

Personal Property Securities in Australia

The Commonwealth Attorney-General has recently released a Consultation Draft of the Personal Property Securities Bill 2008 and an accompanying commentary. The Bill aims to provide a national system to regulate security interests in all property other than land, and would replace over 70 Commonwealth, State and Territory enactments.

As one can imagine, the Bill contains substantial provisions relating to choice of law (Part 2 Div 7) and jurisdiction (Part 11 Div 5).

In general, Australian law will apply to security over property located in Australia (s 45), and in other circumstances the law of the place where the grantor is located will apply (s 46). Specific rules are proposed regarding foreign intellectual property (s 47), minerals (s 48), investment instruments and non-negotiable documents of title (s 49), investment entitlements (s 50), and bank accounts (s 51). Rules will also cover circumstances where property is brought into or taken out of Australia (ss 52-33), or where the grantor relocates to another jurisdiction (s 54).

The Bill appears to envisage that foreign law may govern some aspects of personal property securities that are otherwise regulated by the Bill. If foreign law applies, the Bill only picks up the relevant foreign law governing the rights, obligations and duties of debtor (or grantor of security) against the secured party in relation to collateral (i.e. the property that is subject to the security) (s 43). This would, it seems, exclude aspects of the debtor-creditor relationship unrelated to security, and may also exclude foreign choice of law rules. However, the operation of these provisions is not entirely clear.

So far as jurisdiction is concerned, the Bill is unusual among Commonwealth enactment in excluding the operation of s 39B of the *Judiciary Act 1903*, and the *Jurisdiction of the Courts (Cross-Vesting) Act 1987*. Rather, the Bill contains its own provisions investing Australian state and federal courts with jurisdiction (s 261) and providing for the transfer of proceedings between courts (s 263).

The Attorney-General is seeking public comment on the Bill as a whole, and there

are also specific questions raised for discussion. Questions relating to private international law include:

- Does the common law [relating to jurisdiction of Australian courts] provide a sufficient jurisdiction for courts to act in relation to security interests?
- To what extent should the Bill implement rules consistent with the Hague Securities Convention?
- Are there any aspects of the Hague Securities Convention that should be omitted from the Bill (Australia could not adopt the Convention unless Australia's domestic law was consistent with the convention).
- Should the Bill require a securities intermediary who, in Australia, offers investment entitlements governed by the law of another country to operate an office in that other country of the kind contemplated by the Hague Securities Convention (and to comply with any licensing and other regulatory requirements that may exist in that other country concerning the operation of offices of that kind)?

The deadline for submissions is August 15th 2008. More information can be found [here](#).

A short but interesting Australian case

Armacel Pty Ltd v Smurfit Stone Container Corporation [2008] FCA 592 is a recent case in which the judgment of Jacobson J in the Australian Federal Court, though short, raises a number of interesting issues.

The case arose out of a dispute between Armacel Pty Ltd, an Australian company, and Smurfit Stone Container Corporation, a US company, concerning an intellectual property licensing agreement governed by the law of New South Wales, Australia. Shortly before Armacel instituted the Australian proceedings, Smurfit instituted proceedings against Armacel in a US District Court concerning

the same dispute. The US Court decided that, applying US principles of contractual interpretation as required by US principles of private international law, a New South Wales jurisdiction clause in the licensing agreement was not an exclusive jurisdiction clause. Accordingly, it dismissed Armacel's motion for dismissal of the US proceedings for want of jurisdiction. Smurfit then applied for a stay of the Australian proceedings on *forum non conveniens* grounds.

Jacobson J refused to allow Armacel to re-argue the question of whether the jurisdiction clause was an exclusive jurisdiction clause. Armacel was held to be estopped from raising that issue, since it had already been the subject of a decision in the US proceedings. This was so even though that decision was made by reference to US principles of contractual interpretation as the law of the forum, whereas Jacobson J suggested it ought to have been made by reference to New South Wales law as the governing law of the contract — the estoppel operated regardless of any such criticism.

This conclusion was important because, absent the estoppel, Jacobson J would have construed the clause as an exclusive jurisdiction clause. The clause stated:

This Agreement must be read and construed according to the laws of the State of New South Wales, Australia and the parties submit to the jurisdiction of that State. If any dispute arises between the Licensor and the Licensee in connection with this Agreement or the Technology, the parties will attempt to mediate the dispute in Sydney, [New South Wales,] Australia.

The parties also expressly agreed that New South Wales law would prevail in the event of a conflict between those laws and the laws of the jurisdiction in which the equipment the subject of the licensing agreement was located. Perhaps somewhat surprisingly, Jacobson J concluded that even though the jurisdiction clause was not exclusive on its face, it should be construed that way. This was because the parties negotiated at arm's length, must be presumed to have intended some certainty as to where their disputes would be litigated, had agreed to compulsory mediation in New South Wales, and had sought to avoid the circumstance that a New South Wales Court might have to apply the law of another jurisdiction because that was the location of the relevant equipment. Jacobson J further considered that the submission to 'the jurisdiction of [New South Wales]' also included the Federal Court exercising Australian federal

jurisdiction in New South Wales.

In any event, because of the estoppel, Jacobson J proceeded on the basis that the clause was non-exclusive. In that light, having regard to the fact that the US proceedings were pending at the time the Australian proceedings were instituted and the closer factual connection with the US than Australia, Jacobson J stayed the Australian proceedings. However, he gave Armacel liberty to apply to have the stay lifted in case developments in the US proceedings made that appropriate. In particular, in the Australian proceedings, Armacel sought to make claims under the Australian *Trade Practices Act 1974* (Cth) based on alleged misrepresentations by Smurfit during the negotiation of the licensing agreement. Expert evidence from Smurfit's US counsel, which Jacobson J accepted, was to the effect that such claims could be brought in the US proceedings. However, if the US Court ultimately declined to apply the *Trade Practices Act*, Jacobson J said it may be appropriate to lift the stay. Jacobson J also made the stay conditional on Smurfit filing an appearance in the Australian proceedings, and thereby submitting to the Federal Court's jurisdiction, and participating in a mediation in Sydney, both of which Smurfit had declined to do, as required by the licensing agreement.

Conference: International Society of Family Law

From 16th to 20th September 2008, the **13th World Conference of the International Society of Family Law** will take place in Vienna. The topic of the conference is "Family Finances".

A preliminary programme as well as further information on the venue, registration etc. can be found on the website of the University of Vienna.

(Many thanks to Thomas Thiede (Vienna) for the tip-off.)

Annotation on ECJ Judgment in “FBTO Schadeverzekeringen”

Thomas Thiede and *Katarzyna Ludwichowska* (both Vienna) have written a comment (in German) on the ECJ’s judgment in case C-463/06 (*FBTO Schadeverzekeringen*) in the latest issue of the legal journal *Versicherungsrecht* (VersR 2008, 631 et seq.).

An English abstract has been kindly provided by the authors:

The authors criticise the judgment of the European Court of Justice from 13 December 2007, in which the Court ruled that the reference in Art. 11(2) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters to Art. 9(1)(b) of that Regulation is to be interpreted as meaning that the injured party may bring an action directly against the liability insurer of the person liable before the courts of the Member State where that injured party is domiciled. They present and counter the arguments given by the ECJ and show the possible negative consequences of the solution accepted by the Court, such as the aggravation of forum shopping or the possible multiplicity of proceedings concerning the same incident in various Member States. The authors also emphasise that - although the case decided by the ECJ concerns only motor vehicle insurance - the reference in Art. 11(2) of Regulation 44/2001 applies to all - also non-compulsory - third-party liability insurance, which means that the Court’s interpretation will have a very broad impact.

See with regard to this case also our previous posts on the judgment, the referring decision as well as an annotation on the referring decision.

Swiss Institute of Comparative Law: Prof. Sturm's Lecture on "Le nom en droit international privé"

✘ On **Thursday 15 May 2008, at 17.00**, the **Swiss Institute of Comparative Law** (ISDC, Lausanne) will host a lecture (in French) by *Prof. Fritz Sturm* (University of Lausanne) on "**Le nom en droit international privé**" ("Name in Private International Law").

The lecture is one of the monthly seminars on private international law and comparative law organized by the ISDC ("Les jeudis de l'ISDC"). A small fee is required for participation (free for students and academics). Further information (and the full list of seminars) is available [here](#).

A Legislative Solution For Cross-Border Defamation Claims

The State of New York, and—recently—the United States Congress—are presently considering enacting laws that would give American authors legal recourse when they are sued abroad for defamation over literary works that would otherwise fall within the broad protections of the First Amendment to the United States Constitution.

In New York, both the Assembly and its Senate have unanimously passed a bill (dubbed the "Libel Terrorism Protection Act" (S.6687/A.9652)) that would give authors who are sued for libel abroad the right to obtain a declaration that such judgments are unenforceable because their works are protected under American

law. Both the U.S. House and Senate are now considering federal legislation that would give authors the right to countersue those who have sued them for defamation in foreign courts, and obtain more than three times the amount of the libel judgment of the foreign court, if the American writer could prove the accuser was trying to intimidate the author from exercising his or her First Amendment rights.

As this article explains, the conflict between foreign judgments and the First Amendment has been brewing since 1941, when the U.S. Supreme Court starkly distinguished American protection of speech from that of England. Only recently, however, as England has become a choice venue for libel plaintiffs from around the world, has that country's libel law come to have a disturbing impact on the First Amendment. The case against Rachel Ehrenfeld in England by Saudi banker Khalid Bin Mahfouz is illustrative. Her 2003 book named Mr. Bin Mahfouz as a possible funder of terrorism. Twenty-three copies of the book were sold in England, which led Mr. Bin Mahfouz to sue there. Ms. Ehrenfeld refused to appear before the English courts, and a judgment against her was entered in the amount of \$225,000. Ms. Ehrenfeld has sought a declaratory judgment in New York determining that the English judgment was not enforceable here, and that her work was protected under American law. But the New York Court of Appeals determined that her suit could not be heard under existing state law (because the state's long-arm statute did not authorize personal jurisdiction over Mr. Bin Mahfouz), and it was the duty of the legislature to change that law if it sees fit. *See Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501 (N.Y. App. 2007). It appears now that that some change in that direction is starting to occur. English courts, however, are not the only one's creating this alleged conflict; consider Yahoo!'s cross-border struggle with French authorities over Nazi-era materials on its auction website. *See Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1204 (9th Cir. 2006).

More commentary on this pending legislation is available [here](#).

Book: La Unión Europea ante el Derecho de la Globalización

✘ An interesting volume, collecting the contributions presented at the **Seminario de Otoño de Derecho Internacional Privado** (Fall Seminar on Private International Law), hosted in October 2007 by the **University Carlos III of Madrid**, has been recently published by Editorial Colex, under the editorship of *Prof. Alfonso Luis Calvo-Caravaca* and *Prof. Esperanza Castellanos Ruiz*: **La Unión Europea ante el Derecho de la Globalización**.

The papers (in Spanish, Italian and Portuguese) cover various aspects of European Private International Law, analysing its current development in the light of issues arising from globalization. Here's the table of contents:

- *Luís de Lima Pinheiro*: O direito de conflitos das obrigações extracontratuais entre a comunitarização e a globalização - uma primeira apreciação do regulamento comunitario Roma II;
- *Hilda Aguilar Grieder*: La voluntad de conciliación con las directivas comunitarias protectoras en la propuesta de reglamento "Roma I";
- *Alfonso Luis Calvo Caravaca* and *Celia M. Caamiña Domínguez*: El caso Klimt;
- *Javier Carrascosa González*: Sociedad cooperativa europea: aspectos de derecho internacional privado;
- *Esperanza Castellanos Ruiz*: El convenio de Roma de 1980 ante los tribunales españoles: balance de 15 años de vigencia;
- *Ma. José Castellanos Ruiz*: Contencioso Airbus-Boeing;
- *Ma. Pilar Diago Diago*: Aproximación a la mediación familiar desde el derecho internacional privado;
- *Pietro Franzina*: Il regolamento "Roma II" sulla legge applicabile alle obbligazioni extracontrattuali;
- *Rafael Gil Nievas* and *Javier Carrascosa González*: Consideraciones sobre el reglamento 805/2004 de 21 abril 2004 por el que se establece un título ejecutivo europeo para créditos no impugnados;
- *Dario Moura Vicente*: Perspectivas de la armonización y unificación internacional del derecho privado en una época de globalización de la economía;

- *Carola Ricci*: Il foro della residenza abituale nel regolamento N° 2201/2003 e nella proposta Roma III;
- *Juliana Rodríguez Rodrigo*: Aplicación del derecho de la competencia a los baremos de honorarios de abogados: Arduino y Cipolla;
- *Stefania Serafini*: Il diritto europeo della concorrenza e le risposte alla sfida della globalizzazione. Un caso esemplare: la valutazione delle concentrazioni nel Reg. CE n. 139/2004.

Title: **La Unión Europea ante el Derecho de la Globalización**, edited by *Alfonso Luis Calvo-Caravaca* and *Esperanza Castellanos Ruiz*, Editorial Colex, Madrid, 2008, 515 pages.

ISBN: 978-8-48-342113-0. Price: EUR 70.

(Many thanks to Pietro Franzina, University of Ferrara, for the tip-off)

Conference: “Le droit français et le droit brésilien d’aujourd’hui : éléments de comparaison”

Centre du droit de l’entreprise at Université Robert Schuman (URS) organizes on 17 June 2008, at Maison Interuniversitaire des Sciences de l’Homme-Alsace (MISHA) (5 allée du Général Rouvillois, Strasbourg), a comparative law day with several private international law related topics on the agenda. The scope of the comparative law day is marked in its title: **“Le droit français et le droit brésilien d’aujourd’hui : éléments de comparaison”** (Contemporary French law and Brazilian law: elements of comparison). The scientific agenda can be consulted here.

Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (3/2008)

Recently, the May/June issue of the German legal journal “Praxis des Internationalen Privat- und Verfahrensrechts” (**IPRax**) was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- **M. Stürner**: “Staatenimmunität und Brüssel I-Verordnung - Die zivilprozessuale Behandlung von Entschädigungsklagen wegen Kriegsverbrechen im Europäischen Justizraum” - The English abstract reads as follows:

The article examines the impact of the law of State immunity on the scope of international jurisdiction under the Brussels I Regulation. Recently the appellate court of Florence, Italy, has granted enforceability to a judgment in which the Greek Supreme Court, the Areios Pagos, had awarded damages to descendants of victims of a massacre committed in 1944 by German SS militia in the village of Dístomo, Greece. Both Greek and Italian courts have based their jurisdiction on an exception to State immunity which was held to exist in cases of grave human rights violations. This standpoint, however, does not reflect the present state of public international law, nor does it take into account the intertemporal dimension of public international law rules. Neither under the Brussels I regime, nor under domestic Italian law a judgment which was rendered in violation of customary State immunity rules can be recognized or enforced. The Brussels Regulation has a limited scope of application. It is designed to respect public international law rules of State immunity, not to trump them. The Regulation therefore does not apply in cases where the defendant enjoys immunity from civil jurisdiction.

- **L. de Lima Pinheiro**: “Competition between legal systems in the European Union and private international law”
The author discusses the idea of competition between national legal

systems and focuses on two aspects: Competition between legal systems and juridical pluralism and competition between legal systems and freedom of choice. Further, the author outlines the mission of private international law in the existing framework of legal pluralism within the EU by emphasising the importance of private international law in a world characterised by globalisation and legal pluralism which should, in the author's view, be reflected in an essential place of private international law in the teaching of law.

- **P. Scholz:** "Die Internationalisierung des deutschen ordre public und ihre Grenzen am Beispiel islamisch geprägten Rechts"

The author examines the internationalisation of the German public policy clause and argues that human rights guaranteed in European and international law have to be taken into account within the framework of German public policy. Further there is, according to the author, no room for a relativization of the German public policy clause in case of internationally guaranteed human rights. Concerns which are expressed towards a supremacy of German values disregarding foreign legal systems are rebutted by the author in reference to the, for several reasons, only limited application of internationally guaranteed human rights.

- **M. Heckel:** "Die fiktive Inlandszustellung auf dem Rückzug - Rückwirkungen des europäischen Zustellungsrechts auf das nationale Recht"

The author examines the impact of the European provisions of service on national law and argues that internal fictional service is, as a consequence of European law, at the retreat in Europe. Nevertheless, internal fictional service is - according to the author - in principle compatible with European law. It was only the statement of claim which had to be served effectively. In case of a fictional service of a statement of claim, a subsequent judgment in default could neither be recognised nor declared enforceable. In view of the right to be heard, internal fictional service was only admissible if the defendant could take notice of the judicial document.

- **R. Geimer:** "Los Desastres de la Guerra und das Brüssel I-System" (ECJ - 15.02.2007 - C-292/05 - *Lechouritou*)

The author reviews the ECJ's judgment in "*Lechouritou*" which concerned

an action for compensation brought against Germany by Greek successors of victims of war massacres and agrees with the Court that actions brought for compensation in respect of acts perpetrated by armed forces in the course of warfare do not constitute “civil matters” in terms of Brussels I. Thus, the author concludes that consequences of war and occupation can only be dealt with at the level of international law.

- **C. Althammer:** “Die Auslegung der Europäischen Streitgenossenzuständigkeit durch den EuGH - Quelle nationaler Fehlinterpretation?” (ECJ - 11.10.2007 - C-98/06 - *Freeport*) - The English abstract reads as follows:

In the case Freeport/Arnoldsson the European Court of Justice has not rewarded the anticipatory obedience that national courts have paid to the judgement Réunion Européenne. Two claims in one action directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict can be regarded as connected (Art. 6 (1), Council Regulation (EC) No 44/2001). In this respect the decision Freeport/Arnoldsson seems correct, although it is criticisable that the ECJ changes his course in such an oblique way. There is no favour done to legal certainty that way. An interpretation of the connection orientated towards the specific case which takes into account the national characteristics is advisable in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. There is no risk of irreconcilable judgments if the proceeding against the anchor defendant is inadmissible. Moreover, the plaintiff must have a conclusive cause of action. Some chance of success seems to be necessary. The possibility of abuse requires an objective handling of the connection. In addition, subjective elements like malice are difficult to prove.

- **A. Borrás:** “Exclusive” and “Residual” Grounds of Jurisdiction on Divorce in the Brussels II bis Regulation (ECJ - 29.11.2007 - C-68/07 - *Sundelind Lopez*)

In the reviewed case, the ECJ has held that Artt. 6 and 7 Brussels II *bis* have to be interpreted as meaning that where in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base

their jurisdiction on their national law if the courts of another Member State have jurisdiction under Art. 3 Brussels II *bis*. The author agrees with the ECJ regarding the final ruling, but is nevertheless critical with regard to the arguments brought forward by the Court and submits that the fact that there was no opinion by an Advocate General had a negative effect on the case. In this respect, the author regrets that this will happen more often in the future since the recent amendments of the Protocol on the Statute of the Court of Justice and of the rules of procedure of the Court provide “for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure”.

- **H. Roth:** “Der Kostenfestsetzungsbeschluss für eine einstweilige Verfügung als Anwendungsfall des Europäischen Vollstreckungstitels für unbestrittene Forderungen” (OLG Stuttgart - 24.05.2007 - 8 W 184/07)
The author approvingly reviews a decision of the Court of Appeal Stuttgart dealing with the question whether an order for costs for an interim injunction constitutes a “judgment” in terms of the Regulation creating a European Order for uncontested claims. The case concerned the question whether a certification of the order for costs as a European Enforcement Order had to be refused due to the fact that the underlying decision constituted an interim injunction which had not been given in adversarial proceedings. Thus, the case basically raised the question of the interdependence between the order for costs and the underlying decision. Here the court held that it was sufficient if the defendant was granted the right to be heard subsequently to the service of the decision.
- **D. Henrich:** “Wirksamkeit einer Auslandsadoption und Rechtsfolgen für die Staatsangehörigkeit” (OVG Hamburg - 19.10.2006 - 3 Bf 275/04)
In the reviewed decision, the Higher Administrative Court Hamburg had to deal with the question of acquisition of German nationality by adoption and thus with the question which requirements an adoption has to comply with in order to lead to the acquisition of German nationality.
- **M. Lamsa:** “Allgemeinbegriffe in der Firma einer inländischen Zweigniederlassung einer EU-Auslandsgesellschaft” (LG Aachen - 10.04.2007 - 44 T 8/07)
The author critically examines a decision of the Regional Court Aachen

which has held - in view of the freedom of establishment - that the registration of a subsidiary of an English Limited could not be refused even if the trading name does not meet the requirements of German law.

- **H. Sattler:** "Staatsgeschenk und Urheberrechte" (BGH - 24.05.2007 - I ZR 42/04) - The English abstract reads as follows:

More than a decade after the fall of the Berlin Wall, the German Bundestag, in the course of a public ceremony in Berlin, donated to the United Nations three sections of the former Wall which had been painted by an Iranian artist without the landowner's assent. The Bundesgerichtshof dismissed the artist's claim for damages. The court found that the donation did not infringe the plaintiff's rights of distribution (§ 17 German Copyright Act), because the parts of the wall were handed over only symbolically in Berlin whereas the actual transfer took place later in New York. The court further held that the painter had no right to be named (§ 13 German Copyright Act) during the Berlin ceremony, since his work was not exhibited at that presentation and had not been signed by the artist. It can be criticized that the court explicitly refused to deal with potential copyright infringements in New York solely due to the fact that the claimant, when stating the facts of his case, had not expressly referred to the applicable US law.

- **C. F. Nordmeier** discusses two Portuguese decisions dealing with the question of international jurisdiction of Portuguese courts with regard to actions against German sellers directed at the selling price. ("Internationale Zuständigkeit portugiesischer Gerichte für die Kaufpreisklage gegen deutsche Käufer: Die Bedeutung des INCOTERM für die Bestimmung des Lieferortes nach Art. 5 Nr. 1 lit. b EuGVVO") (Tribunal da Relação de Porto, 26.4.2007, Agravo n° 1617/07-3ª Sec., und Supremo Tribunal de Justiça, 23.10.2007, Agravo 07A3119)
- **W. Sieberichs** addresses the qualification of the German civil partnership as a marriage which is provided in a note of the Belgium minister of justice ("Qualifikation der deutschen Lebenspartnerschaft als Ehe in Belgien")
- **C. Mindach** reports on the development of arbitration in the Kyrgyz Republic ("Zur Entwicklung der Schiedsgerichtsbarkeit in der

Kirgisischen Republik")

- **H. Krüger/F. Nomer-Ertan** present the new Turkish rules on private international law ("Neues internationales Privatrecht in der Türkei")

Further, this issue contains the following **materials**:

- The Turkish Statute No. 5718 of 27 November 2007 on private international law and the international law of civil procedure ("Das türkische Gesetz Nr. 5718 vom 27.11.2007 über das internationale Privat- und Zivilverfahrensrecht")
- Statute of the Kyrgyz Republic on the arbitral tribunals of the Kyrgyz Republic of 30 July 2002, Nr. 135 ("Gesetz der Kirgisischen Republik über die Schiedsgerichte in der Kirgisischen Republik - Bischkek, 30.7.2002, Nr. 135")
- Première Commission - Résolution - La substitution et l'équivalence en droit international privé - Institut de Droit International, Session de Santiago 2007 - 27 octobre 2007

As well as the following **information**:

- **E. Jayme** on the 73rd Session of the Institute of International Law in Santiago, Chile ("Substitution und Äquivalenz im Internationalen Privatrecht - 73. Tagung des Institut de Droit International in Santiago de Chile")
 - **S. Kratzer** on the annual conference of the German-Italian Lawyers' Association ("Das neue italienische Verbrauchergesetzbuch - Kodifikation oder Kompilation und Einführung des Familienvertrages ("patto di famiglia") im italienischen Unternehmenserbrecht - Jahrestagung der Deutsch-italienischen Juristenvereinigung in Augsburg")
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Developments in the Recognition of Foreign Class Action Judgments

With the courts of Canadian provinces willing to take jurisdiction over a “national” class claim, involving a plaintiff class which includes members located in other provinces, and with American courts willing to take jurisdiction over “international” classes, involving a plaintiff class which includes members located in Canada, Canadian courts are increasingly having to confront the issue of whether to recognize a foreign class action decision. If a defendant settles a class claim brought in the United States which purports to bind class members in Canada, that defendant then will raise that settlement, as approved by judicial order, in response to subsequent class claims in Canada. Given the value of class claims, the decision whether or not to recognize the foreign decision has significant economic repercussions.

Two relatively recent Canadian decisions on whether to recognize such judgments are *Parsons v. McDonald’s Restaurants of Canada Ltd.* (available [here](#)) and *Currie v. McDonald’s Restaurants of Canada Ltd.* (available [here](#)). These decisions generally support recognition of such judgments, but they impose particular conditions relating to the process followed in the foreign court and the notice given to the people affected in Canada. More recently, two Quebec decisions have addressed the recognition of foreign class action judgments. See *Lépine v. Société Canadienne des postes* (available [here](#); affirmed on appeal) and *HSBC Bank Canada c. Hocking* (lower court decision available [here](#); appellate decision will be available on CanLII). The latter decision has just been released, and the former decision has been appealed to the Supreme Court of Canada, so further guidance on these issues is likely forthcoming.

Some of these issues are addressed in Janet Walker, “Crossborder Class Actions: A View from Across the Border” (2003) Mich. St. L. Rev. 755; Debra Lyn Bassett, “U.S. Class Actions Go Global: Transnational Class Actions and Personal Jurisdiction” (2003) 72 Fordham L. Rev. 41; Ellen Snow, “Protecting Canadian Plaintiffs in International Class Actions: The Need for A Principled Approach in Light of *Currie v. McDonald’s Restaurants of Canada Ltd.*” (2005) 2 Can. Class Action Rev. 217; and Craig Jones & Angela Baxter, “Fumbling Toward Efficacy: Interjurisdictional Class Actions After *Currie v. McDonald’s*” (2006) 3 Can. Class

Action Rev. 405.