Survey response	
Please indicate: [Name:]	Professor Janet Walker CM
Please indicate: [State:]	Ontario
Please indicate: [Region:]	Canada
Please indicate: [Affiliation:]	Osgoode Hall Law School
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
1.1 What are your views on the scope of the Draft Text?	
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?	
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)?	
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).	
2. 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.	
3. What are your views on Article 4?	
4. What are your views on Article 5?	
5. What are your views on Articles 6 – 8 including how they will work in practice?	
6.1 What are your views on the ‘jurisdiction / connection’ list in Article 8(2)?	
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?	
6.3 Are there any additional factors that you believe should be included?	
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?	

7.2 What are your views on how the two approaches may work in practice?	
7.3 Do you have a preference for either approach? If so, please explain why.	
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)?	
8.2 Do you have any views on how Article 10 might work in practice?	
8.3 Are there additional considerations that, in your view, should be taken into account?	
9. 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.	
10. 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.	
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 seised, in cases involving parallel proceedings and related actions?	
11.2 Are there particular advantages and challenges you foresee in applying these methods?	
12. 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?	
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.	No.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	They would not.
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?	The race to judgment might merely be replaced by a race to the courthouse.
14. What other comments, if any, do you have?	Although, as a result of my response to question 13, I have refrained from responding to the other questions, I commend the Working Group on the provisions in the draft text, which, in the right circumstances, would be very effective. However, in the common law, in circumstances where there is a choice of forum, there is a greater risk than in the civil law that the choice that is made will be an opportunistic feature of a larger litigation plan, the mischief of which could be exacerbated by a first-seised approach to resolving parallel proceedings. Moreover, outside the ambit of an advanced regime for economic and judicial integration, such as exists in the European Union, the safeguards of a system operating, in effect, to allocate jurisdiction, rather than merely to regulate the exercise of jurisdiction is neither desirable nor helpful in international disputes in the common law. This was an important reason that the original comprehensive draft multilateral Hague Judgments Convention failed. Although, the option in the current text for a court other than the court first seised to exercise jurisdiction where it determines itself to be more appropriate would appear to address these concerns, experience suggests otherwise. In 2004, I proposed in a Uniform Law Conference study such an approach (the "second-seised approach") to resolve the risk of inconsistent outcomes in multi-jurisdictional class proceedings: (2005) 42 CBLJ 112-121. Since then, the approach has since been adopted in many Canadian provinces but, initially, it provoked, as might have been anticipated, costly and disruptive collateral attacks on existing proceedings. Without close judicial cooperation and a

	common approach to the exercise of jurisdiction, courts determining their own jurisdiction based only on the submissions and evidence of counsel before them can find it difficult to take a balanced approach to the question of which forum is more appropriate. Furthermore, particularly in the common law, there will be situations in which there may be pressing societal needs in both fora to exercise jurisdiction, even where those needs differ between the two fora: (2009) 47 CBLJ 191-208.