



eLaw - Litigation Update

April/May 2012 - No. 55

ISSN 1916-3932

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Supreme Court Simplifies Framework for Assessing Jurisdiction Over Foreign Defendants

In [Club Resorts Ltd. v. Van Breda](#), 2012 SCC 17 the Supreme Court formulates an even simpler framework for the "real and substantial connection" test for assessing jurisdiction over foreign defendants than the eight factor test developed by the Ontario Court of Appeal in its [earlier decision](#) in the same case. According to the Supreme Court, the four presumptive factors entitling a Canadian court to assume jurisdiction over a tort dispute are: (a) the defendant is domiciled or resident in the province; (b) the defendant carries on business in the province; (c) the tort was committed in the province; and (d) a contract connected with the dispute was made in the province. (para. 90) This list is not closed, however, and "(o)ver time, courts may identify new factors which also presumptively entitle a court to assume jurisdiction," taking into account the relevant considerations outlined in para. 91. In this case, the defendant (a company which managed the Cuban resorts where both plaintiffs were injured) was unable to rebut the presumptive connecting factors to Ontario established by the plaintiffs.

On the doctrine of *forum non conveniens* and the exercise of jurisdiction, the court stressed that while the court can decline jurisdiction on the basis that another jurisdiction is more appropriate, a clear distinction must be drawn between the existence and the exercise of jurisdiction. *Forum non conveniens* comes into play only when jurisdiction has been established and the defendant both raises the doctrine and demonstrates why another forum should be preferred.

The court subsequently applied the *Van Breda* analysis in two defamation cases ([Éditions Écosociété Inc. v. Banro Corp.](#), 2012 SCC 18 and [Breedon v. Black](#), 2012 SCC 19), finding the Ontario courts had jurisdiction where the impugned book had been checked out of an Ontario library (*Banro*) and the allegedly defamatory statements had been republished in three Ontario newspapers (*Black*).

Many commentators have weighed in on the significance of these decisions. See, for example:

The Supreme Court of Canada Conflict of Laws Trilogy: [Part I](#) and [Part II](#), Trial Warrior blog;

- [The SCC Clarifies the "Real and Substantial Connection" Test and Order in the Court? The Van Breda Trilogy - Part II - A New Test for Jurisdiction Simpliciter](#), McCarthy Tétrault;
- [Court Jurisdiction - the Supremes Weigh in \(Again\)](#), Slaw; and
- [Breedon v Black and Éditions Écosociété v Banro: Exercising Jurisdiction in Multijurisdictional Defamation Cases](#), The Court.

Guidance Needed on Reimbursement for Out-of-Province Medical Expenses: MBCA

A motor vehicle accident victim denied reimbursement for successful medical treatment obtained in Germany by both Manitoba Health and MPIC was granted leave to appeal in [Harder v. Manitoba Public](#), 2012 MBCA 20. The court was concerned that the Automobile Injury Compensation Appeal Commission may not have considered the effect of [s.6 of the regulations](#) in reaching its (otherwise reasonable) conclusion that *The Health Services Insurance Act*, not *The Manitoba Public Insurance Corporation Act*, provides health care benefits for Manitobans. Given the uncertainty as to the meaning and implications of s.6 it would be unjust to dismiss the appeal said the court, which noted that the section "provides, in effect, that reimbursement for an expense payable for out-of-province medical care (for an insured service) is subject to a maximum of such amount as MPIC considers reasonable and proper" and may address the control concerns identified by MPIC. (para.38)

Claims Related to Brian Sinclair Death Struck: MBQB

The master strikes the *Charter*, breach of privacy, and public nuisance claims brought by Brian Sinclair's family in [Grant v. Winnipeg Regional Health Authority et al](#), 2012 MBQB 88, but allows their claim for the costs of the inquest into his death to proceed against the WRHA. *Charter* rights and remedies are personal and die with the individual, said the court, hence the family had no standing to pursue this remedy. Similarly, an estate has no privacy that may be violated for the purposes of a tort action under *The Privacy Act*. Noting the necessity of involving Sinclair's family in the inquest, and the fact that other Canadian courts have been open to the possibility that inquest costs are recoverable as damages, the court refused to strike the family's claim for costs.

Constitutional Articles Online

As noted in this [Slaw post](#), the [Supreme Court Law Review](#) Constitutional Cases collection is now available free online and in a searchable format. The collection currently contains over 200 scholarly articles on federalism and constitutional rights dating back to 2001, and the project is still in development.

Recent Publications

[Mediation Advocacy \(Again\)](#) - this Slaw post discusses an article by the Chief Justice of the Ontario Court of Appeal on Advocacy in Mediation. It highlights the differences between mediation advocacy and traditional court advocacy and offers tips on the former.

[Ontario's Sorry Court Document Management System Ripped by Judge](#) - Simon Fodden's post on Slaw quotes from Justice Brown's decision in [Romspen Investment Corp. v. 6176666 Canada Ltée](#). 2012 ONSC 1727 in which he denounces the "systemic failures and delay" of the court's document management system.

Upcoming CPD Programs: LSM

[The Advent of e-Filing in Manitoba: Are you Ready?](#) - This program will address what the advent of e-filing (in progress in the Queen's Bench) will mean for your practice. It will be held May 16, 2012, from 1:00 to 4:00 p.m. at the Law Society classroom.

[Current Trends in Personal Injury Damages in Canada](#) - Diarize now to attend Professor Daniel Gardner's review of trends in Canadian personal injury damages on June 20, 2012, from 9:00 to 11:00 a.m. at the Law Society classroom.

MBA Programs

The Civil Litigation section of the MBA is presenting the program [Avoiding Complaints and Lawsuits from Unhappy Clients](#) on May 14, 2012, from 12:00 noon to 1:30 p.m. at the Law Society classroom. [RSVP](#) online by 12:00 noon, May 11, 2012 or call 927-1211.

[Arbitration Tips: Practice Pros and Cons from the Perspective of the Adjudicators](#) - Join experienced arbitrators Arne Peltz and A. Blair Graham, Q. C. as they share their recommendations on effective advocacy before arbitrators. The program takes place from 12:00 noon to 1:30 p.m. on May 25, 2012 at the Law Society classroom.

[Small Claims Procedures](#) - Presenters Georgina Garrett and Cynthia Lau will discuss proper service, declarations of service, how to effectively advocate, what to expect when going for default judgment, costs, and calculating interest at this lunch hour session hosted by the Young Lawyers section of the MBA. It takes place from 12:00 noon to 1:30 p.m. on June 7, 2012 at the Law Society classroom.

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