Private International Law
Executive Summary

This Report deals with two matters arising out of the 1994 Supreme Court of Canada decision in *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon* ("Tolofson") namely choice of law for tort and the characterization of limitation periods, and jurisdiction simpliciter and the concept of real and substantial connection pertaining thereto.

Until 1994, in tort actions, which are actions having to do with civil wrongs such as negligence, trespass, and defamation, Canadian courts applied the law of the forum to the determination of substantive (as opposed to procedural) issues; that is to say, a Manitoba court applied the law of Manitoba.

In its 1994 decision in *Tolofson*, the Supreme Court of Canada decided that courts are to apply the law of the country of the wrong, without exception. The decision has been criticized for not including a flexible exception of the general rule, where applying the law of the country of the wrong results in an injustice. The Commission recommends enactment of legislation codifying the *Tolofson* general rule, with some greater specificity, and empowering Manitoba courts in exceptional circumstances to apply some other law than the law of the country of the wrong in order to do justice.

The 1994 decision of the Supreme Court of Canada also changed the law regarding limitation periods within which civil actions can be commenced. Prior to 1994, courts applied the limitation period of the law of the forum, in other words, their own law, even if foreign law, so called, was applicable to decide the dispute. Now, the governing limitation period is that of the law to be applied to decide the dispute. The Commission is working on a sweeping revision of *The Limitation of Actions Act* of Manitoba, and recommends the inclusion in a revised Act of a section codifying the Supreme Court decision in this regard.

Thirdly, the Report deals with the establishment of jurisdiction of the Court of Queen’s Bench in cases where a defendant has had to be served with the Statement of Claim somewhere other than in Manitoba. Currently, the case law is in an uncertain state, resulting in costly contestations, which could be obviated by clarifying legislation.

The Report recommends that Manitoba follow British Columbia, Saskatchewan, Nova Scotia, Yukon, and likely Alberta and Ontario, to enact the model Act of the Uniform Law Conference of Canada titled the *Uniform Court Jurisdiction and Transfer Proceedings Act*. 

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