

Revised Canadian Statute on Jurisdiction

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Many Canadian and some other conflicts scholars will know that the Uniform Law Conference of Canada (ULCC) has drafted (in 1994) model legislation putting the taking of jurisdiction and staying of proceedings on a statutory footing. This statute, known as the Court Jurisdiction and Proceedings Transfer Act (CJPTA), has subsequently been adopted and brought into force in 4 of Canada's 13 provinces and territories (British Columbia, Saskatchewan, Nova Scotia, Yukon).

The ULCC has now released a revised version of the CJPTA. It is available [here](#) and background information is available [here](#).

The most notable changes, each explained at some length in the commentaries, are as follows: 1. New provisions on exclusive and non-exclusive forum selection clauses in the staying of proceedings (s. 11); 2. A new section on subject matter competence dealing with the foreign immovable property rules (s. 12.2); 3. Use of the phrase "clearly more appropriate" for a stay of proceedings based on *forum non conveniens* (s. 11); 4. Territorial competence in respect of necessary parties (s. 3(d.1)); 5. Clarification of the meaning of the presumptive connection based on carrying on business in the forum (s. 10(h)).

Disclosure: I was a member of the Working Group for the revised statute. Solely in a personal capacity, I can offer three observations on the revisions. First, s. 12.2 is an attempt to largely (though not perfectly) codify the common law's *Mocambique* rule regarding jurisdiction over foreign immovable property (classified as subject matter competence under the CJPTA). Some may find this interesting as there are not many available codifications of this complex rule. Second, the role given to exclusive forum selection clauses reflects the fact that under Canadian common law these are not treated as absolutely binding and instead are subject to a "strong cause" test before they can be disregarded (see ss. 11(3) and (4)). Section 11(5), however, allows a consumer or employer to treat such a clause as non-exclusive rather than exclusive (but also rather than disregarding it altogether). Third, there is a provision for taking jurisdiction

(called territorial competence in the CJPTA) over a defendant who is a “necessary party” (s. 3(d.1)). Canadian common law has largely rejected “necessary or proper party” as an acceptable basis on which to exercise jurisdiction, but this flows from the undue breath of what can constitute a “proper party”. The statutory provision uses a very narrow meaning of “necessary party”.

It will now fall to the provinces and territories that have enacted the CJPTA to determine how to act on the changes. It will also be interesting to see if the revised and updated version generates any interest in the provinces and territories that have not so enacted.

All best wishes of the season.