International.

²⁶ Federal Trade Commission.

²⁷ Geist.