

## News

## Ontario decision demonstrates longer arm of the law

Pivotal SCC ruling gives province jurisdiction in negligent representation case

## CHRISTOPHER GULY

A recent Court of Appeal for Ontario decision regarding jurisdiction illustrates a further application of a framework for tort cases provided last year in a major Supreme Court of Canada ruling, according to the lawyer who acted for the appellant in that latter case.

Toronto civil litigator John Olah said that in *Club Resorts Ltd. v. Van Breda* [2012] S.C.J. No. 17, the Supreme Court outlined presumptive connecting factors for tort cases and when a Canadian court can assume jurisdiction over a tort committed outside the country. Ontario's appellate court showed in *Central Sun Mining Inc. v. Vector Engineering Inc.* [2013] ONCA 601 "how broad that principle's reach can be in some situations," Olah said.

In *Van Breda*, the Supreme Court stated that in an action involving a tort claim that occurred in a foreign jurisdiction, a Canadian court has jurisdiction over that claim if one of the presumptive factors is shown, subject to rebuttal. In *Central Sun Mining*, the Ontario Court of Appeal applied that approach in a case involving the tort of negligent misrepresentation.

Toronto-based Central Sun owns a gold mine in Costa Rica that was built based on what the appellant considered to be badly flawed siting, design and operation studies prepared by the respondents, U.S.-based engineering consultants Vector and SRK.

In 2007, a major landslide occurred at the mine, forcing a shutdown and causing Central Sun to lose its investment and incur substantial remediation costs. The appellant sued the respondents for negligent misrepresentation, negligence and breach of contract to recover its losses.

In response, Vector and SRK moved for an order that an Ontario court had no jurisdiction over them. Late last year, Ontario Superior Court Justice David Stinson agreed, finding in *Central Sun Mining Inc. v. Vector Engineering Inc.* [2012] O.J. No. 6137 that the respondents' work was mainly performed at the Costa Rican mine site or at their American offices; that most of the documentation was sent to Central Sun's Vancouver office; and that the physical damage to the mine occurred in Costa Rica. The judge concluded that Central Sun's action lacked a real and substantial connection to Ontario, and dismissed it.



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**John Olah**  
Beard Winter

But the appellate court said there was a connection.

"The core of the tort of misrepresentation is that the misrepresentation is received and acted upon," wrote Justice Stephen Goudge, in the Oct. 2 ruling agreed to by Justices Eileen Gillese and Sarah Pepall.

"There can be no question that the appellant acted on [the respondents'] studies in Ontario. That is where it relied on the studies to take the decisions about where to locate the mine and how to build and operate it." Thus, there was a connection between the dispute and Ontario and the Court of Appeal held that, "it cannot be said that only a relatively minor element of the tort occurred in this province."

Senior Toronto litigator David Hamer, who served as lead counsel for Central Sun, said the court pointed out that even if the respondents' studies had only been sent to the company's Vancouver office and only recommendations based on the studies were transmitted to Toronto, the negligent misrepresentation would still have been committed in Ontario.

"The respondents foresaw that their studies would be received by the appellant and acted on in Toronto [and] should have expected to be called to account in Ontario," wrote Justice Goudge.

Hamer, founder and co-chair of the global mining litigation practice group at McCarthy Tétrault, said that *Central Sun* reaffirmed that jurisdiction simpliciter is established by one cause of action with a connection to a province. "An Ontario court can then hear all the causes of action in a case rather than dividing them up and having them heard all over the place."

However, professor Vaughan Black of Dalhousie University's Schulich School of Law found it "troubling" the appeal court concluded the respondents—particularly SRK, which only sent its studies to Central Sun's Vancouver office—foresaw the appellant would have relied on them in

Toronto, despite the motion judge not having addressed that issue.

"To suggest that negligent misrepresentation takes place wherever the reliance occurs is overly broad in that it doesn't recognize that a person making a statement in one jurisdiction might not reasonably foresee that it would be acted and relied upon in another jurisdiction," said Black, who teaches tort law.

Yet the Court of Appeal stated

that with companies having offices in different locations, "corporate defendants should not escape liability simply because they send their studies to an office of the plaintiff outside Ontario with the clear understanding that it will be acted on in Ontario."

As Olah explained: "In McLuhan's 'global village,' where businesses are interconnected, *Van Breda* brought a

very clear and relatively comprehensive set of rules to tort law as to how you approach international cases where various facets of a cause of action are in different jurisdictions.

"We're going to see *Van Breda* as a beacon or a shining star that guides courts in the right direction in applying its principle in a variety of different settings," said Olah, who focuses on complex tort litigation at Beard Winter.

The Central Sun appeal was allowed and the Court of Appeal ruled that an Ontario court has jurisdiction over the respondents whose motion must be returned to the motion court for a determination of the forum conveniens issue.

Counsel for the respondents could not be reached for comment.

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