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Article 5

General Jurisdiction over Corporate Defendants under the CJPTA: Consistent with International Standards?

Catherine Walsh

Faculty of Law, McGill University

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General Jurisdiction over Corporate Defendants under the CJPTA: Consistent with International Standards?

Abstract

“General jurisdiction” refers to a court’s competence to adjudicate disputes arising out of a defendant’s activities anywhere in the world. Absent consent or submission, international instruments reserve general jurisdiction over corporations to the states in which the corporation has its registered office, centre of administration, or principal place of business. The bases of general jurisdiction under the Court Jurisdiction and Proceedings Transfer Act (CJPTA) are far broader and include simply having a place of business in the forum or even registering to carry on business there. This article locates the conceptual roots of the CJPTA approach in the traditional common law presence-based concept of jurisdiction. Although the constitutional legitimacy of the traditional common law approach was recently reaffirmed by the Supreme Court of Canada, it is suggested that the international standard better balances the interests of both parties and is more consonant with territorial limitations on the exercise of adjudicatory power.

Special Issue
The *CJPTA*: A Decade of Progress

General Jurisdiction over Corporate Defendants under the *CJPTA*: Consistent with International Standards?

CATHERINE WALSH*

“General jurisdiction” refers to a court’s competence to adjudicate disputes arising out of a defendant’s activities anywhere in the world. Absent consent or submission, international instruments reserve general jurisdiction over corporations to the states in which the corporation has its registered office, centre of administration, or principal place of business. The bases of general jurisdiction under the *Court Jurisdiction and Proceedings Transfer Act (CJPTA)* are far broader and include simply having a place of business in the forum or even registering to carry on business there. This article locates the conceptual roots of the *CJPTA* approach in the traditional common law presence-based concept of jurisdiction. Although the constitutional legitimacy of the traditional common law approach was recently reaffirmed by the Supreme Court of Canada, it is suggested that the international standard better balances the interests of both parties and is more consonant with territorial limitations on the exercise of adjudicatory power.

* Professor, Faculty of Law, McGill University.

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THE SHORT ANSWER TO THE QUESTION posed in the title of this article is “no.” In explaining why, it is helpful to borrow terminology from the US literature and jurisprudence under which the bases for exercising adjudicatory jurisdiction divide between general and specific jurisdiction.¹ Specific jurisdiction refers to bases of competence that require a connection between the subject matter of a dispute and the defendant’s in-forum activities. General (“dispute-blind” or “all-purpose”) jurisdiction refers to bases of competence that depend *solely* on the defendant’s connection to the forum, regardless of whether the subject matter of the dispute has any connection to the forum. General jurisdiction, in turn, is predicated on the defendant’s consent or submission to the exercise of jurisdiction by the court or the sufficiency of the defendant’s “presence” in the forum. The focus here is on presence-based jurisdiction.

The common law traditionally has treated service of process on a natural person physically present in the forum as sufficient for general jurisdiction, even if that person’s presence was casual or transient. By a somewhat strained analogy to natural persons, presence-based general jurisdiction could also be exercised over a foreign corporation served with local process at a place of business in the forum even if the subject matter of the claim was entirely unrelated to the business

1. Arthur T von Mehren & Donald T Trautman, “Jurisdiction to Adjudicate: A Suggested Analysis” (1966) 79:6 Harv L Rev 1121 at 1136-45 (proposing the distinction between general and specific jurisdiction); Tanya Monestier, “Where is Home Depot ‘At Home’?: *Daimler v. Bauman* and the End of Doing Business Jurisdiction” (2014) 66:1 Hastings LJ 233 at 238-39 [Monestier, “Where Is Home Depot”] (observing that the seeds of this analytical structure were planted in *International Shoe Co v Washington*, 326 US 310 (1945) [*International Shoe*]); Mary Twitchell, “The Myth of General Jurisdiction” (1988) 101:3 Harv L Rev 610 (coining the synonym “dispute blind” jurisdiction at 613). The synonym “all-purpose” jurisdiction was used by the Supreme Court of the United States in the *Goodyear* and *Daimler* cases. *Goodyear Dunlop Tires Operations, SA v Brown*, 564 US 915 (2011) [*Goodyear*]; *Daimler AG v Bauman*, 134 S Ct 746 (2014) [*Daimler*]. For a discussion of these two cases, see Part II, below.

carried on by the corporation in the forum. As Part I of this article explains, the Supreme Court of Canada has recently reaffirmed the continued availability at common law of general presence-based jurisdiction over corporate defendants.

The common law approach is in sharp contrast to the more restrained standard found in the European Union under the *Brussels I Regulation*, in which general jurisdiction is available over a corporation only if it has its statutory seat (*i.e.*, “registered office” or place of incorporation, place of central administration, or principal place of business in the forum).² This is also the approach to the general jurisdiction of a foreign court over corporations for the purposes of foreign judgment recognition adopted in the 2017 *Hague Draft Convention*³ and the 2016

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2. EC, *Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)*, [2012] OJ, L 351/1, arts 4, 63 [*Brussels I Regulation*]. Under article 4, general jurisdiction is based on the “domicile” of the defendant in the member state. Domicile is defined in article 63(1) so that a company (or other entity), depending on how it structures its operations, may have three different domiciles: (a) its statutory seat; (b) its place of central administration; or (c) its principal place of business. For the purposes of Ireland, Cyprus, and the United Kingdom, article 63(2) defines “statutory seat” to mean “the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.” See also EC, *Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters*, [2001] OJ, L 12/44 at 1 (replaced by *Brussels I Regulation*).
 3. Hague Conference on Private International Law, “Special Commission on the Recognition and Enforcement of Foreign Judgments: February 2017 Draft Convention” (16-24 February 2017), online: <assets.hcch.net/docs/d6f58225-0427-4a65-8f8b-180e79cafdbb.pdf>, arts 5(1)(a), 3(2) [*Hague Draft Convention*]. Under article 5(1)(a), a judgment is eligible for recognition and enforcement if the person against whom recognition or enforcement is sought was “habitually resident” in the state of origin when it became a party to the proceedings. Under article 3(2), an entity or person other than a natural person is habitually resident in the state: (a) where it has its statutory seat; (b) under whose law it was incorporated or formed; (c) where it has its central administration; or (d) where it has its principal place of business. A corporate defendant will usually have its “statutory seat” (“registered office”) in the state under whose law it was incorporated: In this situation, factors (a) and (b) refer to the same place. However, the concept of statutory seat is generally not applicable to unincorporated entities (other than limited partnerships). For this reason, and to accommodate corporations formed under federal law in federally-organized states, it was thought necessary to include both factors (a) and (b).

draft *Commonwealth Model Law on Foreign Judgments*.⁴ Carrying on business in the forum is only a basis for specific jurisdiction under these instruments; *i.e.*, the claim must arise out of the corporation's in-forum business activities.⁵

The *CJPTA*⁶ adopts "ordinary residence" in the forum as the standard for exercising general jurisdiction.⁷ For defendants who are natural persons, "ordinary residence" clearly eliminates common law "tag" jurisdiction predicated on service of process on a defendant who is only transiently or casually present in the forum.⁸ To this extent, the *CJPTA* is consistent with the international instruments referred to in the preceding paragraph. When it comes to corporations and other business entities, however, the *CJPTA* defines "ordinary residence" in an expansive manner.⁹ The concept is not limited to defendants whose registered office or place of central administration is in the forum. A corporate defendant is also deemed to be ordinarily resident in the forum if it has a place of business there, or if it has registered pursuant to laws requiring an extra-provincial corporation

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4. See Commonwealth Secretariat, *A Commonwealth Model Law on Foreign Judgments: Meeting Paper*, by David McClean, Provisional Agenda Item 15(b) (London: Senior Officials of Law Ministries, 2016), s 5(1)(e) [*Commonwealth Model Bill*] [on file with author]; *Hague Draft Convention*, *supra* note 3, art 5(1)(a). Although the terminology is somewhat different, section 5(1)(e) of the *Commonwealth Model Bill* is intended to parallel article 5(1)(a) of the *Hague Draft Convention* in recognizing the general jurisdiction of the foreign court if "the judgment debtor, not being an individual, was incorporated in the state of origin, exercised its central management in that state or had its principal place of business located in that state."
 5. *Brussels I Regulation*, *supra* note 2, art 7(5); *Hague Draft Convention*, *supra* note 3, art 5(1)(c); *Commonwealth Model Bill*, *supra* note 4, s 5(1)(f).
 6. See Uniform Law Conference of Canada, *Proceedings of the Seventy-Sixth Annual Meeting, 1994*, Appendix C: *Court Jurisdiction and Proceedings Transfer Act*, online: <www.ulcc.ca/images/stories/1994_EN_pdf/1994ulcc0008_Court_Jurisdiction_Proceedings_Transfer_Act.pdf> at 140 [*CJPTA*]. Three jurisdictions have brought the *CJPTA* into force—British Columbia, Saskatchewan, and Nova Scotia. See *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 [*CJPTA*, BC]; *The Court Jurisdiction and Proceedings Transfer Act*, SS 1997, c C-41.1 [*CJPTA*, SK]; *Court Jurisdiction and Proceedings Transfer Act*, SNS 2003 (2d Sess), c 2. For ease of reference, the section numbering of the British Columbia Act is used in this article.
 7. *CJPTA*, BC, *supra* note 6 ("A court has territorial competence in a proceeding that is brought against a person ... if ... that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding ...," s 3(d)).
 8. *Maharane Seethadevi Gaekwar of Baroda v Wildenstein*, [1972] 2 QB 283 at 291-92, [1972] 2 WLR 1077 (CA). For a pre-*CJPTA* British Columbia decision confirming the continued availability of jurisdiction at common law over an individual defendant who is only casually or transiently present in the forum when served with process, see *Ruwenzori Enterprises Ltd v Walji*, 2000 BCSC 790, [2000] BCTC 348.
 9. *CJPTA*, *supra* note 6, s 7.

carrying on business in the enacting province to register and appoint a local agent for the purposes of service of process. As will be seen in Part II of the article, these latter two concepts of ordinary residence replicate and arguably exceed the traditional common law concept of corporate presence for the purposes of general jurisdiction.

The Canadian common law and *CJPTA* presence-based approaches to general jurisdiction over corporations are not only inconsistent with international standards. As explained in Part III of the article, they are also out of step with the recent jurisprudence of the Supreme Court of the United States limiting general jurisdiction, save in exceptional cases, to the states where the corporation is “at home” in the sense of either being incorporated under the law of that state or having its principal place of business there. Part III reviews the policy and pragmatic justifications advanced in the United States in favour of limiting general jurisdiction to a corporation’s “home” fora. It will be argued that these justifications are equally or even more relevant in the *CJPTA* and Canadian common law context.

The conclusion in Part IV questions the justification for the persistence in common law Canada and under the *CJPTA* of the broad common law concept of presence-based general jurisdiction over corporate defendants. The consequence of that approach is to expose a corporation doing business in multiple provinces to the burden of having to respond to suits in every jurisdiction where it has established a place of business even though the dispute has nothing to do with its activities in that province. Moreover, the burden and inconvenience for the corporate defendant is not the only concern. A broad theory of general jurisdiction greatly expands the potential for courts in multiple jurisdictions to claim adjudicatory authority over the same dispute. It will be suggested that the more restrained international standard better balances convenience for litigants while also taking into account the mutual interest of all jurisdictions in respecting the territorial limits on the reach of the adjudicatory authority of their courts.

I. COMMON LAW PRESENCE-BASED JURISDICTION OVER CORPORATE DEFENDANTS

The common law traditionally has treated service of process on an individual defendant while physically present in the forum as sufficient for general jurisdiction even if the defendant’s presence is only transient or casual.¹⁰ A concept

10. See *supra* note 8.

of jurisdiction that relies on a defendant's physical presence in the forum does not translate easily to corporations or other business entities. A corporation is prima facie assumed to be "present" in the jurisdiction where it is domiciled, *i.e.*, in the state under whose laws it is incorporated,¹¹ or more precisely—to cover federally-incorporated companies—where its head office or registered office is located.¹² The English and Canadian jurisprudence, however, early on confirmed that where a corporation carries on business outside its 'birth place' and is served with process there, it may also have a sufficient "presence" in that place to support the exercise of jurisdiction.¹³ In so holding, the courts, particularly in the earlier cases, have sometimes used the metaphor of "residence."¹⁴ The use of that metaphor is open to criticism since the meaning of corporate residence is not universal

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11. *Okura & Co Ltd v Forsbacka Jernverks Aktiebolag*, [1914] 1 KB 715 at 722, 80 LJKB 561 (CA) [*Okura*]. In *Okura*, Lord Justice Phillimore wrote: "I take it that every corporation is prima facie locally situated in the territory of the sovereign power from which it derives its origin." See *ibid*. See also *Machado v The Catalyst Capital Group Inc*, 2015 ONSC 6313, 27 CCEL (4th) 116 [*Machado*]. In *Machado*, it was said:

Because the Defendant's registered head office is located in Ontario, an Ontario court has 'presence-based' jurisdiction over the Defendant. Ontario thus has *jurisdiction simpliciter*, and it is not necessary to apply the 'real and substantial connection' test to extend 'assumed jurisdiction' over the Defendant (*ibid* at para 60).

- For authority that the place of incorporation of a company is its domicile, see *National Trust Co v Ebro Irrigation & Power Co*, [1954] OR 463, [1954] 3 DLR 326 (SC) [*National Trust*]; *Gasque v Commissioners of Inland Revenue*, [1940] 2 KB 80, 109 LJKB 769 (KBD) [*Gasque*].
12. The location of a corporation's head office or registered office ordinarily coincides with the jurisdiction under whose laws it is incorporated owing to the typical corporate law requirement for a corporation to maintain its registered office or head office in its jurisdiction of incorporation. However, in the case of a federally incorporated corporation, reference must necessarily be made to the province that it has designated as the location of its head office or registered office.
13. Note that where the dispute relates to the internal management and affairs of a company, jurisdiction is reserved exclusively to the courts in its jurisdiction of incorporation (or in the jurisdiction where its registered head office is located in the case of federally-incorporated companies). See *Gould v Western Coal Corp*, 2012 ONSC 5184 at paras 319-39, 221 ACWS (3d) 789; *Ironrod Investments Inc v Enquest Energy Services Corp*, 2011 ONSC 308, 198 ACWS (3d) 341; *Takefman c Golden Hope Mines Ltd*, 2015 QCCS 4947, 260 ACWS (3d) 274; *Wilson v Hudson's Bay Co* (1884), 1 BCR (Pt 2) 102, [1884] BCRJ No 16 (QL) (SC).
14. See *e.g.* *Newby v Von Oppen* (1872), (1871-72) LR 7 QB 293, 41 LJQB 148 [*Newby*]; *Compagnie Generale Transatlantique v Thomas Law & Co (La Bourgogne)*, [1899] AC 431, 15 TLR 424 (HL) (Eng); *Tytler v Canadian Pacific Railway Co* (1899), 26 OAR 467 at 472, [1899] OJ No 48 (QL) [*Tytler*]; *Murphy v Phoenix Bridge Co* (1899), 18 OPR 495 at 499-503, [1899] OJ No 249 (QL) (CA) [*Murphy*]; *Charron v La Banque provinciale du Canada*, [1936] OWR 315, [1936] OJ No 78 (QL) (H Ct J) [*Charron*].

or constant but rather depends on the legal context in which the issue arises.¹⁵ In any event, in the context of presence-based jurisdiction, it is accepted that the terms presence and residence have the same meaning and that a corporation may simultaneously be present (or reside) in multiple jurisdictions for this purpose.¹⁶

Although the analysis is intensely fact-specific, in general, a foreign company is considered to have a sufficient presence in the forum if it carries on its business or an aspect of its business there at a fixed place for a sufficiently substantial period.¹⁷ There is no difficulty in finding presence-based jurisdiction under this test where a foreign company establishes a physical place of business in the forum in its own name, staffed by its own employees, to carry out its business there.¹⁸ A sufficient corporate presence, however, has been found in circumstances far removed from the branch office scenario. A fixed place of business, for example, need not be a place owned or rented by the company, so long as some aspect of its business is conducted there.¹⁹ The period during which the company's business is carried on in the forum need not be very long, for example, nine days was

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15. For example, it is long accepted that the residence of a corporation (and now a trust) for income tax purposes is in the jurisdiction where its central management and control is exercised. See *Garron Family Trust (Trustee of) v R*, 2012 SCC 14 at para 6, [2012] 1 SCR 520. However, it is also accepted that the meaning of corporate residence depends on the nature and the purpose of the statute or rule in issue, and that in other legal contexts, a corporation may have multiple residences. See *Canada Life Assurance Co v Canadian Imperial Bank of Commerce*, [1979] 2 SCR 669 at 676-81, 98 DLR (3d) 670.
 16. *South India Shipping Corporation Ltd v Export-Import Bank of Korea*, [1985] 1 WLR 585 at 589, [1985] 2 All ER 2019 (CA) [India]; *Okura*, *supra* note 11 at 721. See also Pippa Rogerson, *Collier's Conflict of Laws*, 4th ed (Cambridge: Cambridge University Press, 2013) at 240.
 17. The test is derived from Lord Buckley's remarks in *Okura*, *supra* note 11 at 718-19. For the leading Canadian case on its appropriate interpretation, see *Canada Life Assurance Co v Canadian Imperial Bank of Commerce* (1974), 3 OR (2d) 70, 44 DLR (3d) 486 (CA), leave to appeal to SCC refused, [1974] SCR viii [Canada Life Assurance]. In *Canada Life Assurance*, Chief Justice Gale adopted Justice Sydney Smith's interpretation of the meaning of "carrying on business" in *Central Trust Company v Dolphin Steamship Company* (1950), [1950] 2 WWR 516, [1951] 1 DLR 19 (BC CA). For recent judicial analyses of the test, see *Allchem Industries Industrial v "CMA CGM Florida" (Vessel)*, 2015 FC 558, 253 ACWS (3d) 778 [Allchem]; *Yip v HSBC Holdings plc*, 2017 ONSC 5332, 283 ACWS (3d) 886 [Yip].
 18. See e.g. *Newby*, *supra* note 14; *Charron*, *supra* note 14.
 19. See e.g. *Actieselkabet Dampskib Hercules v Grand Trunk Pacific Railway Co*, [1912] 1 KB 222, [1912] 105 LT 695 (CA) (it was held that four Canadian directors conducting business, rent-free, out of a London office for a Canadian corporation were carrying on the business of the London company and that the office was therefore the office of the Canadian corporation for the purposes of establishing its presence in UK).

held in one English case to be sufficient.²⁰ The company need not be directly conducting its business in the forum; an indirect presence through an agency or representative is sufficient provided that the agent is doing the business of the company,²¹ and not its own business.²² That said, the activities alleged to constitute carrying on business, whether carried out directly or indirectly, must be integrally related to some aspect of the company's business, and there must be some regularity to them.²³

It has traditionally been accepted that if a corporation has a sufficient "presence" in the forum according to these criteria when served with process, the court has general jurisdiction, *i.e.*, it is irrelevant that the subject matter of the claim does not arise out of the company's business in the forum.²⁴ Although the Supreme Court of Canada in *Morguard* stated that the defendant's in-forum presence, when served with process, remained a distinct ground of jurisdiction separate from jurisdiction in service *ex juris* cases which required a real and substantial connection between the claim and the forum,²⁵ ambiguities in the post-*Morguard* jurisprudence created some doubt.²⁶ The point was reaffirmed by

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20. See *e.g. Dunlop Pneumatic Tyre Co Ltd v Actien-Gesellschaft für Motor und Motorfahrzeugbau Vorm Cudell & Co*, [1902] 1 KB 342, [1902] 71 LJKB 284 (CA) [*Dunlop*]. In *Dunlop*, a German company hired the use of a stand at an exhibition in London for a total of eight days at which two representatives exhibited products and took orders. The Court of Appeal held that the company had established a place of business in England sufficient to make service on its representatives at the stand service on the company.
 21. *Allchem*, *supra* note 17. See also Rogerson, *supra* note 16 at 242-44.
 22. *Sarco Canada Ltd v Pyrotherm Equipment Ltd*, [1969] 1 OR 426, 40 Fox Pat C 182 (SC) [*Sarco*].
 23. *Ibid*; *Murphy*, *supra* note 14; *Appel v Anchor Insurance & Investment Corp* (1921), 21 OWN 25 at 27, [1921] OJ No 161 (QL) (H Ct J); *Wee-Gee Uranium Mines Ltd v New York Times Co*, [1969] 1 OR 741, [1969] OJ No 1279 (QL) (H Ct J); *Venture Helicopters Ltd v European Aeronautic Defence & Space Co Eads NV*, 2010 ABQB 633, 38 Alta LR (5th) 121. See also *Wat-cha Farms Ltd v Charolais International Inc*, [1971] 5 WWR 554, [1971] AJ No 78 (QL) (SC).
 24. See *Tytler*, *supra* note 14; *Charron*, *supra* note 14. Although the courts in these cases did not expressly state that service of process had been effected locally, it seems evident from the facts (location of a branch office) that this would have been the case.
 25. *Morguard Investments Ltd v De Savoie*, [1990] 3 SCR 1077 at 1103, 52 BCLR (2d) 160 [*Morguard*]. Although *Morguard* was concerned with the recognition of a foreign court's jurisdiction for the purpose of enforcement of its judgments, Justice La Forest made it clear that "the taking of jurisdiction by a court in one province and its recognition in another must be viewed as correlative" (*ibid* at 1094).
 26. See Tanya J Monestier, "(Still) a 'Real and Substantial' Mess: The Law of Jurisdiction in Canada" (2013) 36:2 Fordham Int'l LJ 396 at 447, n 158 [Monestier, "Jurisdiction in Canada"].

the Court in *Club Resorts Ltd v Van Breda*²⁷ but in a confusing manner.²⁸ On the one hand, the Court stated that “jurisdiction may also be based on traditional grounds, like the defendant’s presence in the jurisdiction.”²⁹ On the other hand, it treated “carrying on business” in the forum as merely a presumptive connecting factor for jurisdiction in tort claims against corporate defendants served outside the jurisdiction, rebuttable “by showing that the subject matter of the litigation is unrelated to the defendant’s business activities in the province.”³⁰

Van Breda thus left it unclear whether *in juris* service on a corporate defendant carrying on business in the forum remained available as a basis for the exercise of general jurisdiction over claims unrelated to the defendant’s forum activities. Further uncertainty was created by the Court’s observation that “a defendant may always be sued in a court of the jurisdiction in which he or she is domiciled or resident (in the case of a legal person, the location of its head office).”³¹ The parenthetical reference to a legal person’s *head office* as constituting its domicile or *residence* arguably contradicted the traditional view, outlined above, that a corporation may have as many “residences” as it has places where it is carrying on business for the purposes of establishing traditional presence-based jurisdiction provided it is capable of being served with process locally. Moreover, the Court listed “domicile or residence” as a separate presumptive connecting factor in tort actions, distinct from carrying on business, implying that jurisdiction on this basis also could be rebutted if the subject-matter of the dispute was otherwise unrelated to the forum.³² This also seemingly contradicted the traditional view, noted above, that general jurisdiction may always be exercised over a corporation at its domicile.

The Court sought to clarify the matter in *Chevron Corp v Yaiguaje*.³³ The point arose in relation to the jurisdiction of the Ontario courts over Chevron Canada, a third party to the foreign judgment obtained against its parent company Chevron Corporation, for which recognition was being sought in

27. 2012 SCC 17, [2012] 1 SCR 572 [*Van Breda*].

28. Tanya J Monestier provides an excellent detailed critique. See Monestier, “Jurisdiction in Canada,” *supra* note 26 at 417-24.

29. *Van Breda*, *supra* note 27 at para 79.

30. *Ibid* at para 96.

31. *Ibid* at para 86.

32. *Ibid* at para 90.

33. *Chevron Corp v Yaiguaje*, 2015 SCC 42, [2015] 3 SCR 69 [*Chevron*].

Ontario.³⁴ Although Chevron Canada was incorporated under the *Canada Business Corporations Act* and had designated an address in British Columbia as its “registered office,” it had been served with process at a “bricks and mortar” office it had established in Ontario from which its Ontario staff provided services and solicited sales to its Ontario customers.

Chevron Canada argued that regardless of whether a corporate defendant is served *in juris* or *ex juris*, carrying on business in the forum is only a presumptive connecting factor which can be rebutted by showing that there is no connection between the claim and the corporation’s in-forum activities. The Court rejected that argument, observing that the maintenance of physical business premises in the forum accompanied by a degree of sustained business activity have consistently been found to be “compelling indicia of corporate presence.”³⁵ It further stated that to require a specific connection between the defendant’s in-forum activities and the subject matter of the claim would “conflate” the long-standing distinction between “presence-based” jurisdiction in service *in juris* cases and “assumed jurisdiction” in service *ex juris* cases.³⁶

The Court then went on to address Chevron Canada’s argument that merely carrying on unrelated business in the forum was an illegitimate basis for the exercise of general jurisdiction insofar as the “real and substantial connection” principle also operates as a *constitutional* limit on the exercise of adjudicatory power. The Court rejected this aspect of that defendant’s argument on the conclusory reasoning that by electing to establish and continue to operate a place of business in Ontario at which it was served, Chevron Canada “should therefore ... expect ... that it might one day be called upon to answer to an Ontario court’s request that it defend against an action” and that “it is reasonable to say that the

34. The action against Chevron Canada sought to seize its shares and assets to satisfy the Ecuadorian judgment obtained against its corporate parent. The Ontario Superior Court of Justice subsequently granted Chevron Canada’s motion to dismiss the action. See *Yaiguaje v Chevron Corp*, 2017 ONSC 135 at para 74, 136 OR (3d) 261. Chevron Canada’s shares and assets were held not to be exigible since it was not the judgment debtor under the Ecuadorian judgment and the court further refused to pierce the corporate veil, there being no allegation that the Chevron group corporate structure was designed or being used an instrument of fraud or wrongdoing (*ibid* at paras 34-49). The Superior Court’s ruling has been appealed and the Ontario Court of Appeal recently set aside an order requiring the appellants to post security for costs, observing that “[i]t cannot be said, at this stage, that this is a case that is wholly devoid of merit” and that it “is hardly just that potential advancements in or restatements of the law be thwarted for procedural or tactical reasons.” See *Yaiguaje v Chevron Corporation*, 2017 ONCA 827 at para 26(e), (f), 138 OR (3d) 1.

35. *Chevron*, *supra* note 33 at paras 85-86.

36. *Ibid* at para 81.

Ontario courts have an interest in [such a] defendant and the disputes in which it becomes involved.³⁷

The Court's ruling on jurisdiction over Chevron Canada was made in the context of foreign judgment recognition proceedings against its parent company. Its principal significance going forward lies in its explicit confirmation that service in the forum on a corporate defendant carrying on business in the forum vests general jurisdiction in the court both as a matter of common law and constitutional law.³⁸ As the Court made clear, general presence-based jurisdiction is distinct from "carrying on business in the forum" as a presumptive connecting factor for assumed jurisdiction in tort actions against a defendant served outside the forum. In the latter case, while carrying on business is presumptively sufficient to vest general jurisdiction, that presumption can be rebutted by showing that there is no connection between the subject matter of the dispute and the defendant's activities in the forum.³⁹ In contrast, if service is effected in the forum on a company carrying on business in the forum, jurisdiction is conclusive and irrebuttable.⁴⁰

This is not an insignificant distinction. While the defendant can still argue that the court should stay the action in favour of the forum with the closest relation to the subject-matter, it is by no means certain that the court will accede to a *forum non conveniens* argument even if the dispute bears no connection to the defendant's forum activities. After all, as the Court emphasized in *Van Breda*, the doctrine of *forum non conveniens* should only be applied in exceptional cases. Moreover, the primary emphasis at the jurisdiction *simpliciter* stage is on "objective factors that connect the legal situation or the subject matter of the

37. *Ibid* at para 89.

38. *Ibid* at para 83.

39. *Ibid* at para 91. For an example of a case where the defendant successfully rebutted the presumption of jurisdiction on this basis, see *Wilson v RIU*, 2012 ONSC 6840, 98 CCLT (3d) 337.

40. See *Chevron*, *supra* note 33 at para 87. The court confirmed that presence-based jurisdiction is not open to rebuttal on the basis that the subject matter of the dispute has no connection to the business carried on by the defendant in the forum:

[W]here jurisdiction stems from the defendant's presence in the jurisdiction, there is no need to consider whether a real and substantial connection exists ... In other words, the question of whether jurisdiction exists over Chevron Canada should begin and end with traditional, presence-based jurisdiction in this case (*ibid*).

litigation with the forum.”⁴¹ In contrast, the primary emphasis at the *forum non conveniens* stage is on more subjective considerations of fairness and efficiency for *both parties*,⁴² thereby increasing the likelihood that the court will retain jurisdiction where a local plaintiff lacks the resources to pursue the defendant in a more remote forum or in class action proceedings where considerations of litigation efficiency play into the analysis.

As Monestier has observed, it is odd, indeed conceptually incoherent, to hold that the same jurisdictional connection—“carrying on business” in the forum—should give rise to different consequences for a defendant depending on whether it is served within the forum or outside.⁴³ Moreover, the availability of presence-based general jurisdiction will depend on, and vary with, the scope of the civil procedure rules of the relevant province relating to local service on a corporation. For example, the Ontario *Rules of Civil Procedure* authorize service on the person in apparent control or management of any “place of business” of the corporation in the province,⁴⁴ whereas the Alberta counterpart to this rule refers to any “place of business *or activity*” and authorizes service by recorded mail to that address.⁴⁵ Service on a corporation can also be effected by service on a representative, but again, the formulations vary. For example, the Ontario rules refer to service on “an officer, director or agent of the corporation,”⁴⁶ while the Alberta rules refer to an “officer” who “appears to have management and control responsibilities with respect to the corporation.”⁴⁷

41. See *Van Breda*, *supra* note 27 at para 82:

Jurisdiction must ... be established primarily on the basis of *objective* factors that connect the legal situation or the subject matter of the litigation with the forum. ... Abstract concerns for order, efficiency or fairness in the system are no substitute for connecting factors that give rise to a ‘real and substantial’ connection for the purposes of the law of conflicts [emphasis added].

42. See *ibid* at para 105:

A party applying for a stay on the basis of *forum non conveniens* may raise diverse facts, considerations and concerns. ... In essence, the doctrine focusses on the contexts of individual cases, and its purpose is to ensure that *both parties* are treated fairly and that the process for resolving their litigation is efficient [emphasis added].

43. Tanya J Monestier, “You’re It! Tag Jurisdiction over Corporations in Canada” (2017) 50:3 Vand J Transnat’l L 583 at 612-16 [Monestier, “Jurisdiction over Corporations”].

44. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 16.02(1)(c) [Ontario Rules].

45. Alberta, *Rules of Court*, AR 124/2010, vol 1, r 11.9(1) [Alberta Rules] [emphasis added].

46. Ontario Rules, *supra* note 44, r 16.02(1)(c).

47. Alberta Rules, *supra* note 45, r 11.13(1).

This criticism assumes that “carrying on business” for the purposes of establishing presence-based jurisdiction has the same meaning as when “carrying on business” is relied on as a presumptive connecting factor in service *ex juris* cases. There seems little doubt that this was the understanding of the Court in *Chevron*. After stating that “the common law has consistently found the maintenance of physical business premises to be a compelling jurisdictional factor” for presence-based jurisdiction, the Court went on to say that “LeBel J. accepted this in *Van Breda* when he held that ‘carrying on business requires some form of actual, not only virtual, presence in the jurisdiction, such as maintaining an office there.’”⁴⁸ Since *Van Breda* was a case of assumed jurisdiction, it is evident that the Court considered the concept of “carrying on business” to carry the same meaning in both contexts, and the criteria for corporate presence in *Chevron* has been referenced in the subsequent case law interpreting the concept of “carrying on business” for the purposes of assumed jurisdiction under the *Van Breda* framework.⁴⁹

The issue was directly addressed in *Yip v HSBC Holdings plc*, a 2017 decision of the Ontario Superior Court of Justice in which assumed jurisdiction was alleged to be available over a foreign corporation on the basis that it was carrying on business in Ontario.⁵⁰ In a comprehensive and persuasive analysis, the court traced the origin of “carrying on business” as a presumptive connecting factor in *Van Breda* to the pre-*Van Breda* jurisprudence on traditional presence-based general jurisdiction.⁵¹ As the court explained, much of the case law on carrying on business in the presence-based jurisdictional context was developed at a time when the rules governing local service on a foreign corporation deemed “any person who within Ontario transacts or carries on any of the [corporation’s] business” to be an “agent” of the corporation for the purposes of local service.⁵² In interpreting “carrying on business” for the purposes of this provision, the cases recognized that the issue, although superficially one of practice, went to the more fundamental question of whether the activities carried on by the alleged “agent” in the forum when served with process were sufficient to make the foreign corporation “present” in the forum for the court to have general jurisdiction over

48. *Chevron*, *supra* note 33 at para 85.

49. *Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC*, 2016 ONCA 977 at paras 7-17, 135 OR (3d) 551 [*Budd*]; *King v Giardina*, 2017 ONSC 1588 at para 47, n 21, 279 ACWS (3d) 525; *Yip*, *supra* note 17 at paras 157-58. See also Monestier, “Jurisdiction over Corporations,” *supra* note 43 at 615.

50. *Yip*, *supra* note 17.

51. *Ibid* at paras 155-200.

52. *Ibid* at paras 167-69.

it at common law. Consequently, the court concluded, “carrying on business” should be interpreted for the purposes of assumed jurisdiction under the *Van Breda* framework in line with its roots in presence-based general jurisdiction:

[C]arrying on business “in” a jurisdiction means that the foreign defendant’s activity in the jurisdiction approaches that or has the intensity of the defendant being a resident in the jurisdiction amenable to being personally served with a court process in that jurisdiction, which ... is the source of the idea that carrying on business in the jurisdiction is presumptive of having a real and substantial connection with the jurisdiction.⁵³

The difficulty is that in the assumed jurisdiction context, the defendant quite evidently was not served with process locally nor do the courts require a showing that this would have been possible under the forum’s rules for service of process. On the other hand, since general jurisdiction based on “carrying on business” under the *Van Breda* framework is rebuttable by showing the absence of a subject matter connection to the forum, the concept has tended to receive a flexible, case-specific, and correspondingly elastic interpretation in order to enable jurisdiction to be exercised, notwithstanding that it is evident that the corporation could not have been served with process locally. *Budd*⁵⁴ is a good example. In that case, the Court of Appeal for Ontario affirmed the motion judge’s ruling that a foreign corporation was carrying on business in Ontario for the purposes of assumed jurisdiction even though the business allegedly done in Ontario was mainly not carried out at any physical place in the province.⁵⁵ In challenging the motions judge’s ruling, the appellants had cited *Chevron* and several other cases as requiring a more substantial physical presence. While acknowledging that “a more substantial presence, along the lines discussed in the cases, would have added weight to the motion judge’s determination,” the court emphasized that “each case invoking the ... [presumptive connecting factor] of carrying on business in Ontario must be considered on its unique facts.”⁵⁶ The case involved a class action proceeding, a context where courts may be inclined towards a liberal interpretation of carrying on business to preserve jurisdiction in the interests of litigation efficiency and fairness to plaintiffs. In endorsing

53. *Ibid* at para 160.

54. *Budd*, *supra* note 49.

55. *Ibid* at paras 7-17.

56. *Ibid* at para 17. Note that the court referred to “carrying on business” as the fourth presumptive connecting factor recognized in *Van Breda* when in fact it is the second. See *Van Breda*, *supra* note 27 at para 90.

an elastic, case-specific approach to the meaning of “carrying on business,” the Court of Appeal may have been influenced by this consideration.

The Supreme Court of Canada in *Chevron* was careful to limit its ruling on the constitutional legitimacy of common law presence-based jurisdiction to presence as established “*in this case*.”⁵⁷ This leaves the door open to the argument that the real and substantial connection principle as a constitutional limit may on other facts constrain the meaning of “carrying on business.” And since the term has the same meaning in both the presence-based and presumptive jurisdiction contexts, the same challenge presumably could also be made in the latter context.

Admittedly, in *Lapointe Rosenstein Marchand Melançon LLP v Cassels Brock & Blackwell LLP*,⁵⁸ the Supreme Court emphasized that the fourth presumptive connecting factor in *Van Breda*—that the dispute be connected to a contract made in the forum—should not be interpreted in an “unduly narrow” manner that would undermine “flexibility and commercial efficiency.”⁵⁹ This suggests that the Court might be inclined to also endorse an elastic approach to “carrying on business” at both the common law and constitutional law levels. On the other hand, the fourth presumptive connecting factor at least requires that the contract have some connection to the dispute, however indirect. Consistent with its origins in presence-based jurisdiction, “carrying on business,” like the presumptive connecting factors of “domicile or residence,” establishes presumptive *general* jurisdiction, *i.e.*, there is no need to show that the dispute is related to the business carried on in the forum: The absence of a subject-matter connection is merely a basis on which the presumption of jurisdiction may be rebutted. Thus, a broad theory of the second presumptive connecting factor that exceeds even the generous approach adopted in *Chevron* would run a greater danger of creating universal jurisdiction for all local plaintiffs in relation to all foreign corporations that have some business presence in the forum, a consequence that the Court cautioned against in *Van Breda*.⁶⁰

All of the above suggests that establishing the outer boundaries of “carrying on business” for the purposes of both presence-based and assumed jurisdiction promises to be a fruitful source of litigation in years to come. Moreover, the problem is not limited to the domestic jurisdiction context. A corporate defendant’s presence in the forum, when served with process, has also traditionally been recognized as a sufficient basis at common law for the exercise of general

57. *Chevron*, *supra* note 33 at para 89 [emphasis added].

58. 2016 SCC 30, [2016] 1 SCR 851 [*Lapointe*].

59. *Ibid* at para 32.

60. *Van Breda*, *supra* note 27 at para 87.

jurisdiction by foreign courts in the foreign judgment recognition context,⁶¹ and courts have used the same approach, and often relied on the same cases, to elucidate the meaning of corporate presence in the latter context.⁶²

In *Chevron*, the Court did not suggest that its ruling on the legitimacy of presence-based general jurisdiction over corporations for the purposes of domestic jurisdiction did not have equal application in the context of recognizing foreign judgments. On the contrary, in observing that the common law has always considered the establishment of a physical place of business and the sustained carrying on of business there as sufficient to establish presence-based jurisdiction over a corporation, the Court placed primary reliance on cases decided in the foreign judgment recognition context.⁶³

Chevron thus has important implications for all Canadian corporations doing business nationally or internationally. The constitutional obligation to give full faith and credit to sister province judgments means that the courts in all provinces are obligated to recognize the exercise of jurisdiction by courts in sister provinces as legitimate if the defendant carried on business in the judgment forum and was served with process there. In the common law provinces, the same presumably applies to judgments rendered against Canadian corporations by courts outside of Canada if the corporation was served within the jurisdiction. Saskatchewan is an exception insofar that its *Enforcement of Foreign Judgments Act*, applicable to judgments rendered by courts outside of Canada, defines “ordinary residence”

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61. In the wake of *Morguard*, the issue of presence-based jurisdiction in the foreign judgment context was litigated most frequently in the context of the Reciprocal Enforcement of Judgments Acts adopted by many of the common law provinces. These Acts were adopted prior to *Morguard* and provided, in line with the pre-*Morguard* common law, that no order for registration could be made if the defendant was not ordinarily resident or carrying on business within the jurisdiction of the original court when the action was commenced and did not voluntarily submit to its jurisdiction. Following *Morguard*, it was frequently argued that the legislation should be more liberally construed to facilitate registration where the judgment related to a claim that had a real and substantial connection to the foreign judgment forum. That argument was generally rejected with the result that the foreign judgment creditor had to instead proceed by way of a common law action on the foreign judgment. See *Acme Video Inc v Hedges* (1993), 12 OR (3d) 160, 38 ACWS (3d) 1129 (CA); *TDI Hospitality Management Consultants Inc v Browne* (1994), 95 Man R (2d) 302, 117 DLR (4th) 289 (CA) [*TDI Hospitality*]; *Laasch v Turenne*, 2009 ABQB 267, 476 AR 377.
62. See e.g. *Mahon/Moore Group of Cos v Mercator Enterprises Ltd* (1978), 31 NSR (2d) 327, 90 DLR (3d) 590 (SC) (cited as “[a] leading case” on the meaning of “carrying on business” in *TDI Hospitality*, *supra* note 61 at para 13).
63. *Chevron*, *supra* note 33 at para 85, citing *Wilson v Hull* (1995), 174 AR 81 at para 52, 128 DLR (4th) 403 (CA); *Adams v Cape Industries Plc*, [1990] Ch 433, [1990] 2 WLR 657 (CA).

in the same manner as the international standard.⁶⁴ New Brunswick's *Foreign Judgments Act* also adopts "ordinary residence" as the standard for foreign court jurisdiction but does not define the term, so the position is unclear.⁶⁵ In the other common law provinces the law relating to foreign judgment recognition has not been codified, and the common law rule that presence suffices for foreign court jurisdiction continues to apply. So far as foreign country judgments are concerned, however, Canadian corporations are likely protected in practice by the fact that presence-based jurisdiction is available only in common law jurisdictions and has now been rejected in the United States, as Part II of the article explains.

Whether carrying on business in the foreign judgment forum, if served *ex juris*, would also be a basis for foreign judgment recognition is a more open question. This will depend on whether the presumptive connecting factor approach adopted in *Van Breda* also operates to determine the jurisdiction of foreign courts in the foreign judgment recognition context, a matter that remains unresolved.⁶⁶

II. GENERAL JURISDICTION UNDER THE *CJPTA*: "ORDINARY RESIDENCE"

The *CJPTA* adopts the "ordinary residence" of the defendant in the forum as the standard for general jurisdiction.⁶⁷ This is sometimes treated as marking a significant change from the common law concept of presence-based jurisdiction. This is true insofar as jurisdiction is detached from procedural issues of service of process.⁶⁸ General jurisdiction under the *CJPTA* exists if the defendant is

64. *The Enforcement of Foreign Judgments Act*, SS 2005, c E-9.121, ss 8(d)-(e). General jurisdiction in the state of origin is recognized if the judgment debtor "being an individual, was ordinarily resident in the state of origin" (*ibid*, s 8(d)) or "not being an individual, was incorporated in the state of origin, exercised its central management in that state or had its principal place of business located in that state" (*ibid*, s 8(e)). This act is modelled on the Uniform Law Conference of Canada, *Uniform Enforcement of Foreign Judgments Act (2003)*, ss 8(d)-(e), online: <www.ulcc.ca/en/home/353-josetta-1-en-gb/uniform-actsa/enforcement-of-foreign-judgments-act/662-enforcement-of-foreign-judgments-act>.

65. *Foreign Judgments Act*, RSNB 2011, c 162, s 2(a).

66. Tanya J Monestier, "Foreign Judgments at Common Law: Rethinking the Enforcement Rules" (2005) 28:1 Dal LJ 163.

67. *CJPTA*, BC, *supra* note 6, s 3(d) (note that general jurisdiction based on the defendant's consent or submission to the adjudicatory authority of the forum court is preserved by ss 3(b)-(c)).

68. See *e.g. Purple Echo Productions, Inc v KCTS Television*, 2008 BCCA 85 at para 31, 76 BCLR (4th) 21.

ordinarily resident in the forum at the time of commencement of the proceeding regardless of whether it is served within or outside the jurisdiction.⁶⁹ It is also true that for individual defendants, ordinary residence marks a departure from the traditional common law view that merely casual or transient presence suffices. While the *CJPTA* does not define what constitutes the ordinary residence of an individual, the term is a long-standing one in a diversity of jurisdictional contexts, and self-evidently does not include a fleeting presence in the forum.⁷⁰

When it comes to corporate defendants, however, common law presence-based jurisdiction remains alive and well in substance if not in name. To determine the ordinary residence of a corporation, section 7 of the *CJPTA* provides the following four alternative standards, any one of which is sufficient to found general jurisdiction:

7. A corporation is ordinarily resident in [*the enacting province or territory*] ... if
- (a) the corporation has or is required by law to have a registered office in [*the enacting province or territory*],
 - (b) pursuant to law, it
 - (i) has registered an address in [*the enacting province or territory*] at which process may be served generally, or
 - (ii) has nominated an agent in [*the enacting province or territory*] upon whom process may be served generally,
 - (c) it has a place of business in [*the enacting province or territory*], or
 - (d) its central management is exercised in [*the enacting province or territory*].⁷¹

As explained in the analysis that follows, while the definitions of “ordinary residence” in paragraphs (a) and (d) above are entirely consistent with the type of defendant connections needed for general jurisdiction under international standards, the definitions in paragraphs (b) and (d) define ordinary residence in a manner that preserves and arguably enlarges the common law concept of “carrying on business” discussed in Part I above.

69. See e.g. Vaughn Black, Stephen GA Pitel & Michael Sobkin, *Statutory Jurisdiction: An Analysis of the Court Jurisdiction and Proceedings Transfer Act* (Toronto: Carswell, 2012) at 73-75 (general jurisdiction exists even if the defendant is no longer ordinarily resident in the forum at the time of actual service of the process of the court).

70. *Ibid* at 75-76. Note, however, that the courts have given the term “ordinarily resident” in the *CJPTA*, in the context of individual defendants, “a broad and liberal interpretation, in accordance with the provisions of the *Act* regarding corporations ordinarily resident in the province.” See *Blazek v Blazek*, 2009 BCSC 1693 at para 33, 86 CPC (6th) 128.

71. *CJPTA*, *supra* note 6.

A. “REGISTERED OFFICE” (PLACE OF INCORPORATION) IN THE FORUM

The reference to a corporation’s “registered office” in section 7(a) as constituting its “ordinary residence” refers to the general requirement for a corporation to maintain its “registered office” in the jurisdiction under whose laws it is incorporated.⁷² In Canada’s federal framework, it is understood to refer to two categories of corporate defendants.⁷³ The first comprises corporations organized under the law of the enacting *CJPTA* province. Thus, a corporation organized under the British Columbia *Business Corporations Act* is always subject to the general jurisdiction of the British Columbia courts in claims brought against it in that province.⁷⁴ The second category comprises Canadian corporations organized under federal law that elect to specify the relevant *CJPTA* jurisdiction as the location of their “registered office” (or “head office” where that term is instead used in the relevant federal law).⁷⁵

The idea that a corporation should always be subject to the general jurisdiction of the courts at its ‘birth place’ is a long-standing and entirely uncontroversial proposition. Not surprisingly, it is also a basis of general jurisdiction in the *Brussels I Regulation* in the European Union, and for recognition of foreign judgment purposes in the 2017 *Hague Draft Convention*⁷⁶ and the 2016 draft *Commonwealth*

72. See e.g. *Business Corporations Act*, SBC 2002, c 57, s 34(1) [BCBCA]. Note that section 8(a) of the *CJPTA* addresses the concept of ordinary residence as it relates to partnerships in a parallel manner to section 7(a) and thus deems a partnership to be ordinarily resident in the enacting jurisdiction if the partnership has, or is required to have, “a registered office or business address” there. Limited liability partnerships are typically required, as a condition of their coming into existence, to designate a registered office in the jurisdiction under whose laws they are constituted with the result that courts of that jurisdiction will always have general jurisdiction over them under this criterion. See e.g. *Partnership Act*, RSBC 1996, c 348, ss 54(1), 108(1).

73. Black, Pitel & Sobkin, *supra* note 69 at 77-78.

74. See e.g. *Environmental Packaging Technologies Ltd v Rudjuk*, 2012 BCCA 343 at para 12, 36 BCLR (5th) 103; *Livingston v IMW Industries Ltd*, 2015 BCSC 1627 at para 38, 257 ACWS (3d) 82; *Anaya v Nevsun Resources Ltd*, 2017 BCCA 401 at paras 2, 14, 285 ACWS (3d) 847.

75. *Canada Business Corporations Act*, RSC 1985, c C-44, s 19(2). Section 19(1) requires a company “at all times” to “have a registered office in the province in Canada specified in its articles” at which its corporate records must be maintained (*ibid*, s 20(1)). Federal legislation governing federally regulated financial institutions such as banks and insurance companies imposes a similar requirement but uses the term “head office.” See e.g. *Bank Act*, SC 1991, c 46, s 237(1) (requiring that a bank “shall at all times have a head office in the province specified in its incorporating instrument or by-laws”).

76. *Supra* note 3.

Model Bill.⁷⁷ The *Civil Code of Quebec* likewise adopts the traditional civilian rule that the courts at the domicile of a defendant are empowered to exercise general jurisdiction, defined in the case of a corporate defendant as its head office, equivalent to its registered office.⁷⁸

B. CENTRAL MANAGEMENT EXERCISED IN THE FORUM

The concept of “registered office” in section 7(a) is synonymous with a corporation’s domicile at common law.⁷⁹ The “registered office” of a corporation may not always coincide in practice with its real domicile in the sense of the place where its central management is localized. A corporation may elect to be incorporated under the law of one jurisdiction for taxation or other pragmatic reasons yet manage its business in an entirely different jurisdiction. If general jurisdiction were instead confined to the corporation’s head office or registered office, creditors would not be able to pursue their claims at the corporation’s real home. Section 7(d)⁸⁰ of the *CJPTA* addresses this reality by providing that the

77. *Supra* note 4.

78. Arts 75-76, 307 CCQ; *CJPTA*, *supra* note 6, s 7(a); *Business Corporations Act*, CQLR c S-31.1, art 29. Article 75 of the *Civil Code* defines domicile as the place where a person has their “principal establishment.” The concept of “principal establishment” is not synonymous with residence but incorporates an additional element of intention. This is reflected in article 76, under which a change of domicile is effected by actual residence in another place coupled with the intention of the person to make that place the seat of her principal establishment. For corporations and other legal persons, however, article 307 sets out a separate definition, locating domicile “at the place and address of its head office.” The term “head office” is understood as equivalent to the term “registered office” in section 7(a) of the *CJPTA* when read in conjunction with section 29 of the Quebec *Business Corporations Act*, under which companies incorporated under the *Act* are required to have their “head office[s] ... permanently located in Québec.”

79. See *National Trust*, *supra* note 11; *Gasque*, *supra* note 11. Note that where the action relates to the internal management and affairs of the company, jurisdiction is reserved exclusively to the courts in its jurisdiction of incorporation. See also cases cited in *supra* note 13.

80. Note that section 8(c) parallels section 7(d) by deeming a partnership to be ordinarily resident in the forum if its central management is exercised there. See *CJPTA*, *supra* note 6. Identifying the location of the central management of a partnership can be problematic in cases where the partners are dispersed across multiple jurisdictions yet each is involved in its management. For that reason, section 7 of the Saskatchewan *CJPTA* provides that a partnership is ordinarily resident in Saskatchewan only if a partner is ordinarily resident there or the partnership has a place of business there (See *CJPTA*, SK, *supra* note 6). The Alberta Law Reform Institute and the Manitoba Law Reform Commission prefer the Saskatchewan approach. See Alberta Law Reform Institute, *Report No. 94, Enforcement of Judgments* (Edmonton: Alberta Law Reform Institute, 2008) at 31-32; Manitoba Law Reform

forum court also has general jurisdiction over a company incorporated outside the forum if its central management is exercised in the forum.⁸¹

A company that structures its affairs in this manner can reasonably expect that the courts in both jurisdictions will have a sufficient interest to exercise general jurisdiction over it. Accordingly, as with subsection 7(a), subsection 7(d) of the *CJPTA* is uncontroversial from a comparative and international standpoint. As observed earlier, the place of central management of a corporation also grounds general jurisdiction under the *Brussels I Regulation* and the 2017 *Hague Draft Convention* and *Commonwealth Model Bill* foreign judgment recognition instruments.⁸²

Like section 7(d), these international instruments recognize that for general jurisdictional purposes, a corporation can have multiple domiciles or residences. The problem of taking too narrow a view of a corporation's home is illustrated by the *Civil Code of Quebec* under which general jurisdiction is available only if the defendant is domiciled in Quebec.⁸³ It has been held that a person, whether natural or legal, can have only one domicile at any given time.⁸⁴ For personal actions, the *Civil Code* enlarges the permissible bases of general jurisdiction to include residence.⁸⁵ However, residence-based jurisdiction is only available in Quebec law for natural persons, as the Court of Appeal of Quebec has held that legal persons are incapable of having a residence separate from their domicile.⁸⁶ Article 3148(2) authorizes jurisdiction over corporations and other business

Commission, *Report No. 119, Private International Law* (Winnipeg: Statutory Publications, 2009) at 15-17.

81. There is not much developed analysis in the *CJPTA* case law on what is needed to show that a corporation's central management is exercised in the forum. See *Wheatland Industrial Park Inc, Re*, 2013 BCSC 27 at para 49, 42 BCLR (5th) 177 [*Wheatland*] (summary consideration); *Stewart v Stewart*, 2017 BCSC 1532 at paras 34-35, 100 BCLR (5th) 410; *Right Business Ltd v Affluent Public Ltd*, 2011 BCSC 783 at paras 34-36, 40, 6 CPC (7th) 245, aff'd 2012 BCCA 375, 37 BCLR (5th) 101 [*Right Business*, BCCA].
82. *Brussels I Regulation*, *supra* note 2; *Hague Draft Convention*, *supra* note 3; *Commonwealth Model Bill*, *supra* note 4.
83. Art 3141 CCQ.
84. See *Herzog c Interinvest Consulting*, 2009 QCCA 1428 at para 24, 179 ACWS (3d) 1088 [*Interinvest*]. The Quebec Court of Appeal confirmed that like a natural person, a legal person can have only one domicile.
85. Art 3148 CCQ. Residence is defined as the place where a person "ordinarily" (English version) or "*habituellement*" (French version) resides. See art 77 CCQ.
86. This interpretation first came from decisions applying the rule on security for costs that could be imposed on a "non-resident" plaintiff. See *Groupe Pages jaunes cie c Pitney Bowes du Canada ltée*, 2010 QCCA 368, 190 ACWS (3d) 988. This has recently been codified in art 492 of the new *Quebec Code of Civil Procedure*, CQLR c C-25.01.

entities if the defendant possesses an “establishment” (*i.e.*, place of business⁸⁷) in Quebec, but only if the dispute relates to the defendant’s activities in the province. Contrary to the views of commentators, the Court of Appeal of Quebec has endorsed a disjunctive reading of the two conditions, holding that the defendant’s activity in Quebec need not be undertaken by or from the defendant’s place of business in Quebec to found jurisdiction.⁸⁸ The facts of the case giving rise to that decision involved a company incorporated under Bermuda law but whose central management was exercised in Quebec. The practical effect of the decision on those facts was to vest the Quebec courts with equivalent jurisdiction to that available under section 7(d) and the international instruments referred to above, and this may have been influential to the Court of Appeal’s ruling.

C. PLACE OF BUSINESS IN THE FORUM

In treating a “place of business” in the forum as sufficient to constitute the “ordinary residence” of a corporation, section 7(c)⁸⁹ of the *CJPTA* codifies, or at least approximates, the common law approach to general presence-based jurisdiction. True, as noted in the introduction to this Part above, the *CJPTA* detaches jurisdiction from procedural issues of service of process. A place of business in the forum is sufficient for general jurisdiction regardless of whether the defendant is served with process in the forum or *ex juris*. However, the defendant must have a place of business in the forum at the time of the commencement of the proceedings; evidence that it had a place of business there at some time in the past is insufficient.⁹⁰ While presence at the time of commencement of the proceedings is not quite parallel to the common law rule which requires presence at the time of service of process, this requirement nonetheless indicates that the theory underlying general jurisdiction under section 7(b) is the traditional common law view that the defendant’s physical “presence” in the forum at the time the forum court’s adjudicatory power is invoked is sufficient for general jurisdiction.

87. While the notion of establishment is not defined in the *Civil Code*, courts have held that it requires some form of stable physical presence such as a branch or office. See *Interinvest*, *supra* note 83 at para 28.

88. *Ibid* at paras 40-41 (citing the broad interpretation of art 3148 CCQ endorsed by the Supreme Court of Canada in *Spar Aerospace Ltd v American Mobile Satellite Corp*, 2002 SCC 78 at para 57-59, [2002] 4 SCR 205 [*Spar*]).

89. *CJPTA*, *supra* note 6 (sections 8(b) and 9(b) of the *CJPTA* parallel section 7(b) for the purposes of determining the ordinary residence of partnerships and unincorporated associations).

90. *Knapp Consulting Inc v Continovation Services Inc*, 2012 BCSC 887 at paras 21-24, 216 ACWS (3d) 630 [*Knapp Consulting*].

The meaning of “place of business” has not been the subject of significant elaboration. However, the decision in *Borgstrom v Korean Air Lines*⁹¹ is compatible with the undemanding common law standard in *Chevron*. In that case, it was held that the defendant airline had a place of business in British Columbia at Vancouver International Airport because its airlines flew in and out of that airport and it had ten employees at the airport to manage this activity.⁹²

Clearly, a place cannot qualify as a “place of business” if the corporation does not in fact carry on any business at that place.⁹³ The reverse, however, is not necessarily true. In *Van Breda*, the Court had suggested that regular visits to the forum by the representatives of a corporation could constitute “carrying on business” even if the defendant does not have a physical place of business in the forum: “The notion of carrying on business requires some form of actual, not only virtual, presence in the jurisdiction, such as maintaining an office there *or regularly visiting the territory of the particular jurisdiction*.”⁹⁴

Since the term “carrying on business” has the same meaning in both the presence-based and presumptive jurisdiction contexts, it is conceivable that presence-based general jurisdiction could exist at common law if a visiting representative were served within the forum, provided the person served fitted within the categories of representatives specified in the relevant rules of court upon whom local service constituted service on the corporation.

General jurisdiction based on carrying on business in the forum in the absence of a current physical place of business is not even a theoretical possibility under the *CJPTA*. Only specific jurisdiction is available under section 10(h), which presumes that jurisdiction based on a real and substantial connection between

91. *Borgstrom v Korean Air Lines Co*, 2006 BCSC 1690, 153 ACWS (3d) 576, rev'd on other grounds 2007 BCCA 263, 70 BCLR (4th) 206 [*Borgstrom*].
92. *Ibid* at para 11. Note that the defendant ultimately succeeded, on *forum non conveniens* grounds, in having the British Columbia action stayed in favour of the Korean courts as the most appropriate forum. See *Borgstrom v Korean Air Lines Co*, 2007 BCSC 947, 159 ACWS (3d) 82.
93. Michael Mann, “Jurisdiction over a Foreign Company” (1955) 18:2 Mod L Rev 180 at 184. Depending on the wording of the relevant rules of court for service of process, the courts have sometimes used the expression “place of business” as a shorthand expression to denote presence sufficient to found jurisdiction. See e.g. *The Lord Advocate v Huron & Erie Loan and Savings Co*, [1911] 48 Scot LR 554, 1911 SLT 280 (Ct Sess).
94. *Van Breda*, *supra* note 27 at para 87 [emphasis added]. See also *Essar Steel Algoma Inc, Re*, 2016 ONSC 595, 33 CBR (6th) 313 [*Essar*]. In *Essar*, the Ontario Superior Court of Justice cited *Van Breda* in support of its ruling that regular visits by representatives of a foreign company to the forum were sufficient to constitute “carrying on business” for the purposes of assumed jurisdiction.

the facts giving rise to the proceeding and the forum exists if the subject matter of the claim “concerns a business carried on” in the forum.⁹⁵ In interpreting section 10(h), courts have considered the presence of a physical office in the forum at the time of the events giving rise to the dispute as relevant to the determination of whether the claim “concerns a business carried on in the forum” even though the defendant no longer had a physical office in the province when the proceeding was commenced.⁹⁶ However, unlike “carrying on business” as a presumptive connecting factor under the *Van Breda* framework, specific jurisdiction under section 10(h) is not derived from common law presence-based jurisdiction. It therefore does not depend on the defendant’s physical presence in the forum at the time of the proceeding, but on whether the business alleged to be carried on by the corporation in the forum in the past bears a subject-matter connection to the dispute. Provided some connection is present, this frees courts to adopt a far more expansive approach to what constitutes “carrying on business.” Thus, it has been held that the defendant’s physical presence in the forum, whether in the form of a place of business or regular visits by representatives, is *not* required to establish that the claim “concerns a business carried on in the forum” under section 10(h).⁹⁷

In contrast to section 7(c) of the *CJPTA* and the common law, the presence of a physical place of business in the forum is insufficient to ground general jurisdiction under the *Brussels I Regulation* and the 2017 *Hague Draft Convention* and *Commonwealth Model Bill* foreign judgment recognition instruments *unless* it is the defendant’s *principal* place of business.⁹⁸ Moreover, in contrast to section 10(h) of the *CJPTA* which does not require any physical presence to ground specific jurisdiction where the claim concerns “a business carried on” in the forum, specific jurisdiction under these international instruments is available only if the dispute arose out of the activities or operations of “a branch, agency or other establishment” established by the corporation in the foreign judgment forum.⁹⁹

The meaning of “principal place of business” in these instruments for the purposes of general jurisdiction could be understood in the abstract as referring

95. *Knapp Consulting*, *supra* note 90 at para 26. The wording of section 10(h) of the *CJPTA* is somewhat ambiguous, but it is accepted that it requires the subject matter of the claim to concern a business carried on by the *defendant* in the forum at some point. See also *MicroCoal Inc v Livneh*, 2014 BCSC 787 at paras 87-88, 240 ACWS (3d) 608.

96. *Knapp Consulting*, *supra* note 90 at para 26.

97. *Bier v Continental Motors, Inc*, 2016 BCSC 1393 at paras 53-60, 240 ACWS (3d) 608.

98. *Brussels I Regulation*, *supra* note 2; *Hague Draft Convention*, *supra* note 3; *Commonwealth Model Bill*, *supra* note 4.

99. *CJPTA*, *supra* note 6, s 10(h).

either to the place of central management of a business or to the place where the defendant's principal business is conducted. Of course, this will often be at the same place, but it could be that a business entity carries out its principal business in a different place than the one where it manages its affairs or under whose laws it is incorporated. In the context of the *Brussels I Regulation*, it has been held that the connecting factors of "statutory seat," place of "central administration," and "principal place of business" are to be differentiated, leaving open the availability of as many as three venues for the exercise of general jurisdiction.¹⁰⁰

D. REGISTERED ADDRESS OR AGENT FOR SERVICE OF PROCESS IN THE FORUM

Under section 7(b), a corporation is also considered to be ordinarily resident in the forum so as to vest general jurisdiction if it has "pursuant to law" registered an address or nominated an agent in the forum at which or upon which process may be served generally.¹⁰¹ This provision is understood to refer to provincial laws requiring an extra-provincial corporation "carrying on business" in the enacting province to register and appoint a local agent or attorney for the purposes of service of process in local proceedings.¹⁰² These statutory regimes vary considerably, including in the definition of what constitutes "carrying on business." That said, the typical statutory formulation begins by listing specific acts of a corporation that are deemed to constitute carrying on business in the forum and then concludes with a catch-all reference to "or otherwise carries on business in the forum."¹⁰³ The concept is thus not confined to the already

100. *Young v Anglo American South Africa Ltd (No 2)*, [2014] EWCA Civ 1130 at para 39, [2014] Bus LR 1434:

What then is the correct interpretation of the words "central administration" in article 60(1)(b) bearing in mind that it is one of three alternatives possible "domiciles" of a company for the purposes of the Regulation. Article 60 contemplates the possibility that a company's "statutory seat", its "central administration" and its "principal place of business" could be in the same or in different locations. In my view, the draftsman of article 60 also plainly contemplated that the three attributes of the company set out in article 60(1)(a), (b) and (c) were to be differentiated. Thus ... [t]he third [possible alternative domicile] is the place where the company does its principal "business". Where that is must be a question of fact in each case.

101. See e.g. *Hans v Volvo Trucks North America Inc*, 2010 BCSC 1700 at para 32, 2 CPC (7th) 149; *Chalmers (Litigation Guardian of) v AMO Canada Co*, 2009 BCSC 689 at para 68, 178 ACWS (3d) 313; *Formula Contractors Ltd v Lafarge Canada Inc*, 2009 BCSC 105 at para 11, 174 ACWS (3d) 712; *Hudye Farms Inc v Canadian Wheat Board*, 2011 SKCA 137 at para 15, 342 DLR (4th) 659; *Borgstrom*, *supra* note 91.

102. See e.g. *BCBCA*, *supra* note 72, ss 375-76, 386.

103. See e.g. *ibid*, s 375(2).

very broad common law concept of “carrying on business” for the purposes of presence-based jurisdiction, but can include, for example, such acts as simply listing the corporation’s name in a local telephone directory or having it appear in “any advertisement” with a local address or telephone number.¹⁰⁴

An extra-provincial company that carries on business in the forum in the manner contemplated by these statutes but does not register and appoint an agent for service is *not* ordinarily resident in the forum under section 7(b). Section 7(b) applies only if the corporation has in fact registered. It is insufficient that it may have been required “pursuant to law” to do so.¹⁰⁵ In the latter scenario, general jurisdiction will be available only if the defendant is ordinarily resident in the forum under some other criterion in section 7.

On the other hand, if an extra-provincial company does register, courts have accepted uncritically that section 7(b) *per se* confers general jurisdiction.¹⁰⁶ It is irrelevant that the company was not in fact carrying on business in the forum when the action was commenced or indeed whether it ever carried on any business there. This is a rather astonishing proposition. After all, failure to register can expose an extra-provincial company to heavy fines; for example, the penalty in British Columbia is one hundred dollars for each day that a company carries on business without being registered.¹⁰⁷ To avoid the risk of a fine, and in view of the uncertain meaning of what constitutes carrying on business, companies may often make a precautionary filing even though they are not carrying on any significant business in the forum. Or they may register in anticipation of doing business in the forum at some future time without yet having carried out that intention. To say that the mere act of registration nonetheless confers general jurisdiction over suits arising out of that company’s activities anywhere in the world is excessive by any standard. Yet that is what the plain wording of section 7(b) directs.

104. *Ibid.*

105. This is evident from the wording of section 7(b) compared to section 7(a) of the *CJPTA*. See Black, Pitel & Sobkin, *supra* note 69 at 80-81 (the authors note the confusion in *Moore v NextEnergy Inc*, 2012 BCSC 458 at paras 36-45, 217 ACWS (3d) 82). See also *Right Business*, BCCA, *supra* note 81 at paras 89-93; *Wheatland*, *supra* note 81 at para 49 (unfortunately, the British Columbia courts have continued to assume that an extra-provincial company that “carries on business” in the forum in the sense contemplated by the extra-provincial corporate registration regime is subject to jurisdiction under section 7(b) even if it has not registered).

106. *Conor Pacific Group Inc v Canada (Attorney General)*, 2012 BCCA 222 at paras 8-13, 32 BCLR (5th) 356.

107. *BCBCA*, *supra* note 72, ss 426(1)(b), 428(3); *Business Corporation Regulation*, BC Reg 65/2004, s 35.

In this respect, the *CJPTA* would seem to represent a sharp departure from the prior common law. In several pre-*CJPTA* decisions, the British Columbia courts doubted that registration as an extra-provincial company was sufficient to confer jurisdiction in the absence of any connections between the claim and the forum,¹⁰⁸ citing the 1912 decision of the British Columbia Court of Appeal in *Pearlman v Great West Life Assurance Co.*¹⁰⁹ In that case, the court rejected the proposition that an extra-provincial corporation served at its registered local address could be considered resident or present in the province so as to support the exercise of presence-based jurisdiction over a cause of action that was entirely localized outside of British Columbia. The purpose of the registration requirement was “for the protection of creditors of the Company in this Province, and to enable the Company to sue and be sued in respect of business transacted in this Province.”¹¹⁰ Consequently, registration, at best, conferred jurisdiction only in relation to claims that arose out of business done by the extra-provincial company in the province.¹¹¹

108. *Procon Mining & Tunnelling Ltd v Waddy Lake Resources Ltd*, 2002 BCSC 129 at para 35, [2002] BCTC 129; *Columbia Trust Co v Skalbania* (1991), 68 BCLR (2d) 353, [1992] 5 WWR 216 (SC). There is also Ontario authority holding that mere registration as an extra-provincial corporation does not suffice for presence-based jurisdiction if the defendant does not have a place of business in the province. See *Essex Garments Canada Inc v Cohen* (2005), 145 ACWS (3d) 814 at para 19, 22 CPC (6th) 64 (Ont Sup Ct) [*Essex*]. However, the defendant in *Essex* was a federal company with a registered head office in Manitoba and Ontario does not require extra-provincial companies incorporated under federal law with a registered office in another province, or incorporated under the law of another province, to appoint a local agent to accept service of process. Accordingly, common law presence-based jurisdiction is available in Ontario only if the extra-provincial company has a physical place of business in Ontario on which *in juris* service of process may be effected pursuant to rule 16.02(1)(c). See *Ontario Rules*, *supra* note 44.

109. *Pearlman (Pearson) v Great West Life Insurance Co* (1912), 17 BCR 417 at 419, 4 DLR 154 (CA) [*Pearlman*].

110. *Ibid* at 421.

111. All members of the panel of the British Columbia Court of Appeal agreed that registration was insufficient to give the British Columbia courts general jurisdiction over claims unrelated to the defendant’s business in the forum. However, Chief Justice Macdonald doubted that an extra-provincial company registered to do business in the province should thereby automatically be considered, even for business done in the province, to be carrying on business here for the purposes of establishing the jurisdiction of the British Columbia courts. *Ibid* at 419. Justice Martin, on the other hand, thought that when an extra-provincial company “has taken out a licence ‘authorizing it to carry on business within this Province’ ... it is too ... late for it to contend that as a fact it is not ‘carrying on business’ here, and a wide interpretation should be given to that expression” (*ibid* at 421-22). The other justices did not address this issue.

In *Pearlman*, as the court observed, there was nothing in the extra-provincial registration provisions showing it was the intention of the legislature “to confer any extraordinary jurisdiction on the Courts, or to make the Company liable to process except in respect of their British Columbia business.”¹¹² In contrast, the plain language of section 7(b) of the *CJPTA* quite clearly makes registration per se sufficient to establish general jurisdiction, even if the defendant is not, in fact, doing any business in the forum, or not doing sufficient business there to satisfy the test for common law corporate presence formulated in *Chevron*.

As noted earlier, the Supreme Court of Canada in *Chevron* left the door open to the argument that the real and substantial connection principle as a constitutional limit on the exercise of adjudicatory power may on other facts constrain presence-based jurisdiction. If a foreign company does not, in fact, carry on business in the forum sufficient to make it “present” within the territorial jurisdiction of the court, the exercise of jurisdiction under section 7(b) based solely on registration as an extra-provincial company very arguably is open to challenge on that principle. The constitutional dimension of the real and substantial connection principle in the Canadian context is said to derive from the territorial limits on provincial legislative competence and on the authority of the courts under section 92 of the *Constitution Act, 1867*.¹¹³ Citing *Van Breda*, the Court in *Chevron* stated that this principle requires that the connection between the forum and the dispute cannot be so “weak or hypothetical” as to “cast doubt upon the legitimacy of the exercise of state power over the persons affected by the dispute.”¹¹⁴ One can quarrel with the Court’s conclusory ruling in *Chevron* that it is not constitutionally illegitimate to found general jurisdiction on the traditional common law basis of presence over a corporation that “has elected to establish and continue to operate a place of business” within the territorial jurisdiction of the court at which it is served with process.¹¹⁵ But even accepting that conclusion, it is difficult to see how registration by an extra-provincial company of a local address or agent for service of process per se could give it a sufficient presence within the territorial jurisdiction of the forum to support the constitutionally legitimate exercise of general jurisdiction. To so hold would make the notion of territorial limits on a court’s authority illusory.

112. *Ibid* at 421.

113. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 92, reprinted in RSC 1985, Appendix II, No 5.

114. *Chevron*, *supra* note 33 at para 88, citing *Van Breda*, *supra* note 27 at para 32.

115. *Chevron*, *supra* note 33 at para 89.

It has been suggested that when an extra-provincial company registers to do business in the forum, it has in some sense thereby consented or submitted to the jurisdiction of the forum court.¹¹⁶ This theory arguably would make the exercise of general jurisdiction under section 7(b) constitutionally permissible, not because of the defendant's in-forum presence, but rather its submission to the exercise of authority by forum courts over its activities. A defendant's consent or submission to jurisdiction in a dispute undoubtedly confers the necessary legitimacy on a court's exercise of adjudicatory power regardless of whether the dispute bears any connection to the forum. But it defies logic and language to say that when an extra-provincial company registers and appoints a local agent for service of process, it can be taken as having impliedly submitted to the exercise of jurisdiction by the local courts over its activities anywhere in the world. The widely acknowledged purpose of requiring extra-provincial companies that do business in the province to register implies at most concession to the authority of local courts over disputes arising out of its local business. Even that proposition requires assigning an artificial meaning to the notion of consent since, as noted earlier, extra-provincial companies often make a precautionary registration to avoid the risk of penalties in view of the typically broad and open-ended definition of what constitutes carrying on business under these extra-provincial registration statutes.¹¹⁷

The "consent by registration" theory of general jurisdiction has attracted considerable attention in US jurisprudence and literature in the wake of the recent rejection by the Supreme Court of the United States of the availability of general jurisdiction based solely on a corporation's "doing business" in the forum.¹¹⁸ Most commentators have rejected the theory for the reasons already stated. True consent- or submission-based jurisdiction is: *dispute-specific* (whereas registration at best signifies consent only in relation to disputes arising out of the defendant's activities in the forum) and *voluntary* (whereas the act of registration is coerced in the sense that failure to register typically exposes the out of state corporation to

116. Black, Pitel & Sobkin, *supra* note 69 at 78.

117. See also Lord Collins of Mapesbury et al, eds, *Dicey, Morris, & Collins on the Conflict of Laws*, 15th ed (London: Sweet & Maxwell, 2012) vol 1. This edition explains:

[T]o say that a corporation which, under the threat of heavy fine, files with the Registrar of Companies ... thereby submits to the jurisdiction seems even more artificial than saying that a corporation which establishes a place of business in England is deemed to be present in England (*ibid* at 425).

118. See Part III, below.

civil incapacities and other penalties).¹¹⁹ The analysis in the US context focuses on the weakness and artificiality of the registration-by-consent theory in the context of the jurisdictional constraints imposed by the due process requirements of the US Constitution. The same criticisms apply in the Canadian context insofar as the purpose of the territorially-based constitutional constraints on provincial authority is to ensure the legitimate exercise of provincial adjudicatory power.

The consent-by-registration theory of general jurisdiction has not yet been the subject of a ruling by the US Supreme Court.¹²⁰ To date, it has received a mixed reception in lower courts. It has, for example, been rejected by district courts in some circuits,¹²¹ but accepted in others, albeit based on statutory wording that specifically advised that registration constituted the registrant's consent to jurisdiction.¹²²

III. LIMITING COMMON LAW GENERAL JURISDICTION TO A CORPORATION'S "HOME" FORUM: THE RECENT US JURISPRUDENCE

For many years, US courts recognized a kind of presence-based general jurisdiction over out-of-state and foreign country corporations. Under what was variously referred to as the "corporate presence" and "doing business" doctrine, a suit could be brought against a corporation that had substantial "continuous and systematic" business contacts with the forum state, even though the cause of action arose from activities that were entirely unrelated to those contacts.¹²³ While there was considerable variation in the jurisprudence of different state courts on what constituted sufficiently substantial contacts, the few US Supreme Court decisions in which the matter was addressed seemed to accept that doing

119. See generally Craig Sanders, "Of Carrots and Sticks: General Jurisdiction and Genuine Consent" (2017) 111:5 Nw UL Rev 1323; Tanya J Monestier, "Registration Statutes, General Jurisdiction, and the Fallacy of Consent" (2015) 36:4 Cardozo L Rev 1343; Edward D Cavanagh, "General Jurisdiction 2.0: The Updating and Uprooting of the Corporate Presence Doctrine" (2016) 68:2 Me L Rev 287 at 308-14; Monestier, "Jurisdiction over Corporations," *supra* note 43 at 167-68, n 42. See also Kevin D Benish, "Penmoyer's Ghost: Consent, Registration Statutes, and General Jurisdiction after *Daimler AG v. Bauman*" (2015) 90:5 NYUL Rev 1609.

120. The US Supreme Court declined to rule on the point because the Montana Supreme Court had not addressed the question. See *BNSF Ry Co v Tyrrell*, 137 S Ct 1549 at 1553 (2017) [*BNSF Ry Co*].

121. *Famular v Whirlpool Corp*, 16 CV 944 (VB) (SDNY 2017).

122. *Bors v Johnson & Johnson*, 208 F Supp (3d) 648 at 652 (ED Pa 2016).

123. Cavanagh, *supra* note 119 at 302.

business in the forum on a continuous and systematic basis was an acceptable basis for general jurisdiction.¹²⁴

All that changed with the 2011 decision of the US Supreme Court in *Goodyear*.¹²⁵ In delivering the opinion of the court, Justice Ginsburg concluded that a state court could assert general jurisdiction over out-of-state corporations only if their affiliations were “so ‘continuous and systematic’ as to render them essentially at home in the forum State.”¹²⁶ Three years later, in *Daimler*,¹²⁷ Justice Ginsburg confirmed (on behalf of an 8-to-1 majority) that a corporation’s place of incorporation or its principal place of business (*i.e.*, place of central administration)¹²⁸ constituted the paradigmatic connections needed to satisfy the “at home” standard.¹²⁹ Engaging in “substantial, continuous, and systematic” business activities in the forum was insufficient to support general jurisdiction if the dispute did not arise out of those activities. Further, the US Supreme Court’s citation in its earlier decisions to cases upholding the exercise of general jurisdiction based on the corporation “doing business” from a local office in the forum state “should not attract heavy reliance today.”¹³⁰

In the wake of the Court’s narrowing of general jurisdiction in *Goodyear* and *Daimler*, it was speculated that US state courts would be inclined to push the boundaries of specific jurisdiction. That expectation materialized when the California Supreme Court, in its *Bristol-Myers Squibb* decision,¹³¹ ruled that it had specific jurisdiction over non-resident plaintiffs in a tort class action suit against a pharmaceutical manufacturer in California even though their alleged injuries had been suffered in their home states, and none of the conduct giving rise to their claims had occurred in California. On appeal, the US Supreme Court reversed, ruling that the jurisdiction of the California courts was limited to the

124. *Ibid* at 301-03.

125. *Goodyear*, *supra* note 1.

126. *Ibid* at 919 [emphasis added].

127. *Daimler*, *supra* note 1.

128. The Court cited *Hertz Corporation v Friend*, 559 US 77 (2010), when referring to the defendant’s “principal place of business” in both *Goodyear* and *Daimler*, in which it had defined a corporation’s principal place of business for the purposes of diversity of citizenship jurisdiction as its “nerve center,” *i.e.*, the place where managers “direct, control, and coordinate the corporation’s activities” as opposed to the place of its principal activities (*ibid* at 92-93). The term thus appears to equate with the “place of central administration” connecting factor used in the *CJPTA* and in international instruments. See *supra* notes 3-5 and accompanying text.

129. *Daimler*, *supra* note 1 at 760.

130. *Ibid* at 761, n 18.

131. *Bristol-Myers Squibb Company v Superior Court*, 1 Cal (5th) 783 (S Ct 2016).

California plaintiffs injured in California.¹³² In language that would not be out of place in a Canadian constitutional context, the US Supreme Court emphasized that “restrictions on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of *territorial limitations on the power of the respective States*’”¹³³ and the “sovereign power” of each State to try causes in its courts implies “a limitation on the sovereignty of all its sister States.”¹³⁴ Consequently,

“[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State ... [and] even if the forum State is the most convenient location for litigation, the Due Process Clause, *acting as an instrument of interstate federalism*, may sometimes act to divest the State of its power to render a valid judgment.”¹³⁵

In subsequent decisions, the US Supreme Court has unequivocally confirmed that it meant what it said in *Daimler*. Decided in 2017, *BNSF Ry Co v Tyrrell*¹³⁶ involved claims instituted in Montana under the *Federal Employers’ Liability Act* (“*FELA*”) for personal injuries sustained by employees of the defendant railroad company in states other than Montana. The defendant was incorporated in Delaware and had its principal place of business in Texas. The Montana Supreme Court held that it could exercise general jurisdiction since *FELA* provided that claims could be brought in any state where the defendant is “doing business.” The US Supreme Court reversed. Writing for the Court, Justice Ginsburg ruled that the *FELA* provision did not state a rule of jurisdiction but merely provided a venue if jurisdiction was otherwise available. Justice Ginsburg then reiterated the *Daimler* ruling that the “paradigm” forums in which a corporation is subject to general jurisdiction are the corporation’s place of incorporation and its principal place of business.

Daimler brings the law on general jurisdiction in the United States much closer to the European and international approaches referred to earlier in the article, and conversely moves it much further from the *CJPTA* and Canadian common law. Indeed, the US Supreme Court cited considerations of comity and international harmonization as influential in its tightening of the bases

132. *Bristol-Myers Squibb Company v Superior Court of California, San Francisco County*, 137 S Ct 1773 (2017) [*Bristol-Myers* 2017].

133. *Ibid* at 1780, quoting *Hanson v Denckla*, 357 US 235 at 251 (1958) [emphasis added].

134. *Bristol-Myers* 2017, *supra* note 132, citing *World-Wide Volkswagen Corp v Woodson*, 444 US 286 at 293 (1980) [*World-Wide Volkswagen*].

135. *Bristol-Myers* 2017, *supra* note 132 at 1780-81, citing *World-Wide Volkswagen*, *supra* note 134 at 294 [emphasis added].

136. *BNSF Ry Co*, *supra* note 120.

for exercising general jurisdiction.¹³⁷ While these considerations have obvious resonance in the Canadian context, it is instructive to consider the extent to which the other justifications underlying the US Supreme Court's conclusion are also transferable.

Consider first the US Supreme Court's observation that there was no need for an expansive theory of general jurisdiction given that the available bases of specific jurisdiction, in the wake of the US Supreme Court's decision in *International Shoe Co v Washington*,¹³⁸ had been sufficiently enlarged to eliminate the need to adopt a broad theory of general jurisdiction to allow "plaintiffs access to a reasonable forum in cases when specific jurisdiction would deny it."¹³⁹ This justification has even greater resonance in the Canadian context. The Supreme Court has adopted a very liberal approach to the determination of what constitutes a sufficiently "real and substantial" presumptive connecting factor to found assumed jurisdiction at common law.¹⁴⁰ In common law jurisdictions that have adopted the *CJPTA*, section 10(h) sets out a long list of broadly formulated and broadly interpreted presumptive "real and substantial connection" bases for specific jurisdiction.¹⁴¹ And the Quebec courts have endorsed a liberal reading

137. *Daimler*, *supra* note 1 at 763.

138. *International Shoe*, *supra* note 1.

139. See *Daimler*, *supra* note 1 at 757-58, n 9, citing Patrick J Borchers, "The Problem with General Jurisdiction" (2000) 2001:1 U Chicago Legal F 119 ("general jurisdiction exists as an imperfect safety valve that sometimes allows plaintiffs access to a reasonable forum in cases when specific jurisdiction would deny it" at 139). See also *Daimler*, *supra* note 1 at 755-58; 762, n 20.

140. As observed earlier, the *Van Breda* presumptive connecting factor of "carrying on business" in the forum was given a liberal interpretation in the case itself, and the subsequent case law has confirmed and arguably taken an even more liberal approach. See the text accompanying note 54. The same is true of the presumptive connecting factor of "a contract connected to the dispute" made in the forum. See *Lapointe*, *supra* note 58. See also *Toews v Grand Palladium Vallarta Resort & Spa*, 2016 ABCA 408, 408 DLR (4th) 282, leave to appeal to SCC refused, 37450 (18 May 2017). The presumptive connecting factor of a tort committed in the forum has also been given a broad "contextual" interpretation. See *e.g. Gulevich v Miller*, 2015 ABCA 411, 393 DLR (4th) 304.

141. See the discussion of section 10(h) in Part II, above.

of the statutory connecting factors for jurisdiction in the *Civil Code* under the influence of the Supreme Court of Canada's decision in *Spar*.¹⁴²

Consider next the US Supreme Court's concern with unpredictability for corporations having a presence in multiple jurisdictions owing to the considerable variation in state jurisprudence on what constituted a sufficiently proximate business presence in a state to support general jurisdiction.¹⁴³ This concern is equally acute in the Canadian common law and *CJPTA* contexts. For all the reasons discussed in Part I, above, the uncertainty surrounding the outer boundaries of "carrying on business" for the purposes of both presence-based general jurisdiction and assumed jurisdiction in the common law context promises to be a fruitful source of litigation in the years to come in both the domestic jurisdiction and foreign judgment recognition contexts. The scope of general jurisdiction under the *CJPTA* is marginally less uncertain since, as noted in Part II of the article, section 7(c) of the *CJPTA* at least confirms that the corporation must be "carrying on business" at a physical place of business in the forum to be considered ordinarily resident there. On the other hand, as also discussed in Part II, carrying on business as a basis for specific jurisdiction under section 10(h) of the *CJPTA* has been given a generous interpretation so as not to require the corporation to have any physical presence in the forum, in contrast to the international standards for specific jurisdiction. Moreover, as further observed in Part II, the constitutional legitimacy of exercising general jurisdiction over extra-provincial companies based solely on registration of an address or agent for service in the forum under section 7(b) is controversial, particularly if the company does not in fact carry on business in the forum to an extent sufficient to make it "present" there in the common law sense of presence-based jurisdiction as articulated in *Chevron*.

Consider also the US Supreme Court's concerns with the need to constrain forum shopping.¹⁴⁴ This is perceived as problematic in the United States for a

142. For example, the Quebec Court of Appeal has twice upheld jurisdiction under the "injury ... suffered in Québec" connecting factor in article 3148(3) in claims for personal injury suffered abroad, where the victim returns to Quebec and continues to suffer from the initial foreign injury. See *D'Amours c Transat Tours Canada inc*, 2007 QCCA 418, [2007] RJQ 550; *Nosseir v Vacances Transat Holidays inc*, 2009 QCCA 2182, 2009 JQ no 13825 (QL). This was premised on the Supreme Court of Canada's emphasis that article 3148(3) provides a "broad basis for finding jurisdiction." See *Spar*, *supra* note 88 at paras 57-59.

143. *Daimler*, *supra* note 1 at 759-60. See also Monestier, "Where Is Home Depot," *supra* note 1 at 258-59.

144. *Daimler*, *supra* note 1 at 757, 760-61. See also Monestier, "Where Is Home Depot," *supra* note 1 at 259-60.

variety of reasons.¹⁴⁵ First, there is considerable disharmony in the choice of law approaches applied by courts in the various states with the result that a plaintiff's choice of forum can sometimes result in the application of a more favourable substantive law to the merits. Second, even if the substantive law is the same in all possible fora, state courts often apply their own internal limitations statutes to a claim, thereby encouraging plaintiffs pursuing stale claims to shop for a forum with a generous limitation period. Third, there can be considerable variation in the standards of liability and damages awarded for similar conduct owing to variations in the makeup and plaintiff-friendly disposition of juries from one state to the next.

These specific forum-shopping considerations have somewhat less resonance in the Canadian context: juries are either unavailable or not utilized in civil law claims,¹⁴⁶ choice of law approaches are largely harmonious,¹⁴⁷ and claimants generally cannot rely on a longer forum limitation period if the claim is barred by the limitations statute of the jurisdiction whose law applies to the merits of the claim.¹⁴⁸ That said, a theory of general jurisdiction that entitles a plaintiff to bring claims anywhere that a corporation carries on business, however remote that place may be from the subject matter of the dispute, undoubtedly offers ample opportunity for litigants to select a forum for strategic (*e.g.*, to force a settlement) or other reasons having little to do with the merits of the claim.¹⁴⁹ Moreover, since "carrying on business" in the forum also gives presumptive, albeit rebuttable, general jurisdiction in assumed jurisdiction cases under the *Van Breda*

145. See Lea Brilmayer et al, "A General Look at General Jurisdiction" (1988) 66:4 *Tex L Rev* 721 at 725. See also Allan R Stein, "Frontiers of Jurisdiction: From Isolation to Connectedness" (2000) 2001:1 *U Chicago Legal F* 373 at 384-86.

146. WA Bogart, "'Guardian of Civil Rights ... Medieval Relic': The Civil Jury in Canada" (1999) 62:2 *Law & Contemp Probs* 305.

147. The most notable exceptions arise in tort cases. See *e.g.* *Tolofson v Jensen*, [1994] 3 SCR 1022, 120 DLR (4th) 289. The Supreme Court of Canada endorsed the general application of the *lex loci delicti* for common law jurisdictions. The *Civil Code of Quebec* sets out two notable exceptions: (1) article 3128 provides a special victim-protective alternative choice of law rule for products liability cases; and (2) article 3126 provides for the application of the parties' home law where the victim and the defendant have a common domicile or residence in the same state. See arts 3126, 3128 CCQ.

148. While the rules in the various Canadian provinces and territories on the law applicable to limitation periods (prescription) are not entirely uniform, forum shopping is not a problem since claimants generally cannot rely on a longer limitation period if the claim is barred under the limitation statute of the jurisdiction whose law is applicable to the merits. See Stephen GA Pitel et al, *Private International Law in Common Law Canada: Cases, Text and Materials*, 4th ed (Toronto: Emond Montgomery, 2016) at 592-602.

149. See Monestier, "Jurisdiction over Corporations," *supra* note 43 at 623.

framework, the potential for forum-shopping is not limited to cases where the corporation is amenable to local service of process under the forum's service rules.

Consider finally the concern that a broad theory of general jurisdiction affects different categories of defendants differently, exposing large corporations with a country-wide business presence to the risk of litigation in all states in which they carry on business.¹⁵⁰ While that concern also resonates in the Canadian context, there is the countervailing consideration, emphasized in Justice Sotomayor's minority opinion in *Daimler*, that the effect of the majority ruling would be to require individual plaintiffs injured outside their home state by the activities of a large multistate or multinational corporation to pursue the defendant in its home forum or in the state of injury, depriving them of recourse to local courts for relief.¹⁵¹

Justice Sotomayor was also the dissenting voice in the US Supreme Court's subsequent decision in *Bristol-Myers Squibb*.¹⁵² In ruling that the California courts lacked specific jurisdiction over the claims of non-resident plaintiffs, she saw the court as essentially allowing "territorial limitations on the power of the respective States" to trump "fair play and substantial justice."¹⁵³ As in *Daimler*, Justice Sotomayor's dissent was rooted in concerns with access to justice. The ruling would limit the choice of fora for plaintiffs seeking to aggregate claims in mass tort claims (*i.e.*, class actions) to the defendant's home state and might even make such claims impossible where the action is against two or more defendants incorporated or with a principal place of business in different states.

Whatever relevance Justice Sotomayor's concerns with access to justice may have in the US context, they simply do not resonate in Canada. As emphasized above, Canadian jurisdictional law—whether rooted in the common law, the *CJPTA*, or the *Civil Code*—has embraced such an expansive approach to "specific" jurisdiction as to eliminate any need to preserve a broad theory of general jurisdiction based on corporate presence. The concluding analysis that follows elaborates on this point.

150. *Daimler*, *supra* note 1 at 760-61. The case mentions that:

Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." That formulation, we hold, is unacceptably grasping.

151. *Ibid* at 773.

152. *Bristol-Myers* 2017, *supra* note 132.

153. *Ibid* at 1788.

IV. CONCLUSION

As we have seen, international instruments reserve general jurisdiction to the state in which the defendant corporation's registered office, centre of administration, or principal activities are located (where these are distributed among several jurisdictions).¹⁵⁴ The mere establishment of a place of business in the forum vests only specific jurisdiction, *i.e.*, only in relation to disputes specifically related to the corporation's forum activities. This is in contrast to the traditional common law concept of presence-based jurisdiction, under which the establishment of a place of business and the sustained carrying on of business in the forum when served *in juris* vests general jurisdiction over a corporate defendant, *i.e.*, even in unrelated disputes.¹⁵⁵ While the Supreme Court of the United States has narrowed the availability of general jurisdiction over corporate defendants at common law to bring it closer in line with the international standard,¹⁵⁶ the Supreme Court of Canada has declined to follow that lead.¹⁵⁷ And while the *CJPTA* uses the concept of "ordinary residence" for general jurisdiction, it defines "ordinary residence" for corporations and other business entities in a manner that preserves, and even exceeds, the common law approach.¹⁵⁸

The persistence of a broad theory of presence-based general jurisdiction for corporate defendants not just at common law but also under the *CJPTA* is puzzling. While the Supreme Court of Canada in *Chevron* emphasized the long historical roots of traditional common law presence-based jurisdiction,¹⁵⁹ it offered little in the way of principled justification, relying instead on conclusory statements that it is "reasonable" for a corporation that establishes and continues to operate a place of business in the forum to expect someday to be sued there and for that courts of that jurisdiction to take an interest in its affairs.¹⁶⁰ These assumptions have resonance where the specific dispute relates to the defendant's forum activities, but they are unpersuasive where the subject matter of the dispute relates to events and activities that occur elsewhere in the country or abroad.

As observed in Part III, access to justice concerns underpinned Justice Sotomayor's objections to the rejection of a broad concept of general jurisdiction in the US context, particularly in combination with a complementary tightening

154. *Supra* notes 3-5 and accompanying text.

155. See Part I, above, for more on this topic.

156. See Part III, above, for more on this topic.

157. See Part I, above, for more on this topic.

158. See Part II, above, for more on this topic.

159. *Chevron*, *supra* note 33 at para 83.

160. *Ibid* at para 89.

of specific jurisdiction. As Part III concluded, the latter concern does not resonate in the Canadian context. Although *Van Breda* purported to tighten the bases for “real and substantial connection” assumed jurisdiction in service *ex juris* cases at common law, the courts have adopted a generous interpretation to the presumptive connecting factors endorsed in that case, permitting them to retain jurisdiction where access to justice considerations are present.¹⁶¹

Indeed, as observed in Part I, and consistent with its origins in presence-based jurisdiction in service *in juris* cases, “carrying on business” as a presumptive connecting factor under the *Van Breda* framework does not require a connection between the subject-matter of the dispute and the forum; the absence of such a connection is merely a basis on which the presumption of jurisdiction may be rebutted.¹⁶² In determining whether the presumption has been rebutted, the courts have exercised restraint in balancing access to justice concerns with protection of large multinational corporations from being hauled into court in a forum that is a world away from the events giving rise to the dispute.¹⁶³ Nonetheless, “carrying on business” has been interpreted as sufficient to vest jurisdiction under the *Van Breda* framework even where the connection between the subject matter of the dispute and the forum is tenuous,¹⁶⁴ and even though the degree of corporate presence in the forum is contestable.¹⁶⁵ Tellingly, this has tended to happen in cases where the access to justice concerns articulated by Justice Sotomayor in the US context are present: claims by individual plaintiffs in their home forum against a large national or multinational company arising from the company’s out of province or out of country activities,¹⁶⁶ and class action proceedings.¹⁶⁷

In the *CJPTA* context, we saw in Part II that common law presence-based general jurisdiction has been preserved in section 7(c) but without regard to whether service is effected within the jurisdiction or *ex juris*, and in section 7(b) even if the defendant is not actually carrying on business there when the action is commenced provided it has registered a local agent for service of process. While general jurisdiction under section 7(c) at least requires that the corporation have a physical place of business in the forum, it was observed in Part II that specific jurisdiction under section 10(h) is available if the dispute relates to business carried on in the forum by the corporation, even if it has never had any physical

161. See Part I, above; *supra* note 140.

162. The same is true of the presumptive connecting factors of “domicile or “residence” which are also bases for common law presence-based general jurisdiction in service *in juris* cases.

163. See *Kornhaber v Starwood Hotels*, 2014 ONSC 6182, 246 ACWS (3d) 567.

164. See *e.g. Pedwell v Snc-Lavalin Inc*, 2014 ABQB 309, [2014] AWLD 3336 [*Pedwell*].

165. See *e.g. Budd*, *supra* note 49.

166. *Pedwell*, *supra* note 164.

167. *Budd*, *supra* note 49.

presence there whether in the form of a physical office or visits by representatives of the corporation. The adoption of a generous approach to specific jurisdiction under section 10(h) similarly operates to preserve access to local justice for local plaintiffs, notwithstanding that section 10(h) would not be sufficient for specific jurisdiction under international standards which requires that the dispute relate to the activities of the corporation at a physical branch or establishment in the forum.¹⁶⁸

It is true that the common law and *CJPTA* approach to general jurisdiction provides access to local justice for individuals who are injured by the activities of a national corporation while visiting another province or who move to a new province after the occurrence of the relevant events. Yet access is by no means assured given that courts retain the discretion to stay proceedings under the doctrine of *forum non conveniens*. Moreover, the burden and inconvenience for the corporate defendant is not the only concern to be weighed. A broad theory of general jurisdiction greatly expands the potential for courts in multiple jurisdictions to claim adjudicatory authority over disputes arising from events and activities occurring wholly outside their borders. The more restrained international standard better addresses the interest of all jurisdictions in mutually respecting the territorial limitations on the reach of their courts. Claimants are still assured of a reasonable choice of litigation venues insofar as general jurisdiction is not limited to the courts at the corporation's 'birth place' but extends to the courts at the place of central management of its affairs and the place where it carries out its principal business.

The Supreme Court of Canada's decision in *Chevron* signals that implementation of the more restrained international standard for general jurisdiction is unlikely to come from the courts. Whether the *CJPTA* legislators or for that matter legislators in the common law provinces are willing to reform their jurisdictional laws in line with international standards is doubtful. Matters of jurisdiction have not been a priority on the legislative agenda for some time. Reform may therefore have to await the finalization of the *Hague Draft Convention*,¹⁶⁹ assuming there is an appetite in the provinces for its adoption. Even if the *Hague Draft Convention* were adopted, it only addresses the jurisdiction of foreign courts for the purposes of recognizing their judgments. Consequently, Canadian common law jurisdictions (including *CJPTA* jurisdictions) would be free to adopt the Convention while still claiming a broader jurisdictional authority for their own courts.

168. See the text accompanying *supra* notes 95-99.

169. *Hague Draft Convention*, *supra* note 3.