

New Article: Jurisdiction Clauses in Canada

Tanya Monestier (Roger Williams University School of Law) has published an article (available [here](#)) addressing the Supreme Court of Canada's decision in *Douez v Facebook, Inc.* (available [here](#)).

The abstract reads: Every day, billions of people use the online social media platform, Facebook. Facebook requires, as a condition of use, that users “accept” its terms and conditions – which include a forum selection clause nominating California as the exclusive forum for dispute resolution. In *Douez v. Facebook*, the Supreme Court of Canada considered whether this forum selection clause was enforceable, or whether the plaintiff could proceed with her suit in British Columbia. The Supreme Court of Canada ultimately decided that the forum selection clause was not enforceable. It held that the plaintiff had established “strong cause” for departing from the forum selection clause. The Court premised its decision on two primary considerations: the contract involved a consumer and was one of adhesion, and the claim involved the vindication of privacy rights. The Court's analysis suffers from several major weaknesses that will undoubtedly cause confusion in this area of law. This Article will examine those weaknesses, and argue that the Supreme Court of Canada actually abandoned the strong cause test that it claimed to be applying. The consequence of the *Douez* decision is that many forum selection clauses – at least in the consumer context – will be rendered unenforceable. While this may be a salutary development from the perspective of consumer protection, it will undoubtedly have an effect on companies choosing to do business in Canada.