



Courts have power to grant injunctions against parties outside their jurisdiction

BY [G. L. SONNY INGRAM](#), AFFLECK GREENE ORR LLP.

Late last spring, a unanimous Supreme Court of Canada affirmed that the provinces' Superior Courts have the jurisdiction to issue injunctions with purely extraterritorial effects.

In *Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc.*,¹ Transat Tours Canada Inc. sought an injunction and other relief in the Superior Court of Quebec against Impulsora Turistica de Occidente S.A. de C.V., three other Mexican corporations and a Canadian travel company.

Transat alleged that one of the Mexican companies, Tescor, S.A. de C.V. breached an agreement that granted Transat an exclusive right to lease rooms in a Puerto Vallarta hotel for 3 years. The contract included a forum selection clause in favour of the Quebec courts.

Transat alleged that the three remaining Mexican companies were party to the breach by agreeing to make blocks of rooms available to another Canadian company, MyTravel Canada Holidays Inc.

MyTravel, along with the Mexican defendants, contested Transat's injunction, arguing for *declinatory exception*, a principle of civil law that declines the jurisdiction of the court but does not to defeat the underlying action. In this case, MyTravel and the Mexican defendants argued the Quebec court lacked jurisdiction over the matter because Transat was seeking extraterritorial relief against Mexican companies with no connection to Quebec.

The Quebec Superior Court agreed with MyTravel and granted the motion for declinatory exception,

holding, among other things, that the relief sought by Transat would require improper extraterritorial action and that under the principle of *forum non conveniens*, the Mexican courts would be in a better position to handle the dispute.

A unanimous Court of Appeal reversed the judgment of the Superior Court and dismissed the motion for declinatory exception.

The Supreme Court of Canada upheld the Court of Appeal's decision and affirmed that although the courts are reluctant to grant injunctions against parties not within their jurisdiction, the power does exist.

The Court also agreed with the Court of Appeal's ruling that the Superior Court mistakenly focused on the difficulties associated with the enforcement of one of its orders instead of undertaking a proper *forum non conveniens* analysis. Both the Quebec Court of Appeal and the Court found that there were no grounds for denying or declining the jurisdiction of the Quebec courts over this litigation.

As a result, the case has been remitted to the Superior Court for a continuation of the proceedings. Given the forum selection clause in favour of the Quebec courts, it makes sense that the Quebec courts have jurisdiction over this litigation. Nonetheless, this case highlights two rather interesting issues.

First, while it is clear that Canadian courts have the power to grant injunctions with purely extraterritorial effects, the larger question remains unanswered. If such an injunction is granted, would

a Mexican court enforce this type of interlocutory relief?

Second, it is a principle of international law that a court will not grant an order that it would not itself enforce. Then by extension, our highest court appears to be signalling that the traditional prohibition against enforcing foreign injunctions in Canada is no longer.

Indeed, in *Pro Swing Inc. v. ELTA Golf Inc.*² the Supreme Court held that "The time is ripe to change the common law rule against the

enforcement of foreign non-monetary judgments..."³ As well, in *Cavell Insurance Co. Ltd. (Re)*,⁴ the Ontario Court of Appeal recognized a U.K. High Court's initial order in a scheme of arrangement aimed at winding up a reinsurance business.

In short, Canadian courts are going global: recognizing the need to respond to the modern realities of a global economy. Given the proper circumstances, our courts now seem poised to both enforce foreign interlocutory judgments and to grant interlocutory orders over foreign parties.

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For more information contact:

G.L. Sonny Ingram, Affleck Greene Orr LLP

Tel: 416-360-00668

Email: singram@agolaw.com

¹ [2007] 1 S.C.R. 867

² [2006] 2 S.C.R. 612

³ *Ibid.*, at ¶64

⁴ (2006), 80 O.R. (3d) 500 (C.A.). For a discussion of this case, please click the following link to Ken Dekker's article, [Appeal court finds that "non-final" U.K. order should be enforced in Ontario.](#)