



UNIFORM LAW CONFERENCE OF CANADA

FINAL REPORT OF THE WORKING GROUP
on the
UNIFORM COURT JURISDICTION AND PROCEEDINGS
TRANSFER ACT (1994)

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**Final Report of the Working Group
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Uniform Court Jurisdiction and Proceedings Transfer Act (1994)
(August 2021)**

[1] At the 2020 annual meeting of the Civil section of the Uniform Law Conference of Canada, the working group presented an [interim report](#) and an [Appendix](#) on its progress in reviewing the Uniform Court Jurisdiction and Proceedings Transfer Act. The report contained a comprehensive list of issues relating to potential updates to the Uniform Act. The list was divided into three categories: first, issues requiring update and adjustment; second, issues requiring review which might require explanation without legislative amendment; and third, issues which did not require any action.

[2] The interim report listed seven issues for further review by the working group. Only two areas were unchanged: the first, a review of academic commentary on the transfer provisions, resulted in a decision not to take any action; the last, ordinary residence of a corporation was unchanged consistent with Supreme Court of Canada jurisprudence. The other six are addressed in the updated Uniform Act. In particular, (i) the treatment of consumers and employees and (ii) a consolidation of the *Moçambique* rule (including an important revision to an aspect of the rule) are significant additions to the Act. In addition, comments made during the discussions at the annual meeting were noted and considered by the working group.

[3] The interim report listed seven issues for further review by the working group. Only the first, a review of academic commentary on the transfer provisions, resulted in a decision not to take any action. The other six are addressed in the updated Uniform Act. In particular, (i) the treatment of consumers and employees and (ii) a consolidation of the *Moçambique* rule (including an important revision to an aspect of the rule) are significant additions to the Act. In addition, comments made during the discussions at the annual meeting were noted and considered by the working group.

[4] Here is how the working group addressed the seven issues identified for further review:

1. Transfer of Proceedings

After a review of the academic commentary, it was determined that there was no issue which required an amendment to the Act.

2. Residual Real and Substantial Connection

While there is no statutory amendment, the commentary explains how a court might assess territorial competence on the basis of a real and substantial connection (section 3(e)) in the absence of one of the presumptive connections (section 10). In addition, the commentary makes it clear that it would run counter to the philosophy

of the Act for a court to determine that a deliberately excluded presumptive connecting factor, in and of itself, should be sufficient for territorial competence (see commentary to section 10 of the revised Uniform Act).

3. Terminology

After a significant discussion, the working group determined to retain the term “territorial competence”. The implications for the use of this term are discussed in the commentary to section 2 of the revised Uniform Act.

4. The *Moçambique* Rule

This rule (established by the House of Lords decision in *British South Africa Co. v. Companhia de Moçambique*, [1893] AC 602 (HL)), provides that a court does not have the authority to rule on the issue of title to immovable property in another State. The 1994 Act did not address this rule as an aspect of subject matter competence. However, the working group determined that the Act should include explicit language about this rule as a matter of subject matter competence. Nevertheless, in doing so, it was crucial to reflect the exceptions to, and limitations of, the rule. The rule and the exceptions/limitations are set out in section 12.1 and the accompanying commentary.

5. Mandatory Party

The working group maintained the original decision not to include “necessary or proper” party as a basis for territorial competence. However, it recognized that there can be rare cases in which a person must be included in proceedings as a matter of law and that the Act needs to provide a basis for territorial competence in such cases if not otherwise covered. The working group elected to refer to this as a “mandatory” party. This basis of territorial competence appears in section 3(d.1) and the commentary provides a specific example of its application.

6. Consumers and Employees

There has been considerable discussion about the use of exclusive jurisdiction clauses in contracts between businesses and consumers or between employers and employees. These cases often involve a power imbalance with the consumer or employee as the weaker party. This raises issues about the fairness of such clauses.

The working group decided to deal specifically with consumers and employees by giving them the option to treat an exclusive jurisdiction clause as non-exclusive. In the context of the redrafted section 11, which now deals specifically with both exclusive and non-exclusive jurisdiction agreements, this allows consumers and employees to avoid the higher “strong cause” hurdle normally required to override an exclusive jurisdiction clause. Instead, jurisdiction agreements would be dealt with under the less stringent *forum non conveniens* analysis.

7. Ordinary Residence of a Corporation

The working group determined to leave these provisions unchanged. They are consistent with the Supreme Court of Canada's approach to jurisdiction over a corporation.

Activities of the Working Group

[5] The working group met bi-weekly, commencing in January 2021. It was clear that many of the issues were interconnected and nuanced. As a result, some tentative decisions remained unsettled until the final stages. Ultimately, at the end of March the group settled on its policy decisions and a comprehensive set of drafting instructions was prepared.

[6] The interconnection between concepts meant that some revisions were needed after the draft was received.

[7] Saskatchewan undertook the drafting process. Professor Blom spearheaded the revision and updating of the commentary.

[8] The Act dates from 1994 and has been enacted in four jurisdictions (British Columbia, Nova Scotia, Saskatchewan and Yukon). As a result, the introduction and commentaries have to reflect the context 25 years later and explain the proposed changes, some of which flow from the jurisprudence which has developed over that time.

[9] Throughout, the working group took as its starting point the Consolidated Act, incorporating a few minor post-1994 amendments. Jurisdictions which have implemented the Uniform Act can work from the Amending Act. Jurisdictions that have not, can implement the updated Consolidated Act.

[10] In devising its proposals, the working group considered equivalent rules in the Civil Code of Québec. While the updated Act remains largely consistent and compatible with the Civil Code of Québec, there are a number of remaining differences, reflecting distinct policy choices. These differences are noted in the commentary.

[11] The members of the working group are:

Peter J. M. Lown QC – Alberta (Chair)

Joost Blom QC – Univ of British Columbia (Principal Researcher)

Bradley Albrecht – Gov't of Alberta

Frank Pignoli – Gov't of Ontario

John A. Lee – Gov't of Ontario

Blair Barbour - Gov't of Prince Edward Island

Darcy McGovern QC – Gov't of Saskatchewan

Laurence Bergeron - Gouv. du Québec

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Michael Hall - Gov't of New Brunswick
Arthur Close QC - British Columbia **
Stephen G.A. Pitel –Western University, Ontario
Geneviève Saumier – McGill University, Québec

[12] Some credits are very much in order. Professor Joost Blom has served as the subject matter expert in preparing the materials for the group. We have had the benefit of three superb academics. We have also had the benefit of three members of the original 1994 working group,

[13] The working group has worked assiduously and to a tight timeframe. I thank each member for their time and effort and especially for the constructive and collegial way that they have contributed.

[14] Many thanks as always to Clark Dalton for his amazing project support and to Kathleen Cunningham for her administrative support.

[15] It has been my pleasure to chair this group and to submit this report.

Peter J M Lown QC, Chair.

**Almost at the very end of our work, we received the sad news that Arthur passed away suddenly. This is a blow personally, to the Working Group and the Conference as a whole. Arthur's contribution to everything he touched was constructive and immense. We will miss him terribly.