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# Cross-border teleworking: Jurisdiction and choice of law challenges

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# Factual background

## • **Cross-border mobility**

1- home-based teleworker working for an extra-provincial employer

2- relocation of the teleworker's residence during the course of the employment

3- the teleworker moves across borders regularly: digital nomadism



# Jurisdictional challenges

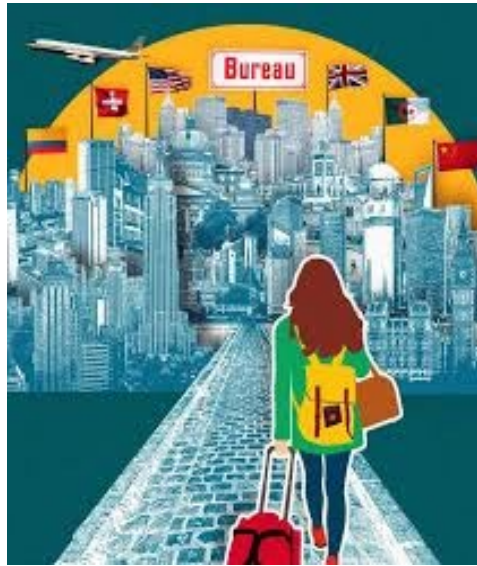
## The place of the work performance

- legitimate expectations
- substantial performance

## Mobile workers

## Transportation services

*Gord's Anchor Service Ltd v  
Turbo Oilfield Service Ltd,  
2009 SKQB 188*



## Mobile teleworkers

## Digital services

1. change of the teleworker's residence
2. Digital nomads

# Jurisdictional challenges

## Carrying on business

- Actual, not only virtual presence
- Business activity in the province

Presence of workers in a fixed place of business.

## Home-based teleworkers and service providers

*Difeo v Blind Ferret Entertainment, 2013 NBQB 337*: the agreed change of residence does not imply carrying on business in that territory.

*Force One Marketing et al v Rritual Superfoods, 2022 ONSC 2877*: the mere presence of the service provider's home-office does not imply carrying on business in that territory.

*Knapp Consulting Inc v Continovation Services Inc, 2012 BCSC 887*: the mere presence of the service provider's home-office implies carrying on business in that territory (corporate defendant's residence).

# Jurisdictional challenges

## The law applicable to the employment contract

- **Common law**

- the law chosen by the parties
- the law of the State most closely connected with the contract

- **Civil Code of Quebec**

- the law chosen by the parties
- the law of the workplace

### Cross-border teleworkers

#### **Common law:** contextual elements

*Danks v. IOLI Management Consulting*, 2003  
CanLII 21459 (ON SC)

**Quebec:** The habitual place of work in a digital context: review of the territorial approach

# Choice of law challenges



- **Territorial application of minimum employment standards**

## Quebec

➤ The requirement of a “physical” performance of work:

- *Holm c Groupe CGI inc*, 2008 QCCRT 0492
- *Trainor c Fundstream inc*, 2018 QCTAT 5714

# Choice of law challenges

- **Territorial application of minimum employment standards**

Quebec: the employer's establishment

*Marchetta v Visual Training Solutions Inc*, 2021 QCTAT 5451 (appeal for judicial review, 2021-12-14 (CS))

Ontario: work outside the province as continuation of the work performed in Ontario

*Shu Zhang v IBM Canada Limited*, 2019 CanLII 79641 (ON LRB)



# Conclusion

- **Impact of cross-border mobility and digitalization of work**
  - ❖ Jurisdictional issues: legal certainty, predictability and access to local justice
  - ❖ Unsuitable territorial approach
  - ❖ Lack of coordination between Private international law and minimum employment standards