ARTICLES ARTICLES

Le droit canadien relatif à la vente internationale de marchandises : sommes-nous en train de manquer le bateau?

Depuis l'entrée en vigueur de la Convention de Vienne sur les contrats de vente internationale de marchandises (CVIM) au Canada il y a 15 ans, les tribunaux canadiens ont eu peu d'occasion de l'interpréter. Les quelques décisions disponibles témoignent d'une réticence à s'engager dans une interprétation autonome de la CVIM qui participerait au corpus jurisprudentiel sans cesse grandissant auquel contribue un nombre important de pays signataires, dont plusieurs partenaires économiques importants du Canada. En effet, les décisions canadiennes témoignent soit d'une ignorance complète du traité ou d'une difficulté à l'interpréter sans avoir recours aux notions locales en matière de droit des contrats ou du droit de la vente. Ce faisant, les tribunaux ne reconnaissent pas la nature de la CVIM qui est de proposer des règles autonomes et neutres vis-à-vis le droit domestique, adaptées à des transactions internationales réunissant des parties d'états et de droits différents. De plus, les tribunaux ne profitent pas de la jurisprudence internationale et d'une doctrine riche et diversifiée pour appuyer leurs conclusions lors

International Sale of Goods Law in Canada: Are We Missing the Boat?

*Geneviève Saumier**

The 1980 Vienna Convention on Contracts for the International Sale of Goods ("CISG") is in force in 68 states globally, including Canada since May 1st 1992.[1] It provides the default legal regime for the international sale of goods and applies to any transborder transaction involving a Canadian-based party unless the contract expressly excludes its application.[2] Considering the amount of Canada-US trade in goods, the CISG potentially applies to millions of transactions.

Cases on the CISG number over 1700 worldwide.[3] The Canadian contribution to this jurisprudence is sparse, with fewer than 20 cases in the fourteen years since the treaty's implementation in Canada.[4] Moreover, the decisions that have been rendered by our courts cannot be said to have advanced the understanding of or appreciation for the CISG either within or beyond our borders. This failure means that any development of a uniform CISG jurisprudence will go forward without the participation of Canadian views as expressed through its judicial and arbitral decisions.

Canadian lawyers seem to be caught in a vicious circle. On the one hand, when they agree (typically with their US counterparts) to exclude the CISG from their clients' sales contracts, they are excluding themselves from the development of a uniform and autonomous interpretation of the CISG. Indeed, should a contractual dispute lead to litigation, the court seized of the matter will not be called upon to interpret and apply the CISG since the parties will have preferred to submit their transborder transaction to a given domestic law.[5] On the other hand, many non-US commercial partners are comfortable with the CISG and will not seek to exclude it.[6] Canadian lawyers dealing with such parties are unlikely to be in a position to impose their domestic law when the neutral CISG is the alternative. Where such contracts are eventually litigated, the foreign party will have a wealth of CISG jurisprudence to draw on to support its claims under CISG, and some of that jurisprudence may even come from its own national courts. The Canadian party will have virtually no Canadian cases to refer to and will therefore be required to refer to foreign sources, and the additional layer of difficulty that such a route entails.

It is time, therefore, for Canadian lawyers to learn more about the CISG and to consider how its application to their transactions may be

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an advantage. It can be a means of leveling the playing field against a partner seeking to impose its own law; it may facilitate exchanges with new partners in CISG-friendly jurisdictions who may view the uniform law as a way to enhance legal security or at least as a signal that their Canadian partner is not seeking any special protection from its domestic law. Regardless of the substantive rules of contract adopted in the CISG – and most commentators agree that these are not problematic *per se* – there may well be practical and strategic reasons not to systematically exclude the CISG that Canadian lawyers should turn their minds to. In the absence of increased sophistication of Canadian jurists regarding the CISG, our courts will continue to produce the kind of jurisprudence we have seen so far, which does a disservice to the CISG in Canada and undermines the international commitment signaled by ratification and implementation of this treaty by all the legislatures in the country.

Cases in Canada

Considering that the CISG has been in force throughout the country for 14 years, there is relatively little case law on which lawyers and judges can rely to provide interpretive guidance.[7] There are three common explanations for this: (i) lawyers routinely exclude the CISG in Canada-US sales contracts,[8] (ii) many routine sales disputes are resolved without recourse to courts and (iii) even if disputes reach courts, courts themselves exhibit a homeward trend that leads them to avoid, downplay or ignore the CISG's role in a given dispute.[9] This last explanation is broadly confirmed by Canadian cases on the CISG since the first decision was handed down eight years ago.

In that decision, *La San Giuseppe v. Forti Moulding Ltd*,[10] the Ontario court was called upon to evaluate whether the Italian vendor of picture frames had breached the sales contract by delivering frames to the Ontario buyer that did not conform to the contract requirements or that were defective in other ways. In discussing the merits of the claim, the Ontario court noted the applicability of the CISG but eventually relied on common law concepts and domestic precedents to justify the conclusions reached. At the time, the reference to the CISG and the court's attempt to apply it seemed promising, particularly following on an earlier case where the CISG, though applicable, had been completely ignored.[11] Unfortunately, there has been little change since that first CISG "success story", suggesting that fluency with the CISG and its modes of interpretation continues to elude Canadian jurists. This assessment reflects jurisprudence throughout the country.

In a recent case from Quebec,[12] a planned sale of Canadian grain to a Latvian purchaser failed when the seller refused to deliver the grain but held onto the purchaser's deposit. On the suit to recover the deposit, the seller invoked an arbitration clause in the written sales agreement. The arbitral clause also stated that the CISG was the law applicable to the contract.[13] Despite this explicit reference to the

des rares cas qui se présentent à eux. Cette approche judiciaire au Canada reflète et reconduit un courant apparemment majoritaire de la pratique juridique canadienne qui perçoit la CVIM comme un instrument imprévisible qui n'a pas fait ses preuves, malgré les 1700 décisions rendues à l'échelle internationale. Selon l'auteur, la communauté des juristes canadiens aurait intérêt à réévaluer sa méfiance de cet instrument du commerce international, tirer profit des sources d'interprétation facilement disponible et chercher à contribuer à l'épanouissement désormais incontestable de cet outil du commerce international.

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CISG, the court never considered whether or how the CISG may have related to the buyer's claim that the arbitration clause was unenforceable because the whole transaction was vitiated by the seller's alleged fraud. Instead, the court referred only to Quebec law and Quebec cases on the severability of the arbitration agreement and the jurisdiction of arbitrators over fraud claims of this nature.

One might well argue that the result would not have changed had the CISG been invoked since under the Convention the issue of the validity of a contract, is expressly excluded under art. 4(1) and therefore governed by the law otherwise applicable to the contract under the forum's choice of law rules, as per art. 7(2) CISG. Still, once the CISG is part of the equation, one expects the court to deal with it or at least to indicate that it is aware of its scope of application.

In the equally recent *Château des Charmes* case,[14] the Ontario court did a slightly better job with the CISG.[15] The case is particularly interesting because it raised issues that had been previously dealt with by a California court, in the same dispute.[16] At issue was the conformity of wine closures purchased by the Niagara winery from the defendant French manufacturer, through its American agent. The initial transaction was concluded by telephone. When the winery was obliged to recall millions of bottles because of apparent cork taint, it instituted proceedings in California. The defendants then raised a forum selection clause referring the parties to the courts of Perpignan in France. This clause, not discussed during the telephone transaction, was printed on the vendor's invoices.

Applying the CISG, the 9th Circuit Court held that the forum selection clause was not part of the oral contract of sale, which had been completed by telephone. It also held that the clause on the vendor's invoice could not operate as a modification to the original contract without the agreement of the buyer and that the buyer's agreement could not be implied by its payment of the invoices on which the clauses was printed, since such payment was merely the performance of the buyer's obligation under the oral contract of sale.[17] In so deciding, the court relied on articles 19 (formation) and 29 (modification) of the CISG. The litigation was subsequently stayed in California on the basis of *forum non conveniens*.[18]

Having failed in its attempt to litigate in California, the plaintiff sought to invoke the jurisdiction of the Ontario courts, no doubt expecting a similar outcome regarding the forum selection clause but not on *forum non conveniens*. Indeed, one of the expected advantages of uniform law is uniformity of results. Because both the Ontario and California courts would be applying the CISG, one might reasonably expect both to arrive at the same conclusion regarding whether or not the forum selection clause was part of the contract of sale between the parties.[19] Surprisingly, that what not the case.

From the reasons, it is not entirely clear whether the Ontario court considered the same CISG provisions to interpret the contract. Indeed, the court only referred to articles 8, 9, 11, 14, 18 and 19, which deal essentially with contract formation. There was no explicit reference to article 29 or to the issue of contract modification. Instead, the Ontario court focused on the fact that the parties had concluded more than one contract of sale, of which at least one, if not two, were made after the buyer had received several invoices and remitted payment. It appears that these subsequent purchases were also concluded by telephone, with quantity, price and time of delivery being the only terms discussed. Contrary to what the 9th Circuit had held, the Ontario court found that these subsequent contracts did include the forum selection clause printed on the invoices, on the basis that the buyer could no longer be unaware of the "vendor's terms of sale"[20] and, presumably, that the buyer had not objected to those additional terms when placing further orders.

The Ontario court did seek to justify its contrary conclusion by stating that the California court appeared to have been unaware that more than one contract was concluded between the parties or at the very least that it was not apprised of all of the facts.[21] Regardless of the accuracy of this claim, the Ontario court's reasoning is not fully persuasive. It is worth noting that the California court held that silence by the buyer could not be equated with acquiescence to the forum selection clause;

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moreover, it held that the buyer did not have to explicitly denounce the forum selection clause in order to avoid it. These statements by the court were made in relation to what it called the second phone order, thereby putting into question the very basis upon which the Ontario court sought to distinguish the case.[22]

Despite its holding regarding the forum selection clause, the Ontario court allowed the plaintiff to pursue its claims in Ontario, finding that the sound administration of justice required that all of the claims be heard in a single forum. In other words, it did not make sense to allow the claim on the first contract to go ahead in Ontario while forcing the plaintiff to go to Perpignan, as per the forum selection clause, for all claims relating to the subsequent orders.[23]

The *Château des Charmes* case presented interesting facts whose full analysis could have contributed to the development of CISG jurisprudence in Canada and elsewhere on the issue of contract formation and modification, particularly in light of the complicating context of repeat transactions. Instead, the Ontario decision does little to contribute to CISG jurisprudence. Beyond its initial list of the relevant CISG provisions, the Ontario court did not refer again to these provisions, to their actual content or to their application to the facts. Rather, the court indicated that it was adopting the California court's interpretation of the CISG, if not its conclusion. Moreover, beyond its reference to the California decision, there is no mention of other CISG decisions or sources. In fact, to support its holding that the buyer was bound by the forum selection clause, the Ontario court referred to a Canadian bill of lading case that did not involve the CISG.[24]

This persistent reliance on domestic law and domestic precedents is typical of the remaining Canadian CISG cases. In *Diversitel v. Glacier*,[25] another case involving a California-Ontario transaction, the determination that a fundamental breach had occurred was made on the basis of Ontario common law precedents, despite the fact that CISG case law was cited to the court by counsel. In its endorsement rejecting the appeal, the Ontario Court of Appeal stated emphatically that the governing principle on the fundamental breach issue was indeed the (non-CISG) domestic case cited by the lower court. While this might have flowed from the parties pleadings, the Ontario court certainly missed an opportunity to redirect the focus onto the CISG and away from domestic law and precedents.

This homeward trend is not restricted to Ontario, as evidenced by recent cases from B.C. and Manitoba.[26] In both provinces, courts have acknowledged the applicability of the CISG to issues in dispute before them but have consistently failed to resolve those issues in light of the CISG and its jurisprudence. On each occasion, courts have referred to and relied upon domestic non-CISG cases and on "analogous" legal concepts drawn from their domestic law of sale or general contract law.

Overall, this suggests that Canadian judges are not prepared to give an autonomous meaning to the CISG and have difficulty distancing themselves from domestic concepts. The reasons in *Diversitel*, where counsel appeared to be pleading CISG and the common law concurrently, suggest that the few Canadian lawyers who are prepared to invoke the CISG and refer to foreign case law should also be prepared to assume that judges will want to hear and ultimately decide the case based on domestic law and precedent. This is a heavy burden for Canadian lawyers, and one which the CISG was specifically intended to avoid, by creating uniform rules that displace any domestic law on the main issues arising between contracting parties.[27] This puts Canadian lawyers at a great disadvantage, assuming of course that lawyers in other signatory-states fare better with the CISG. The significant CISG jurisprudence outside of Canada does seem to support such a conclusion.

CISG jurisprudence outside Canada

The Pace University CISG database includes over 1700 judgments and arbitral awards from 33 of the 68 signatory states and 3 arbitral institutions.[28] The sheer volume of reported decisions lays to rest any possible lament that the CISG is an untested instrument or that its interpretation by courts is a matter of speculation. Admittedly, the same volume may be seen as a significant obstacle to the identification of uniformity, if any, amongst decision-making bodies called upon to apply the CISG. There are, of

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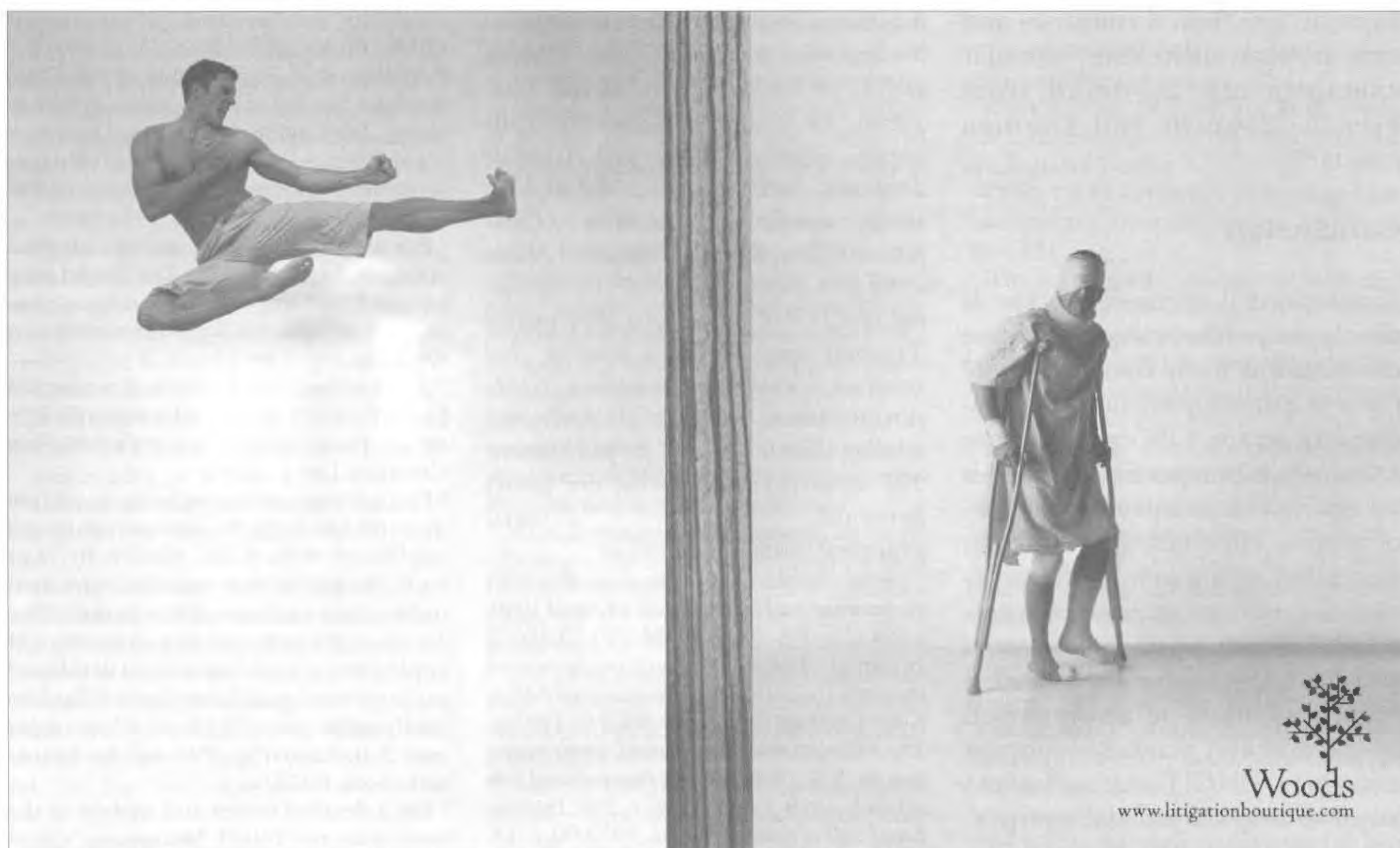

course, numerous resources available to assist in this inquiry, notably the recently developed UNCITRAL Digest of cases on the CISG, available online.[29] And while nobody would claim that parochialism in CISG interpretation is the preserve of Canadian courts, there is a growing body of CISG jurisprudence that reflects the ambitious goals of international and uniform interpretation put forward in article 7 of the CISG.[30] I will mention only a few.

One important source of "international" CISG jurisprudence is the United States. In a 1998 decision of the 11th Circuit, involving a sale of ceramic tile between an Italian vendor and a Florida purchaser, the court had to consider the application of the American parol evidence rule to CISG contracts.[31] The Italian seller was seeking to exclude the defendant's affidavit evidence to the effect that the parties did not mean to be bound by the terms of the written agreement, at least with regard to a particular notice period. In holding against the vendor, the US court held that art. 8 CISG excluded recourse to the domestic parol evidence rule.[32] To support its conclusion, the court referred to other CISG decisions from the U.S. and searched, though unsuccessfully, for foreign CISG decisions on the same point.[33] Numerous references to doctrinal CISG sources, both American and European, highlight the 11th Circuit's attempt to fulfill its art. 7 obligation.[34]

Another more recent example from the U.S. comes from a District court in Illinois that was called upon to resolve a dispute involving a sale of frozen pork ribs between an Ontario wholesaler and a Michigan buyer. In its 2004 judgment in *Chicago Prime Packers v. Northam Food Trading*,[35] the District court referred to CISG cases from four signatory states, including the U.S., and to a number of commentaries on the Convention relating to the issues of notice periods and evaluation of damages.[36]

In terms of European references, a commonly-cited decision is one from the court of Vigevano in Italy, where a claim of non-conformity by a German buyer of vulcanized rubber against the Italian seller was examined in light of CISG jurisprudence

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from no less than 8 countries and one arbitral institution.[37] Similar examples can be found from French, Spanish and German courts.[38]

Conclusion

Transnational commercial law is developing without any significant contribution from Canada. While there is a developing body of commentary on the CISG written from a Canadian perspective,[39] there is no equivalent jurisprudential participation. The challenges and costs associated with a new legal framework for routine commercial transactions cannot be underestimated and the implementation of such a framework must be accompanied by relevant and accessible support structures. UNCITRAL's efforts to improve access to judicial interpretation of the CISG through the creation of the CLOUT database and the more recent Digest provide a partial response. So do the increasing number of privately-run, and yet freely-accessible, websites and databases dedicated to the CISG.

Canadian courts can get in on the CISG jurisprudence merely by recognizing their own ability to invoke the CISG in any case where the CISG applies and has not been excluded by the parties. Indeed, judicial notice surely extends to applicable provincial or territorial statutes enacted pursuant to a ratified international treaty. I have no doubt that Canadian lawyers would quickly take notice and lend their considerable skills to the further development of an international (and perhaps uniform!) CISG jurisprudence.

ENDNOTES

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[1] *United Nations Convention on Contracts for the International Sale of Goods*, 11 April 1980, 1489 U.N.T.S. 3, 19 I.L.M. 671 ["CISG"]; In Canada the CISG has been implemented through the following: *International Sale of Goods Contracts Convention Act*, S.C. 1991, c. 13; *International Conventions Implementation Act*, S.A. 1990, c. I-6.8; *International Sale of Goods Act*, R.S.B.C. 1996, c. 236; *International Sale of Goods Act*, S.M. 1989-90, c. 18, C.C.S.M., c. S11; *International Sale of Goods Act*, S.N.B. 1989, c. I-12.21; *International Sale of Goods Act*, R.S.N. 1990, c. I-16; *International Sale of Goods Act*, R.S.N.W.T. 1988, c. I-7; *International Sale of Goods Act*, S.N.S. 1988, c. 13; *International Sale of Goods Act*, R.S.N.W.T. 1988, c. I-7; *International Sale of Goods Act*, R.S.O. 1990, c. I.10; *International Sale of Goods Act*, S.P.E.I. 1988, c. 33; *An Act Respecting the United Nations Convention on Contracts for the International Sale of Goods*, R.S.Q., c. C-67.01; *The International Sale of Goods Act*, S.S. 1990-91, c. I-10.3; *International Sale of Goods Act*, S.Y. 1992, c. 7.

[2] CISG, *ibid.* art. 6. Some of the enacting statutes in Canadian provinces have attempted to specify how the CISG is to be excluded. Whether or not this is an unorthodox attempt to modify the CISG or merely an interpretational guide for courts in the particular provinces has not been tested. There is a significant body of CISG jurisprudence on art. 6 and it is arguable that this jurisprudence supersedes any provincial legislature's directives on the interpretation of an international treaty, at least if art. 7 CISG is to be given any weight. For a recent review of the art. 6 cases see Daan Dokter, "Interpretation of exclusion-clauses of the Vienna sales convention" (2004) 68 RabelsZ 430.

[3] At least that is the claim of the CISG database housed at Pace University's Institute of International Commercial website: <www.cisg.law.pace.edu> and which is the most significant resource available on the CISG.

[4] For a list of all cases heard in Canadian courts that either involved or should have involved the CISG, see <www.cisg.ca> run by Peter Mazzacano, a graduate student at Osgoode Hall Law School.

[5] For example the Uniform Commercial Code ("U.C.C"), as enacted in a specific U.S. state or the Sale of Goods Act of a Canadian Common Law province.

[6] This is at least confirmed by the number of disputes involving the interpretation and application of the CISG. Admittedly, in its early days parties were sometimes surprised to find their contract subject to the CISG. However, the jurisprudence on the scope of application of the Convention is developed to the extent that such surprise is difficult to justify at this stage. The Pace website, *supra* note 3, indicates that 259 cases have mentioned art. 6 CISG.

[7] For a detailed review and analysis of the main cases, see, Peter J. Mazzacano, "Canadian Jurisprudence and the Uniform Application of the U.N. Convention on Contracts for the International Sale of Goods" (2006) 18 Pace Int'l L. Rev. (forthcoming).

[8] This is commonly cited by practitioners at conferences on the CISG, such as the Nov. 4-5 2005 Symposium on "CISG and the Business Lawyer" held at the Center for International Legal Education of the University of Pittsburgh School of Law.

[9] For a general discussion of this phenomenon see Monica Killian, "CISG and the Problem with Common Law Jurisdictions" (2001) 10 J. Transnat'l L. & Pol'y 217; for an explanation based on a critique of the CISG see Clayton Gillette & Robert Scott, "The Political Economy of International Sales Law" (April 23, 2005) New York University Law and Economics Research Paper Series, Working Paper No. 05-02.

[10] [1999] O.J. No. 3352. (Ont. S.C.J.).

[11] *Nova Tool & Mold Inc. v. London Industries Inc.*, [1998] O.J. No. 5381. (Ont. Gen.Div.).

[12] *Sonox Sia v. Albury Grain Sales Inc.*, [2005] Q.J. no. 9998 (Que. S.C.); aff'd [2005] Q.J. 17960 (C.A.). This case is discussed at length in Rajeev Sharma, "The United Nations Convention on Contracts for the International Sale of Goods: The Canadian

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Experience" (2005) 36 V.U.W.L.R 847.

[13] This would have been the case even absent this clause by virtue of art. 1(1)(a) of the CISG, assuming of course that the contract had not included a choice-of-law clause properly designating domestic sales law.

[14] *Château des Charmes v. Sabaté USA Inc. et al.*, [2005] O.J. no. 4604.

[15] The CISG was applicable on the facts, given the places of business of the companies involved, but the court merely stated that the parties agreed it was the law governing offer & acceptance. *Ibid.* at para. 13.

[16] *Château des Charmes v. Sabaté USA Inc.*, 328 F.3d 528 (9th Cir. 2003), cert. denied 2003 U.S. LEXIS 8613 (U.S., Dec. 1, 2003).

[17] *Ibid.* at para. 3.

[18] *Château des Charmes v. Sabaté USA Inc. et al.*, 2003 U.S. Dist. LEXIS 20337 (N.D. Cal.).

[19] The Ontario court did consider the argument that the California court's determination of the issue was *res judicata* between the parties, at least in the weak sense of issue estoppel. Without holding that estoppel would not be available, the Court concluded that on the facts, it was not successful. See the discussion *supra* note 14 at paras. 33-41.

[20] *Ibid.* at para. 30.

[21] *Ibid.* at para. 20, including footnotes.

[22] The California court refers to "contracts" and "the second telephone order", speaking of total sales of 1.2 million corks; the first phone order involved 500,000 corks (see Ontario decision, *supra* note 14 at para. 7).

[23] It is worth noting that this result would not likely obtain in Quebec following the Supreme Court's interpretation of the relevant Civil Code provisions in *GreCon Dimter v. J.R. Normand*, [2005] 2 S.C.R. 401; the same is probably true under the recently concluded *Hague Convention on Choice of Court Agreements*, 30 June 2005, 44 I.L.M. 1294 (see Hague Conference on Private International Law, online: <www.hcch.net>).

[24] *Supra* note 14 at para. 30 (which is odd considering that the court had specifically indicated, in the previous paragraph, that no bill of lading was involved!).

[25] [2003] O.J. No. 4025 (Ont. Sup. Ct.); aff'd [2004] O.J. No. 10 (C.A.)

[26] *Mansonville Plastics (B.C.) Ltd. v. Kurtz GmBh*, [2003] B.C.J. No. 1958, involved a contract for Styrofoam-making equipment between a German vendor and a BC buyer. In resolving the diverse "warranty" claims raised by the buyer, the court submerged the CISG within domestic sales law and did not give it any autonomous role or interpretation. *Brown & Root v. Aerotech*, [2004] M.J. 181, (2004) 238 D.L.R. (4th) 594 (C.A.) concerned a contract for the sale of portable heaters between a Manitoba vendor and a Texas buyer, a choice-of-law clause designated Texas law without specifically excluding CISG. On that basis, CISG applied and the parties specifically addressed the issues in terms of the CISG. Perhaps not surprisingly, both the Superior Court and the Court of Appeal failed completely with regards to the CISG by resolving all of the issues with exclusive reference to Manitoba statute law, common law and domestic cases.

[27] What lawyer will take a chance, however, of losing a case for failing to plead the local (common or civil) law before a Canadian court, on the basis that the CISG alone governs?

[28] See the Country Case Schedule on the Pace University's CISG database website: <http://cisgw3.law.pace.edu/cisg/text/casecit.html>.

[29] See the UNCITRAL's case law digests online: <http://www.uncitral.org/uncitral/en/case_law/digests/cisg.html>; the same digest is also available from the Pace website with links to cases in the CISG database: http://cisgw3.law.pace.edu/cisg/text/digest-toc.html.

[30] Art. 7(1) states: In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. See CISG, *supra* note 1.

[31] *MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino, S.p.A.*, 144 F.3d 1384 (11th Cir. 1998 (Fla.)); For an excellent commentary on this decision see Harry M. Flechtner, "The Eleventh Circuit Weighs in on Interpretation, Subjective Intent, Procedural Limits to the Convention's Scope, and the Parol Evidence Rule" Case Comment (1999) 18 J. L. & Com. 259.

[32] In so doing, the court also characterized the parol evidence rule as substantive and not procedural and therefore within the scope of CISG.

[33] Flechtner notes that they searched only the PACE website, and that a more extensive search would have yielded at least one German judgment on point, the summary of which supported the decision in MCC-Marble. See Flechtner, *supra* note 31 at 271.

[34] The court specifically refers to and quotes the text of that provision.

[35] (7th Cir. (Ill.), 2005), aff'g (E.D. Ill, 2004). For a commentary on the 2004 decision, see Annabel Teiling "CISG: US Court Relies on Foreign Case Law and the Internet" (2004) 2 Unif. L. Rev. 431.

[36] The holding was subsequently affirmed by the 7th Circuit although in its reasons emphasis was placed on domestic sources, both CISG and UCC, and the appellate court did not comment on the lower court's reference to foreign sources. In fact, the Circuit court restated the common claim that "there is little case law under the CISG", by which it must mean little "U.S." case law!

[37] *Rheinland Verischerungen v. S.r.l. Atlarex*, Trib. di Vigevano, 12-07-2000, Giurisprudenza italiana (2000) 280-290; available at the Pace Law website online: <http://www.cisg.law.pace.edu/cases/000712i3.html>. For a thorough discussion of the case see Franco Ferrari, "Tribunale di Vigevano: Specific Aspects of the CISG Uniformly Dealt With" (2001) 20 J. L. & Com. 225.

[38] See generally Camilla Baasch Andersen, "The Uniform International Sales Law and the Global Juirsconsultorium" (2005) 24 J. L. & Com. 159 at 170-75. One Italian judge actually provided a list of cases (Italian and foreign) where CISG interpretation relied on foreign sources! See *Al Palazzo S.r.l. v. Bernardaud S.A*, Trib. di Rimini, 26-11-2002, Giurisprudenza italiana (2003) I: 896; available at the Pace Law website online: <http://cisgw3.law.pace.edu/cases/021126i3.html#ce>, with an English translation of the decision.

[39] For a bibliography of contributions from Canadians or about the Canadian CISG experience, see the list on Peter Mazzacano's website: www.cisg.ca. I also note an upcoming practitioner book: Antonin I. Pribetic, *The CISG in Canada* (Aurora: Canada Law Book, 2007) (forthcoming).

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