CANADIAN BAR ASSOCIATION
ASSOCIATION DU BARREAU CANADIEN

January 26, 2026

Via email: secretariat@hcch.net

Permanent Bureau
Hague Conference on Private International Law (HCCH)
Churchillplein 6b
2517 JW THE HAGUE
The Netherlands

Dear HCCH:

Re: Parallel proceedings (Hague)

I write on behalf of the Dispute Resolution Section of the Canadian Bar Association (the CBA Section), in response to a consultation (survey questions) from the Permanent Bureau of the Hague Conference on Private International Law (HCCH). It seeks feedback on a Draft Text for a possible HCCH convention on parallel proceedings and related actions, evaluating its practical utility and potential improvements while respecting jurisdictional rules and *forum non conveniens*.

The Canadian Bar Association is a national association representing over 40,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice and effective law reform, and offer expertise on how the law touches the lives of Canadians every day. The Dispute Resolution Law Section's mandate is to promote this growing field and examine issues surrounding different approaches, including arbitration, collaborative law, facilitation, mediation and others.

Questions

Consultation on the draft text of a possible convention on parallel proceedings and related actions

Question 1 on the scope of the Draft Text

1.1 What are your views on the scope of the Draft Text?

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1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?

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1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?

Generally speaking, interim measures for protection should form another head of exclusion in the scope of application of the Convention (Article 2). This is also specifically relevant for arbitration proceedings. Otherwise, even where Article 2(3) expressly excludes arbitration, interim measures in support of arbitration proceedings may very well fall under the scope of the Convention. Typically, jurisdiction for arbitration related proceedings fall to the courts of the seat of arbitration. While interim measures may be sought from courts other than the courts of the seat, such measures, whether for arbitration proceedings or otherwise, should be excluded altogether from the scope of application of the Convention.

1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information).

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Question 2 on definitions

What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.

Parallel proceedings are not, *per se*, prohibited in Canadian common law provinces. The Canadian approach is guided by the doctrine of *forum non conveniens* and statutory frameworks where litigation concerning the same or substantially similar issues and parties occur simultaneously in more than one jurisdiction, including foreign courts: *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board*), 1993 CanLII 124 (SCC). The definition of 'parallel proceedings' in Article 3 of the Draft Text is narrower in that it relies on the 'same' parties and 'same' subject matter for it to fall under the ambit of the Convention. Although the definition of 'related actions' is wider than 'parallel proceedings' when it comes to parties, it is not clear from that same definition whether the issues that arise should also be the 'same'. Query then the application of the Convention in jurisdictions such as Canada which adopt a wider definition of parallel proceedings when Canadian courts apply the common law test of real and substantial connection to assume jurisdiction.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

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Question 4 on Article 5 obligations

What are your views on Article 5?

Article 5(2) lacks clarity on the requirements for the judgment to be recognizable in the suspending Contracting State's courts. Query whether such requirements are those that apply nationally or based on an international instrument. Canada is not a member state to the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. It is therefore presumed that Canada would apply the Canadian common law principles to recognize and enforce a foreign judgment in Canada. It would do so primarily by showing (a) the judgment is valid on its face and issued by a court of competent jurisdiction through a fair process based on a real and substantial connection to the action, (b) that the values of international comity require it to exercise its power in favor of enforcing the judgment, and (c) none of the 'impeachment' defences to recognition and enforcement apply, which are based on the notion that the way the foreign judgment was obtained was in some way tainted or contrary to Canadian notions of justice (i.e. fraud), is available to the claimant: *Beals v. Saldanha*, 2003 SCC 72 (CanLII), [2003] 3 SCR 416. Conscious that not all foreign courts apply a test like Canada's; it is concerning that Canadian courts cannot meet the obligations in Article 5 of the Convention.

Question 5 on priority jurisdiction / connection

What are your views on Articles 6 – 8 including how they will work in practice?

With regard to Article 6, title or rights to possession of immovable property must be referred to the courts where the property is located (the *lex situs* principle). Canadian courts generally do not have jurisdiction to adjudicate on title to foreign immovables; such matters must be decided by the courts of the *situs* (location) of the property. However, Canadian courts may enforce rights affecting foreign land if based on contract, trust, or equity, and the defendant resides in Canada. However, this is an exception and only applies to *in personam* obligations, not to the determination of title: *Galustian v. SkyLink Group of Cos*., 2010 ONSC 292. Therefore, the provisions of article 6 of the Draft Text align with the principles applied in Canada.

About Article 7, again Canadian courts apply the real and substantial connection with the claim or the defendant, considering factors such as attornment or submission to the exclusive jurisdiction of a foreign court. If the defendant attorns to the foreign jurisdiction or agrees to submit to its courts, it bolsters the existence of a real and substantial connection. That would seem to be the objective of Article 7 as drafted. However, if an agreement over the choice of foreign courts is non-exclusive, Canadian courts may still assume jurisdiction over a dispute if the real and substantial connection test is met, even if those courts were not included in the parties' choice of court agreement, which runs counter the rule in Article 7(1).

Question 6 on Article 8(2) jurisdiction / connection requirements

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?

Article 8(2) of the Draft Text on the jurisdiction / connection requirements is a clear departure from the Canadian common law principle of real and substantial connection test for courts to assume jurisdiction. Again, Canadian courts do not assume jurisdiction on the basis of the finite list of requirements set out in Article 8(2). Although the real and substantial connection includes one or more of the requirements under Article 8(2) for assessing jurisdiction, determining whether the foreign court has a real and substantial connection with the claim or the defendant, is not limited by any finite list of requirements such as those in Article 8(2) and allows the courts to consider other factors not enumerated therein.

6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?

Canadian courts will not suspend or dismiss proceedings based on the finite list of jurisdiction / connection requirements without first being satisfied that, based on the real and substantial connection test, a foreign court is a more appropriate forum. In practice, Canadian courts may very well assume jurisdiction even if they are not seized based on the requirements set out in Article 8(2).

6.3 Are there any additional factors that you believe should be included?

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Question 7 on the determination of the more appropriate court

7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?

Canadian courts do not consider whether they have been first seized to determine the more appropriate forum, which renders the provisions of Article 9 of the Draft Text in its two approaches obsolete under Canadian law. Allowing the court first seized to determine the more appropriate forum while another court suspends the proceedings may not be a practical way of ensuring the proper administration of justice.

7.2 What are your views on how the two approaches may work in practice?

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7.3 Do you have a preference for either approach? If so, please explain why.

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Question 8 on factors to be considered to determine the more appropriate court

8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?

Again, Canadian courts only give regard to the real and substantial connection test to determine the more approate forum. Although the factors set out in Article 10 may be relevant in the application of such test, courts in Canada may rely on other connecting factors.

8.2 Do you have any views on how Article 10 might work in practice?

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8.3 Are there additional considerations that, in your view, should be taken into account?

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Question 9 on the effectiveness of the framework for parallel proceedings

Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with **parallel proceedings** in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.

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Question 10 on related actions

Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with **related actions** in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.

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Question 11 on the communication mechanism

11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seized, in cases involving parallel proceedings and related actions?

Direct communication between courts serves as an effective method of correspondence under Article 16(2)(a)of the Draft Text, instead of indirect judicial communication through a competent authority, i.e. ministry of jusice or foreign affairs, or a combination of both.

Canadian courts frequently use direct communication with foreign courts to manage parallel proceedings or recognize foreign judgments, particularly in cross-border insolvency matters, even when those cases fall outside the scope of relevant international conventions and excluded from the scope of the Convention. Communication typically occurs between judges with the parties' knowledge and involvement and is governed by statutes, court protocols, and judicial guidelines to ensure fairness, transparency, and respect for judicial independence. Cooperation may include appointing persons, communicating by any means the court considers appropriate, and coordinating proceedings regarding the same debtor: *Bankruptcy and Insolvency Act* | R.S.C. 1985, c. B-3, s.275. It is important to note, however, that such direct communication, while often highly effective, must be transparent, with advance notice provided to all parties, and properly documented and accessible to them.The Draft Text should aim to reflect such principles of communication in Article 16 of the Convention.

11.2 Are there particular advantages and challenges you foresee in applying these methods?

The requirement for communication translation will raise an issue to determine whether the translation is deemed accurate by the simple stamp of the court's registry or by the use of sworn translators. In the latter case, complexity may arise as to which sworn translators to use, those recognised by the sending court or the receiving court.

Question 12 on safeguards

What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?

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Question 13 on the objectives of the Draft Instrument

13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument?

The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.

The Draft Text may not enhance the perceived legal certainty, predictability and access to justice. While a hamrmonised and finite list of jurisdiction and connection requirements are provided in Article 8 thereof, which is likely to increase predicatbility and reduce the risk of inconsistent judgments, the safeguards in Articles 19 - 21 offer the courts a broad discretion to assess the same based on their national requirements.

Moreover, it is unclear how long courts would take to suspend or dismiss proceedings in favor of a more convenient foreign forum, or how much time the first-seized court would require to determine its jurisdiction. Typically, courts in some jurisdictions take a signficantly longer time than others to assess their jurisdiction. The Draft Text is silent on any needed time period to achieve the objectives of a future instrument.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the *status quo*?

The answer largely depends on the extent to which the Draft Text is acceded to and ratified. Canadian courts apply a distinct common law test for assuming jurisdiction, and courts in other common law jurisdictions may be hesitant to defer their authority to the court first seized with the matter of determining jurisdiction.

13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?

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Yours truly,

(original letter signed by Julie Terrien for Shannon Belvedere)

Shannon Belvedere
Chair, Dispute Resolution Section