

**JURISDICTION FOR CONSUMER CONTRACTS
(DRAFT MODEL PROVISIONS)**

October 2006

Canada

PART 1: JURISDICTION

Definitions

1. In this Part,

“consumer contract” means [A State may legislate to define the term “consumer contract” under this Act to have the same meaning as it does under its national law],

“consumer contract proceeding” means a proceeding brought in connection with a consumer contract,

“ordinarily resident” means [A State may refer to an existing definition of resident under its national law or leave it open as to its meaning],

[Alternatively, under a different provision]

1.1(1) Subject to paragraph 2), a person is an ordinarily resident of the place of usual residence as indicated in the contract.

(2) A business is ordinarily resident in [name of State] where:

- (a) it has or is required by law to have a registered office in [name of state];**
- (b) it has registered an address in [name of State] at which process may be served generally;**
- (c) it has nominated an agent in [name of State] upon whom process may be served generally;**
- (d) it has a place of business in [name of State]; or**
- (e) its central management is exercised in [name of state].**

“plaintiff” means a person who has commenced a consumer contract proceeding,

“vendor” includes a vendor’s agent,

“vendor’s jurisdiction” means the jurisdiction in which a vendor is ordinarily resident.

Commentary: While the definitions of consumer contract proceeding varies, for the most part, the main features of a consumer contract can be identified as follows:

- the contract is for the provision of goods or services for personal, family or household use;
- the vendor is acting in the course of his or her business; and
- the purchaser is an individual acting outside his or her trade or profession.

Exclusion of other ground for jurisdiction

2. The jurisdiction of a court in [name of the State] in a consumer contract proceeding where one party to the consumer contract is ordinarily resident in [name of the State] and another party to the consumer contract is ordinarily resident in a jurisdiction other than [name of the State] is to be determined solely in accordance with this Part.

Jurisdiction Rules for Consumer Contracts

3. A court has jurisdiction in a consumer contract proceeding that is brought against a person if:

- (a) that person is ordinarily resident in [name of State] at the time of the commencement of the consumer contract proceeding,
- (b) there is a real and substantial connection between [name of State] and the facts on which the consumer contract proceeding against that person is based,
- (c) there is a written agreement between the plaintiff and that person to the effect that the court has jurisdiction in the consumer contract proceeding,
- (d) during the consumer contract proceeding that person submits to the court's jurisdiction, or
- (e) the consumer contract proceeding is a counterclaim in another proceeding in the court.

Real and Substantial Connection

4.(1) Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between [name of State] and the facts on which a consumer contract proceeding is based, a real and substantial connection between [name of State] and those facts is presumed to exist if:

- (a) the plaintiff, a consumer ordinarily resident in [name of State], has brought a proceeding under a consumer contract in the courts of [name of State] against a vendor who is ordinarily resident in a jurisdiction other than [name of State], and
- (b) one of the following circumstances exists:

(i) subject to subsections (2) and (3), the consumer contract resulted from a solicitation of business in [name of State] by the vendor, (ii) the vendor received the consumer's order in [name of State], or (iii) the vendor induced the consumer to travel to a jurisdiction other than [name of State] for the purpose of forming the consumer contract, and the vendor assisted the consumer's travel.

(2) For the purposes of subclause (1)(b)(i), a consumer contract is deemed to have resulted from the solicitation of business in [name of State] by the vendor unless the vendor demonstrates that he or she took reasonable steps to avoid concluding consumer contracts with consumers residing in [name of State].

(3) Subclause (1)(b)(i) does not apply if the consumer and the vendor were in the presence of one another in the vendor's jurisdiction when the consumer contract was concluded.

Discretion about the Exercise of Jurisdiction

5.(1) After considering the interests of the parties to a consumer contract proceeding and the public interest, a court may decline to exercise its jurisdiction in the consumer contract proceeding on the ground that the court of another State¹ is a more appropriate forum in which to try the consumer contract proceeding.

(2) In deciding the question of whether it or a court of another State is the more appropriate forum in which to try a consumer contract proceeding, a court shall consider the circumstances relevant to the consumer contract proceeding, including

- (a) the comparative convenience and expense for the parties to the consumer contract proceeding and for their witnesses in litigation in the court or in any alternative forum,**
- (b) the law to be applied to issues in the consumer contract proceeding,**
- (c) the desirability of avoiding a multiplicity of legal proceedings,**
- (d) the desirability of avoiding conflicting decisions in different courts,**
- (e) the enforcement of an eventual judgment, and**
- (f) the fairness and efficiency of the legal system as a whole.**

Limitation on Forum Selection Clauses

6.(1) Notwithstanding that an agreement pursuant to clause 3(c) purports to give a court jurisdiction in a consumer contract proceeding, that agreement is void if

- (a) the agreement was entered into before the commencement of the proceeding,**

¹ States with sub-national entities, such as provinces or states, may wish to have a rule recognising them as «another jurisdiction» for the purpose of this law and to the extent it is desirable. For example, an enacting State may wish to enact the following : «each province is regarded as a country for the application of this Part».

(b) the agreement provides that the court of a jurisdiction other than the jurisdiction in which the consumer is ordinarily resident has jurisdiction in the consumer proceeding, and

(c) one of the following circumstances exists:

(i) the consumer contract resulted from a solicitation of business in the consumer's jurisdiction by the vendor and the consumer and vendor were not in the presence of one another in [name of State] when the consumer contract was concluded,

(ii) the vendor received the consumer's order in the consumer's jurisdiction, or

(iii) the vendor induced the consumer to travel to a jurisdiction other than his or her jurisdiction of ordinary residence for the purpose of forming the consumer contract, and the vendor assisted the consumer's travel.

(2) For the purposes of subclause (1)(c)(i), a consumer contract is deemed to have resulted from the solicitation of business in the consumer's jurisdiction by the vendor unless the vendor demonstrates that he or she took reasonable steps to avoid concluding consumer contracts with consumers residing in the consumer's jurisdiction.