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Supreme Court of Canada splits on test for assuming jurisdiction

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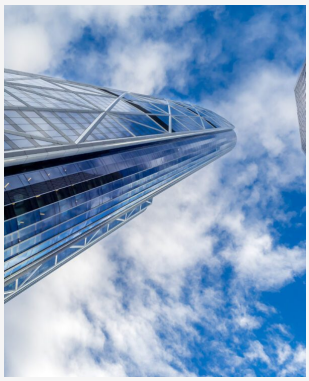

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On July 31, 2025, the Supreme Court of Canada released its much-anticipated decision in *Sinclair v. Venezia Turismo*. The case has significant implications for the ability of Canadian courts to assume jurisdiction over foreign defendants under the "real and substantial connection" test. The decision provides guidance where the jurisdictional connection is alleged to be a contract made in the province, leaving open important questions for future cases.

Background

Mr. Sinclair held a premium American Express (Amex) Centurion card, which provided him with access to a concierge and travel agent service operated by Amex Canada. In July 2017, Mr. Sinclair booked a European holiday through Amex Canada, including a visit to Venice. While in Venice, he contacted the Amex concierge to arrange transportation from Venice's airport to their hotel, including a water taxi ride. The arrangements were made through a chain of service providers. Amex Canada contacted a third-party travel service provider, Carey International, which provided Amex with a quote for the water taxi services and coordinated the actual transportation with Italian companies. While in motion, the water taxi crashed into a wooden structure, causing serious injuries to Mr. Sinclair.

After returning to Canada, the Sinclairs commenced an action in Ontario, seeking damages against Amex Canada, Carey International, several Italian companies and the water taxi driver. The claim alleged that the defendants were jointly and severally liable for negligently engaging incompetent persons to provide transportation services and for negligently providing those services.

Jurisdictional challenge

The Italian defendants brought a motion to dismiss or stay the action against them, arguing that the Ontario court lacked jurisdiction. The Sinclairs relied on the fourth presumptive connecting factor from *Club Resorts Ltd. v. Van Breda* — a contract connected with the dispute was made in Ontario — as the basis for Ontario's jurisdiction over the foreign defendants. The contracts at issue included at least Mr. Sinclair's cardmember agreement with Amex Canada (the Centurion Cardmember Agreement), although the parties' positions varied about whether other contracts were formed and, if so, where.

The motion judge dismissed the Italian defendants' motion, finding that the Sinclairs had established a "good arguable case" that contracts connected with the dispute were made in Ontario.

The Ontario Court of Appeal unanimously allowed the appeal, but for different reasons. The majority held that the Sinclairs had not shown that a contract connected with the dispute was made in Ontario and, even if they had, the Italian defendants had rebutted any presumption of jurisdiction. A concurring judge agreed that the presumption was rebutted, but would have found the Centurion Cardmember Agreement connected with the dispute was made in Ontario.

The Supreme Court's decision

In a 5–4 decision, the Supreme Court dismissed the Sinclairs' appeal, holding that Ontario courts did not have jurisdiction over the Italian defendants, as they had rebutted any presumption of jurisdiction.

Justice Côté, writing for the majority, reaffirmed and clarified the two-step Van Breda test.

At the first step of Van Breda, the plaintiff must establish one of four non-exhaustive connecting factors that presumptively allow a court to assume jurisdiction over a dispute in tort cases: (1) the defendant is domiciled or resident in Ontario; (2) the defendant carries on business in Ontario; (3) the tort was committed in Ontario; or (4) a contract connected with the dispute was made in Ontario.

Justice Côté provided guidance on the fourth connecting factor:

- To rely on this factor, the plaintiff must plead with sufficient particularity the facts necessary to establish the essential elements of a contract: offer, acceptance (including where acceptance took place), and consideration. If a party fails to plead the existence of a contract with sufficient particularity, it will preclude a finding of a real and substantial connection based on the contract, except where the existence of a contract is obvious and undisputed.
- Where parties are seeking to rely on a "constellation of contracts" to establish jurisdiction, each contract must be assessed to determine whether it supports a connection between the dispute and the forum. Multiple contracts, each individually insufficient to establish jurisdiction, cannot collectively be relied upon to establish a real and substantial connection.
- Once a court is satisfied that there is a contract that was formed in the province, the next question is whether the contract is connected with the dispute. This condition will be satisfied where a defendant's conduct brings her or him within the scope of the contractual relationship, and the events giving rise to the claim flow from the relationship created by the contract.
- In cases where there are multiple defendants, jurisdiction should be examined from the perspective of each defendant to avoid jurisdictional bootstrapping.
- Establishing this connecting factor is an "objectively ascertainable and relatively low bar", but Justice Côté left for another day the applicability of the "good arguable case" standard (which had developed in Ontario law).

At the second step of the Van Breda test, the defendant may rebut the presumption of jurisdiction by establishing facts that demonstrate the presumptive connecting factor points to no real relationship, or to only a weak relationship between the subject matter of the litigation and the forum.

To rebut the presumption of jurisdiction, the defendant must prove that the strength of the contract's connection with the forum, the subject matter of the dispute, and the defendant is weak or non-existent. A contract that has only a remote connection to a specific defendant cannot serve as a basis for the legitimate exercise of judicial authority over that defendant. At this stage of the analysis, according to the majority, a court may consider whether the defendant would have reasonably expected to be subject to the forum's jurisdiction in connection with matters arising from the contract.

On the facts of this case, the majority accepted, for the sake of argument, that the Centurion Cardmember Agreement was made in Ontario and "connected" to the dispute in the sense that the travel arrangements flowed from it. But according to the majority, none of the other alleged contracts had been sufficiently made out on the record to ground the fourth connecting factor.

Further, the majority held that the presumption of jurisdiction had been rebutted, finding that the connection between the Centurion Cardmember Agreement and the Italian defendants was "tenuous, if not entirely non-existent". The accident occurred in Italy, involved Italian companies and an Italian driver, and was arranged while the Sinclairs were already abroad. The majority held that the only link to Ontario was the initial booking through Amex Canada's concierge service.

The majority cautioned that accepting such a weak connection would amount to jurisdictional overreach, potentially exposing foreign service providers to litigation in Ontario whenever a Canadian used a payment card to book services abroad. The majority held this would undermine the principles of order and fairness that underpin the Van Breda framework.

The dissent

Justice Jamal, writing for the dissent, would have allowed the appeal and restored the motion judge's order permitting the claims against the Italian defendants to proceed in Ontario. The dissent found that the Sinclairs had pleaded a "good arguable case" that contracts connected with the dispute were made in Ontario, and criticized the majority for not accepting the pleaded facts as true. The dissent applied the "good arguable case" standard as the "orthodox approach".

The dissent reasoned that the Sinclairs' action was not simply about the negligent operation of a water taxi in Italy; it was about a series of integrally related torts, including the negligent engagement of service providers by Amex Canada and Carey International, all flowing from contracts pleaded to have been made in Ontario.

The dissent rejected the majority's focus on the expectations of the foreign defendants and found the Italian defendants had not shown that the connections between the Ontario contracts and the dispute were so weak as to make Ontario's assumption of jurisdiction unreasonable.

Takeaways

The Supreme Court of Canada's decision in *Sinclair* provides clarity on aspects of the test for jurisdiction simpliciter and raises questions on others.

The key takeaway for litigants is the critical importance of pleadings when seeking to ground jurisdiction on a contract made in the forum. Parties must clearly plead the existence of the contract, its essential terms, and, crucially, where it was formed. Vague or general assertions of a contractual relationship will not suffice. The pleadings must set out the material facts necessary to establish the contract's formation and its connection to the dispute.

Furthermore, in cases involving multiple defendants, the Supreme Court made it clear that the connection between the forum and each defendant must be assessed on an individual basis. Jurisdiction over one defendant cannot be used to "bootstrap" jurisdiction over others who lack a sufficient connection to the forum.

Sinclair also underscores that, even where a contract made in the forum is connected to the dispute, the presumption of jurisdiction can be rebutted if the connection to the foreign defendant is weak or remote. The Supreme Court's reasoning reflects a strong concern with avoiding jurisdictional overreach, particularly in the context of global commerce and travel.

Following *Sinclair*, there are open questions about the status of the "good arguable case" standard. This will need to be addressed in future cases, particularly in Ontario where a significant body of case law had built up applying that standard to the test for jurisdiction simpliciter. As Justice Côté recognized for the majority, this standard does not originate from the Supreme Court's leading private international law jurisprudence. But as Justice Jamal noted for the dissent, the "good arguable case" standard has developed as the orthodox approach. This issue will need to be resolved as jurisdiction cases work their way through the courts.