

2001

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Source Publication:

American Society of International Law Proceedings. Volume 95 (2001), p. 294.

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Recommended Citation

Walker, Janet. "Recent Developments in International Tort Law in the British Commonwealth of Nations--Comment ." *American Society of International Law Proceedings* 95 (2001): 294.

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RECENT DEVELOPMENTS IN INTERNATIONAL TORT LAW
IN THE BRITISH COMMONWEALTH OF NATIONS—COMMENT¹

by Janet Walker*

Although the English courts once led the common law tradition in choice of law in tort, they now follow a statutory regime pursuant to the Private International Law (Miscellaneous Provisions) Act of 1995.² Section 11 of the act provides that as a general rule the applicable law is the law of the country in which the events constituting the tort in question occur. Section 12 provides for displacement of the general rule where, in all the circumstances, a comparison of the significance of the factors connecting the tort with the country in which that law applies, and the factors connecting the tort with another country, make it appear that it is substantially more appropriate for the other law to apply.

In Canada, judicial consideration of the law that was pronounced by the Supreme Court of Canada in *Tolofson v. Jensen*³ has resulted in different rules for interprovincial and international torts. In interprovincial torts, the courts have felt constrained to adhere strictly to the requirement of applying the *lex loci*, but in international torts, on occasion, the courts have applied the personal law of the parties, as was done in *Hanlan v. Sernesky*.⁴ In *Wong v. Wei*,⁵ the British Columbia Supreme Court took the unusual but arguably appropriate step of applying the personal law of the parties in a situation in which it did not provide an advantage to the plaintiff to do so. In a case that was similar to that in *Babcock v. Jackson*,⁶ the court was not persuaded to apply the *lex loci*. This meant that the plaintiff could not claim the extent of nonpecuniary damages that might have been available under the law of California, the place where the tort occurred.

¹ Janet Walker, *Are We There Yet? Towards a New Rule for Choice of Law in Tort*, 38 OSGOODE HALL L.J. 331 (2000).

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² Private International Law (Miscellaneous Provisions) Act 1995-Part III-Choice of Law in Tort and Delict, c. 42 (Eng.).

³ *Tolofson v. Jensen*, 3 S.C.R. 1022 (Can. 1994).

⁴ *Hanlan v. Sernesky* (1997), 35 O.R. (3d) 603 (Gen. Div.), *aff'd* (1998), 38 O.R. (3d) 479 (C.A. Ont.).

⁵ *Wong v. Wei* (1999), 65 B.C.L.R. (3d) 222 (B.C. S.C.)

⁶ *Babcock v. Jackson*, 191 N.E.2d 279 (N.Y. 1963).