

CROSS-BORDER LITIGATION BULLETIN

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RECENT ONTARIO COURT OF APPEAL DECISION CONFIRMS IMPORTANCE OF JURISDICTION CLAUSES

In this unusual conflicts of law case with a financial services twist,¹ the Ontario Court of Appeal upheld a decision which granted the defendant, Israel Discount Bank ("IDB"), a permanent stay of an action on the basis that Ontario was not a convenient forum. At the crux of the case stands a letter of credit issued by the Toronto Dominion Bank to secure the indebtedness of Canada Ashdod, an Israeli corporation, to IDB. The letter of credit was obtained by the plaintiff, Towne Meadow Development Corp. ("Towne"), an Ontario corporation, which was related to Canada Ashdod.

The letter was called upon by IDB to pay the indebtedness of Jack Kojfman Ltd. ("Kojfman"), another Israeli corporation related to Canada Asrod. Towne denied that this letter of credit was intended to extend to Kojfman and disputed the validity of IDB's claim on the letter of credit.

While this case seems to have a solid connection to Ontario, in that the plaintiff corporation, the issuing bank, and the letter of credit itself, which was governed by Ontario law, are all intimately connected to Ontario, the Court of Appeal held that Israel was the more convenient forum for the proceeding. This will have the strange result of having a letter of credit issued in Ontario by an Ontarian bank to an Ontarian company being the central issue in an action in the Israeli courts.

The lesson to be learned here is the critical importance of including jurisdiction clauses in all of your agreements, especially ones involving foreign interests such as this letter of credit. Adding a jurisdiction clause can protect your litigation from being dragged into a foreign jurisdiction with unknown results, and it can also protect your interests by allowing you to choose a legal system with which you are both familiar and comfortable, instead of having a court decide the issue for you. Therefore, even when it appears that there is little chance of this occurring, jurisdiction clauses should always be included in agreements.

This issue is not over yet. A strong dissent was written by one of the appellant judges in which he held that Ontario was a convenient forum and the case is currently being appealed to the Supreme Court. More to come.

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¹ *Towne Meadow Development Corp. v. Israel Discount Bank Ltd.*, [2005] O.J. No. 5042.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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