

## Interprovincial or International Claims: Where to Bring the Action

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When can a Canadian court assume jurisdiction over a tort case that involves either interprovincial or international elements? The answer lies in whether the dispute has a "real and substantial connection" with the proposed forum, whether through the tort's location, the defendant's location, and/or whether a contract, formed in the province at issue, is connected with the dispute. A new decision from the Supreme Court of Canada – *Sinclair v Venezia Turismo*, 2025 SCC 27 (***Sinclair***) – expands on the last factor: what makes a contract connected with a dispute such that a court can assume jurisdiction over a common law tort claim.

*Sinclair* follows in the footsteps of *Club Resorts Ltd v Van Breda*, 2012 SCC 17 (***Van Breda***), the Supreme Court's leading case on jurisdiction *simpliciter* (i.e. territorial jurisdiction), in which the Court clarified that a strong link (a "real and substantial connection") is necessary between the claim, parties and forum.

### Key Takeaways

The Supreme Court in *Sinclair* split 5/4, signaling that jurisdictional issues will continue to be an area of interest for Canadian courts:

- The Court's reasons highlight the importance of pleadings involving contracts. Going forward, *Sinclair* will encourage motions judges to carefully evaluate whether:
  - o the necessary elements of a contract (offer, acceptance, and consideration) have been pleaded; and
  - o there is a connection established by each contract pleaded and to each defendant involved in a given action.
- Courts will be careful in future cases to consider the possibility of jurisdictional overreach. The majority in *Sinclair* was clear that allowing Ontario courts to assume jurisdiction over all credit transactions made by Ontarians travelling around the world was a step too far, and went against the principles of order and fairness.

### Refresher on Jurisdiction, Jurisdiction *Simpliciter* and the "Real and Substantial Connection" Test

For a court to be able to hear a particular matter (i.e., to have adjudicative jurisdiction), two jurisdictional elements must be present: (i) jurisdiction *simpliciter* (i.e., territorial jurisdiction); and (ii) subject-matter jurisdiction. *Sinclair*, and its predecessor *Van Breda*, address jurisdiction *simpliciter*.

*Van Breda* established that for a court to have jurisdiction *simpliciter*, there must be a "real and substantial connection" between the proposed forum and the Plaintiff's claim. There is a presumption that there is a "real and substantial connection" if a Plaintiff pleads sufficient facts related to at least one of four presumptive "connecting" factors, namely:

- a) the defendant resides in the jurisdiction;
- b) the defendant carries on business in the jurisdiction;

- c) the tort was committed in the jurisdiction; and/or
- d) there is a contract connected with the dispute that was made in the jurisdiction.

A defendant can then challenge the jurisdiction by rebutting the presumption by showing that the factor does not, in a specific case, point to a real relationship between the dispute and the forum. For example, where the presumptive factor is that the defendant carries on business in the jurisdiction, the presumption can be rebutted by showing that the subject matter of the litigation is unrelated to the defendant's business activities in the province.

### **Sinclair provides guidance on when a contract can serve as a "real and substantial" connection**

The *Sinclair* facts center on an accident involving an Ontario family (the Sinclairs) vacationing in Venice. The Sinclairs used an Amex Canada premium credit card to book the trip, which came with several perks, including a concierge travel booking service. While in Italy, the Sinclairs used this service to book a Venice water taxi, which subsequently crashed while they were onboard.

The Sinclairs filed a lawsuit in Ontario against several defendants, including Amex Canada, Centurion Travel Services (the travel concierge), Carey International (a third party supplier of travel services), three Italian companies and the Italian water taxi driver. The Italian defendants sought to strike the claim against them on the basis that the Ontario Court did not have jurisdiction *simpliciter*. Out of the four presumptive factors, the defendants did not live in Ontario, they did not conduct business in Ontario, and the accident did not occur in Ontario. In response, the Sinclairs argued that there were three Ontario contracts connected with the dispute, which provided a sufficient basis to pursue the claim in Ontario: (i) the cardmember agreement between Mr. Sinclair and Amex, (ii) the Sinclairs' travel booking with Amex, and (iii) an agreement between Amex and Carey International for the booking of the water taxi services.

In a 5-4 split, the Supreme Court of Canada agreed with the Italian defendants and struck the Sinclairs' claim against them, holding that the Ontario Court did not have jurisdiction *simpliciter* to hear the matter. Both the majority and dissent agreed that there was at least one Ontario contract (the Amex cardmember agreement) that was connected to the dispute. The split between the majority and dissent came down to whether the defendants had rebutted the presumption of jurisdiction.

The majority found that, although there was an Ontario contract (the Amex agreement), there was a weak, if not non-existent, connection between that contract and the Italian defendants. The majority stated that to hold otherwise would be to vastly expand the ability of Ontario to assume jurisdiction on the basis of simple credit transactions made by Ontarians travelling around the world, which would not be in keeping with the spirit of order and fairness that animated *Van Breda*. The presumption was accordingly rebutted.

The majority offered several helpful clarifications of the "real and substantial connection" test:

- The court noted that the two stages of the jurisdiction *simpliciter* analysis are complementary. The first stage (the assessment of whether a presumptive connecting factor has been established) is concerned with the existence of a connection between the jurisdiction and the dispute, whereas the second stage (the assessment of whether the presumption has been rebutted) is concerned with the strength of that connection. Both are important steps in the analysis and should not be overlooked.
- Where a party seeks to rely on a contract to establish jurisdiction, they must plead the facts necessary to make out the essential elements of the contract (i.e., offer, acceptance, and consideration). If a party pleads a connection on the basis of multiple contracts, the court should assess each one to determine if it can establish a connection between the forum and the dispute.

- In cases with multiple defendants, jurisdiction should be examined from the perspective of each defendant. For example, if a contract bears only a remote connection to any particular defendant, that contract cannot be said to support the legitimate exercise of the court's authority over that defendant.

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