

Forum Non Conveniens and Jurisdiction Clauses in Ontario

The Court of Appeal for Ontario has released *Red Seal Tours Inc. v. Occidental Hotels Management B.V.* (available [here](#)). The decision is of note for three reasons.

- The court reverses the motions judge's decision not to grant a stay of proceedings. When these sort of conflicting decisions happen on the same facts, it can raise concerns about the way these motions prolong preliminary disputes in litigation.
- The court treats a contract that did not contain a jurisdiction clause as "part and parcel" of a series of related contracts that did contain such a clause (in favour of Aruba). The motions judge gave no effect to the clause, but the appeal court gives it central and crucial weight.
- The court's order is to "permanently stay" the proceedings. For more on this language see C. Dusten and S.G.A. Pitel, "The Right Answer to Ontario's Jurisdictional Questions: Dismiss, Stay or Set Service Aside" (2005) 30 *Advocates' Quarterly* 297 at 308. I have troubles with the concept of a permanent stay, since by its nature a stay has a temporary quality (unlike a dismissal). I wonder if a "permanent stay" here could be seen to signal a move towards the notion of dismissing cases on the basis of forum non conveniens recently seen in the United States Supreme Court in *Sinochem*.