

Uniform Court Jurisdiction and Proceedings Transfer Amendment Act (2021)

Short title

1 This Act may be cited as the *Uniform Court Jurisdiction and Proceedings Transfer Amendment Act, 2021*.

***Uniform Court Jurisdiction and Proceedings Transfer Act* amended**

2 The *Uniform Court Jurisdiction and Proceedings Transfer Act* is amended in the manner set forth in this Act.

Section 1 amended

3 Section 1 is amended by adding the following definitions in alphabetical order:

“**consumer contract**” means a contract that is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession;

“**employment contract**” means a contract of individual employment”.

Section 3 amended

4 Section 3 is amended:

(a) **by striking out “or” after clause (d);**

(b) **by adding the following clause after clause (d):**

“(d.1) that person is a mandatory party in a proceeding that is brought against another person in which the court has territorial competence; or”.

Section 10 amended

5 Section 10 is amended:

(a) **by repealing subclause (e)(iii) and substituting the following:**

“(iii) the contract is a consumer contract that resulted from a solicitation of business in [enacting province or territory] by or on behalf of the seller”; **and**

(b) **by repealing clause (h) and substituting the following:**

“(h) concerns a business carried on in [enacting province or territory] by the person against whom the proceeding is brought”.

New section 11

6 Section 11 is repealed and the following substituted:

“Discretion as to the exercise of territorial Competence

(1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court

Uniform Law Conference of Canada

of another state is a clearly more appropriate forum in which to hear the proceeding.

- (2) Subject to subsections (3) to (5), a court, in deciding whether a court of another state is a clearly more appropriate forum in which to hear the proceeding, must consider the circumstances relevant to the proceeding, including:
 - (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;
 - (b.1) an agreement between the parties that designates a state where such a proceeding may be brought but does not exclude other states;
 - (c) the desirability of avoiding a 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.
- (3) If the parties to a proceeding have agreed that such a proceeding must be brought exclusively in a state other than [*enacting province or territory*], the court must decline to exercise its territorial competence unless strong cause is shown why the agreement should not be enforced.
- (4) If the parties to a proceeding have agreed that such a proceeding must be brought exclusively in [*enacting province or territory*], the court must exercise its territorial competence unless strong cause is shown why the agreement should not be enforced.
- (5) If a proceeding that is otherwise subject to subsection (3) or (4) concerns a consumer contract or an employment contract, at the option of the consumer or the employee, as the case may be,
 - (a) subsections (3) and (4) do not apply, and
 - (b) the agreement that such a proceeding must be brought exclusively in a designated state shall be deemed for the purposes of clause (2)(b.1) not to have excluded states other than the designated state.

Section 12 amended

12 If there is a conflict or inconsistency between this Part and another Act of [*enacting province or territory*] or of Canada that expressly:

- (a) confers jurisdiction or territorial competence on a court; or
- (b) denies jurisdiction or territorial competence to a court,

that other Act prevails.

New Part 2.1

1 The following Part is added after Part 2:

**“PART 2.1
SUBJECT MATTER COMPETENCE OF COURTS OF
[ENACTING PROVINCE OR TERRITORY]**

“Definition for Part

12.3 In this Part, ‘**court**’ means a court of [*enacting province or territory*].

“Immovable property outside [*enacting province or territory*]

12.5(1) A court lacks subject matter competence in a proceeding that is principally concerned with a question of the title to, or the right to possession of, immovable property outside [*enacting province or territory*].

(2) For greater certainty, subsection (1) does not deprive a court of subject matter competence in a proceeding that concerns trespass to, or any other tort affecting, immovable property situated outside [*enacting province or territory*] and that is not principally concerned with a question of the title to or the right to possession of that property.

(3) Notwithstanding subsection (1), a court has subject matter competence in a proceeding relating to immovable property situated outside [*enacting province or territory*] if the proceeding concerns a contractual or equitable obligation that can be effectively enforced without the assistance of a court in the state where the property is situated.

“Conflicts or inconsistencies with other Acts

12.7 If there is a conflict or inconsistency between this Part and another Act of [*enacting province or territory*] or of Canada, that other Act prevails if it expressly:

- (a) confers subject matter jurisdiction or subject matter competence on a court; or
- (b) denies subject matter jurisdiction or subject matter competence to a court”.

Section 14 amended

2 Clause 14(1)(b) is repealed and the following substituted:

- (b) under section 11, the [superior court] should decline to exercise its territorial competence in the proceeding in favour of the receiving court.