Supreme Court of Canada to Hear Jurisdiction Appeal

Canada's highest court does not grant leave to appeal in many cases involving private international law. In November 2025 it granted leave to appeal from *NHK Spring Co., Ltd. v Cheung*, 2024 BCCA 236, in which the British Columbia Court of Appeal agreed with the court below in holding that it had jurisdiction to hear a price fixing class action. The action is interesting because it involves what could be described as a "foreign" conspiracy that had effects within Canada.

The defendants are Japanese entities and the claim alleges that they conspired to fix the price of "suspension assemblies" which are a component of hard disk drives which are in turn a component of things like computers. The claim alleges that Canadians purchased products that contained these assemblies and because of the price fixing they paid more than they otherwise would have done.

The defendants object to being sued in British Columbia. As the Court of Appeal explained (at [11]), "None of the appellants have a relevant personal presence in Canada. Their headquarters are overseas. They do not operate in Canada. They do not carry out business in Canada for Assemblies. There have been no direct sales of Assemblies in Canada. There has been no pleading that they conspired to fix prices in Canada, actually fixed prices in Canada, or allocated markets within Canada. The initial action does not name a defendant located in Canada and there is no Canadian market for Assemblies. That market exists outside Canada. Assemblies are low cost components and any overcharge in relation to a particular final product is arguably negligible."

British Columbia is one of the provinces that has adopted a statute on jurisdiction (the CJPTA) and it presumes a real and substantial connection to the forum, and thus territorial competence (jurisdiction), in a proceeding concerning a tort committed in the forum (s 10(g)). The Court of Appeal relied on several of its own prior decisions in stating (at [43]) that "The judge's statement that the tort of conspiracy is **committed where the harm occurs**, even if the conspiracy is entered into elsewhere, is indisputably correct" (emphasis added). It went on to conclude that the presumed connection had not been rebutted by the defendants.

The parties' written arguments for and against leave to appeal are available here. The defendants seek to have the SCC develop the law on how the place of a tort is identified. They raise the concern that the focus on the location of the harm does not sit well with earlier SCC decisions, notably *Club Resorts* (available here) rejecting the place of damage or injury as a sufficient jurisdictional connection. The defendants also ask the SCC to provide more clarification on how a presumption of jurisdiction is to be rebutted, though it should be noted that since those arguments were filed the SCC has released *Sinclair v Venezia Turismo*, 2025 SCC 27 which does contain significant discussion of that stage of the analysis.

In response, the plaintiffs argue that the law regarding the place of the tort of conspiracy for jurisdiction purposes is well-settled and not in need of development or revision. In the context of taking jurisdiction, it is acceptable for more than one place to be considered the place of a tort; a single place need not be identified. The plaintiffs rely on the longstanding approach in *Moran v Pyle National (Canada) Ltd*., [1975] SCR 393. Not surprisingly, both sides of the dispute rely on various aspects of the competing decisions in the English *Brownlie* litigation.

As is its practice, the SCC did not provide reasons for granting leave to appeal. We have to await clues in the oral argument and then of course the subsequent written decision to determine what the SCC thought warranted its involvement.