2026 QCCS 1059 (CanLII)

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-17-130678-249

DATE: January 30, 2026*

PRESIDING: THE HONOURABLE PATRICK FERLAND, J.S.C.

RJHPPM SERVICES INC.

Plaintiff

v.

NCC DEVELOPMENT LIMITED

and

NUNAVUT LOGISTIC SOLUTIONS INC.

Defendants

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* Judgment rectified on February 2, 2026, to correct a typographic error in the date of the original judgment (article 338 C.C.P.).

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[1] Defendants, two Nunavut-based corporations, have filed a notice of declinatory exception seeking to have Plaintiff's proceedings dismissed. They claim that the parties have agreed to submit any dispute between them to the courts of Nunavut, that the proceedings have no connection with Quebec, and that the courts of Nunavut are the only proper forum to hear the case.

[2] For the reasons that follow, the Court concludes that Defendant's declinatory exception should be dismissed: the conditions for the courts of Quebec to have jurisdiction are met, no forum selection clause applies and there are no exceptional circumstances that would justify the Court's exercise of its power to decline jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

1. ORIGIN OF THE PARTIES' RELATIONSHIP

[3] According to the allegations of Plaintiff's *Amended Application to Institute Proceedings*, Plaintiff RJHPPM Services Inc. is a firm specializing in project management and development based in Blainville, Quebec. Its senior vice-president is Robbie Hellstrom.

[4] In December 2022, Mr. Hellstrom is approached by Eiryn Devereaux, president and CEO of the Nunavut Housing Corporation (**NHC**), a public agency of the Government of Nunavut charged with implementing the Nunavut 3000 Strategy (the "**NU 3000 Project**"), an initiative that seeks to address Nunavut's housing crisis by building approximately 3,000 housing units across the Territory.

[5] After initially suggesting that RJHPPM submit a proposal to act as NHC's owner representative on the NU 3000 Project, Mr. Devereaux suggests that Mr. Hellstrom consider working directly with NCC Development Ltd. (**NCCD**), the construction company charged with building the first 2,000 units of the NU 3000 Project. Mr. Devereaux tells Mr. Hellstrom that he has serious concerns about NCCD's ability to execute its mandate and encourages him to meet with its president Clarence Synard.

[6] In March 2023, Mr. Hellstrom signs a 3-year Project Management Agreement is with NCCD.[1] The agreement provides for fees of $1.26 million and encompasses a wide array of services, including reviewing NCCD's structure, training its personnel, overseeing project planning and execution, managing budgets, contracts, suppliers, and permits, and acting as NCCD's primary representative with NHC.[2] It contains a "Governing Law" clause designating the laws of Quebec and providing that both parties "attorn to the non-exclusive jurisdiction of the Courts of Quebec" over any action arising out of it.[3]

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1 Exhibit P-5.
2 Exhibit P-5, section 5.0 and Appendix 1 "Scope of Work".
3 Exhibit P-5, section 13.0.

[7] Over the following months, problems arise with Nunavut Logistics Solutions Inc. (**NLS**), NCCD's sister company charged with the sourcing and transportation of the equipment and construction material required for NCCD's construction work. NLS, which operates out of a facility in Elgin (Quebec), had failed to ship materials, machinery and equipment, leading to delays and additional costs.

[8] Mr. Hellstrom visits the Elgin facility to meet the NLS team and prepares a service proposal to assist NCCD in the "realignment and reorganization" of NLS. Pursuant to this proposal, agreed to by NCCD in August 2023 (the "**Initial NLS Proposal**"),[4] "RJHPP [will] oversee the operations of NLS until December 2023 by taking on the managerial responsibilities for all day-to-day operations and providing full-time on-site leadership".[5]

[9] A few weeks later, Mr. Hellstrom and Mr. Synard meet at NLS's Elgin facility to discuss RJHPPM's continuing to oversee the operations of NLS for the next few years. At NCCD's request, RJHPPM prepares a revised proposal to continue overseeing the day-to-day operations and management of NLS for a longer period and begins searching for a new facility to accommodate NLS's operations.

[10] RJHPPM submits its proposal to NCCD in November 2023 (the "**Revised NLS Proposal**").[6] It provides that RJHPPM will continue for a period of three years to assume the operations and management of NLS, whose facility will be moved to a new location in Lachute (Quebec). In January 2024, Mr. Synard informs Mr. Hellstrom that the Revised NLS Proposal has been approved by NCCD and NLS's boards of directors and that a written agreement would be signed shortly.[7] RJHPPM continues its work recruiting new employees for NLS's operations and pays a deposit for the Lachute facility.

[11] In parallel with its work with respect to NLS, RJHPPM also assists NCCD with project management of the construction work. Two agreements are signed, pursuant to which RJHPPM will assist NCCD in delivering a total of 22 prefabricated modular housing units to a number of communities in Nunavut. A first "Modular Project Management & Installation Agreement" is signed in August 2023 in respect of 14 modular units,[8] and a second one is signed in September, covering 8 additional units.[9] These two contracts (together, the "**2023 Modular Contracts**") are essentially identical, except with respect to the number of units they concern and the costs involved.

[12] Each of the two 2023 Modular Contracts contains a clause dealing with choice of law and choice of jurisdiction. Their Section 15.0 provides that it is governed by the laws of the Territory of Nunavut and that "NCCD and RJHPPM Services inc. hereby attorn to

[4] Exhibit P-7.
[5] *Amended Application*, at para 49.
[6] Exhibit P-14.
[7] *Amended Application*, at para 75.
[8] Exhibit P-8.
[9] Exhibit P-9.

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the non-exclusive jurisdiction of the Courts of Nunavut and irrevocably submit to the jurisdiction of any court sitting in the Territory of Nunavut over any suit, action or proceeding arising out of or relating to this Agreement."[10]

[13] It is also agreed that RJHPPM will prepare a proposal that NCCD and RJHPPM will jointly present to NHC for the construction of the modular units to be built in 2024. After several draft proposals are exchanged, a final version of this proposal is sent to NHC's president, Mr. Devereaux, on February 2, 2024 (the "**2024 Proposal for Modular Builds**").[11]

[14] Only a few days later, however, RJHPPM is informed that all of the parties' agreements will be terminated as of April 8, 2024.

[15] In a letter dated February 8, 2024 and sent on behalf of NCCD and NLS, Mr. Synard writes that the termination is "in relation to all project managements and services performed by you [Mr. Hellstrom] or RJHPPM in relation to the NU 3000 Project, and all related activities in Nunavut and includes [NLS's] business and activities in Quebec". He adds that this termination is "made without cause".[12]

[16] On the same day, Mr. Synard sends an email to all of RJHPPM's suppliers and contractors, advising them of the termination of RJHPPM's services.[13]

2. PLAINTIFF'S PROCEEDINGS AND DEFENDANTS' DECLINATORY CHALLENGE

[17] In July 2024, RJHPPM institutes proceedings against both NCCD and NLS before the Superior Court of Quebec. Its originating application, amended in September 2024, claims damages of $2,696,808, including $805,663 for the loss of profits under the Revised NLS Proposal, $1,818,183 for the profits RJHPPM would have generated in relation to the 2024 Proposal for Modular Builds, $50,000 for damage to its reputation and $22,962 in compensation for the severance payments made to employees it laid off as a result of the termination of its services.

[18] Defendants NCCD and NLS seek the dismissal of Plaintiff's proceedings.[14] They argue that the Superior Court of Quebec does not have jurisdiction because Section 15.0 of the 2023 Modular Contracts reflects the parties' agreement that all disputes between them would be submitted to the courts of Nunavut. Alternatively, they claim that none of the connecting factors set out by article 3148 C.C.Q. would be present. Defendants further

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10 Exhibits P-8 and P-9, Section 15.0.
11 Exhibit P-27.
12 Exhibit P-36.
13 Exhibit P-37, *Amended Application*, at para 111.
14 *Notice of Declinatory Exception*, dated November 14, 2024.

argue that even if the Court has jurisdiction over the proceedings, it should decline to exercise this jurisdiction because the courts of Quebec would be a *forum non conveniens*.

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ANALYSIS

[19] The Defendants' declinatory exception calls for a two-step analysis. The Court must first determine if the courts of Quebec have jurisdiction over Plaintiff's proceedings pursuant to article 3148 C.C.Q. This requires considering whether any of the connecting factors listed in article 3148 C.C.Q are present, and whether the parties have agreed to submit the dispute to the courts of Nunavut. If the Court concludes that it has jurisdiction, it must then determine whether it should decline to exercise this jurisdiction pursuant to the *forum non conveniens* doctrine.

3. DOES THE COURT HAVE JURISDICTION PURSUANT TO ARTICLE 3148 C.C.Q.?

3.1 Applicable principles

3.1.1 General approach to declinatory exceptions

[20] When the international jurisdiction of the court is challenged by way of application for declinatory exception, the plaintiff has the onus of demonstrating that the court has jurisdiction. For the purposes of this debate, the facts alleged in the plaintiff's introductory proceedings and the exhibits in support thereof are to be taken as averred unless they are specifically challenged by the defendant.[15] If the plaintiff's factual allegations are challenged, or if the alleged facts are insufficient to ground the court's jurisdiction, the plaintiff must adduce evidence to support the existence of those facts that are necessary to establish the court's jurisdiction.[16]

[21] At the declinatory exception stage, the plaintiff's burden is not to establish those facts in a conclusive manner, but simply on a *prima facie* basis.[17] Indeed, the facts which serve to ground the court's jurisdiction may well be highly contested by the defendant — not only for the purposes of the jurisdictional challenge itself, but also on the merits of the case.[18] Hence, when it rules on a declinatory exception, the court is in principle not called

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[15] *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626, at para 13; *Federal Corp. c. Triangle Tires Inc.*, 2012 QCCA 434, at para 31; *Shamji c. Tajdin*, 2006 QCCA 314, at para 16; *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (C.A.); *Baird c. Matol Botanical International Ltd.*, [1994] R.D.J. 282 (C.A.), at 283.

[16] *Supra* note 15.

[17] *Encocorp c. Khonaysser Power*, 2023 QCCA 1480, at para 7.

[18] For instance, defendant may challenge not only the fact that plaintiff's injury was suffered in Québec, but also the fact that plaintiff suffered *any* injury at all. At the declinatory exception stage, the question is whether there are allegations of facts that the injury in question was suffered in Québec or, if these allegations are specifically contested by defendant, to determine whether there is evidence to establish

to settle in a definitive manner the parties' debate regarding the existence of those facts. The role of the judge is instead limited to determining whether the evidence presented allows it to conclude, on a *prima facie* basis, that the elements required to establish the jurisdiction of the Quebec court are present, without undertaking an exhaustive analysis of the facts or of the applicable legal framework, and without ruling on the merits of the dispute.[19]

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3.1.2 Establishment of the Court's jurisdiction pursuant to article 3148 C.C.Q.

[22] Where the proceedings concern a personal action of a patrimonial nature, the jurisdiction of the court is to be evaluated in light of article 3148 C.C.Q., which provides as follows:

> **3148.** In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:
>
> 1° the defendant has his domicile or his residence in Québec;
>
> 2° the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
>
> 3° a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
>
> 4° the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;
>
> 5° the defendant has submitted to their jurisdiction.
>
> However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities.

[23] For Quebec courts to have jurisdiction under article 3148 C.C.Q., it is enough for any one of the connecting factors provided in subparagraphs 1º to 5º to be established[20] and, in the case of subparagraph 3º, it is sufficient that any one of the factors it mentions be present, *i.e.*, a fault committed in Quebec, injury suffered in Quebec, an injurious act or omission having occurred here, or a contractual obligation to be performed in

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(on a *prima facie* basis) that the injury was suffered here. See *Encocorp c. Khonaysser Power*, 2023 QCCA 1480, at para 8 ("*Le fait que le fardeau de la partie demanderesse se limite à une démonstration* prima facie *est particulièrement important lorsque le facteur de rattachement invoqué constitue un élément de sa cause d'action sur le fond. On élimine ainsi tout risque que le jugement statuant sur l'exception déclinatoire ait indirectement pour effet de trancher en partie le fond du litige*").

[19] *Encocorp c. Khonaysser Power*, 2023 QCCA 1480; *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626.

[20] *Capital Factors Inc. c. Royal Bank of Canada*, 2004 CanLII 72832 (QC CA), at para 2.

Quebec.[21] The second paragraph of article 3148 C.C.Q. provides an important exception: even if the conditions of the first paragraph are met, Quebec courts do *not* have jurisdiction in the presence of a forum selection clause (or arbitration clause) by which the parties have agreed that the dispute is to be heard in a different forum.

[24] In principle, jurisdiction against a defendant is to be evaluated globally, and not separately for each cause of action. As such, when multiple causes of action are brought against a defendant, it is sufficient that jurisdiction be established with respect to one of these causes of action.[22] Where proceedings are brought against more than one defendant, however, the court's jurisdiction must be established independently against each of them.[23] A distinct jurisdictional analysis must therefore be undertaken for each defendant.

3.1.3 Impact and operation of forum selection clauses

[25] Jurisdiction established on the basis of the connecting factors contained in subparagraphs 1º to 5º of article 3148 C.C.Q. will be ousted if the parties have agreed to submit their dispute to another forum. In the presence of such a forum selection clause or arbitration clause, the Court has no choice but to give effect to the parties' agreement.[24] This is not an issue over which the Court has any discretion: where the parties have agreed to submit the dispute to a foreign authority, article 3148 C.C.Q provides that "Québec authorities <u>have no jurisdiction</u>".

[26] For a clause to have that effect, it must be demonstrated that it is both mandatory and exclusive. Although there is no need to invoke any kind of talismanic formula[25] — no requirement for the clause to *expressly* state that it is "imperative" and "exclusive" — the

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[21] *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, at para 45; *Spar Aerospace Ltée c. American Mobile Satellite Corp.*, 2002 SCC 78, at para 56; *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, at para 47; *Poppy Industries Canada Ltd c. Diva Delights Ltd*, 2018 QCCA 163, at para 25.

[22] *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 33; *E. Hofmann Plastics Inc. c. Tribec Metals Ltd.*, 2013 QCCA 2112. This principle does not apply when one of the causes of action falls within the ambit of a forum selection clause or an arbitration clause (see infra, at para [64] and note **Error! Bookmark not defined.**) or when the nature of one of the causes of action prevents the courts of Québec from hearing it, for instance where it consists of a real or mixed action concerning property located abroad (*Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 18; *CGAO c. Groupe Anderson Inc.*, 2017 QCCA 923, at para 10).

[23] *Sharp v. Autorité des marchés financiers*, 2023 SCC 29, at para 147; *MTY Franchising Inc. c. 2280548 Ontario Ltd.*, 2025 QCCS 2727, at para 20; *Muridal Inc. c. Dion*, 2008 QCCS 3674, confirmed by 2009 QCCA 234; *Converpro Inc. c. Laferrière*, 2002 CanLII 482 (QC CS).

[24] Unless Defendants have submitted to the jurisdiction of the Superior Court.

[25] In the words of the Court of Appeal in *Holiday Hospitality Franchising c. Hôtels Côte de Liesse Inc.*, 2018 QCCA 1998, "*il n'y a pas lieu d'exiger à tout prix l'emploi de formules sacramentelles ou de mots-clés référant à l'exclusivité et à l'irrévocabilité du for désigné par les parties*" (at para 21).

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clause must show a clear intent on the part of the parties to oust the jurisdiction of the Quebec courts.[26]

[27] The Court of Appeal has often insisted that forum selection clauses should be given their full effect, and that courts should seek to determine the parties' true intent rather than getting caught up in purely semantic or terminological considerations:

> [L]e formalisme qui à une certaine époque a animé la jurisprudence sur les clauses de choix de for n'est plus de mise : il faut rechercher l'intention réelle des parties sans s'arrêter à des considérations d'ordre uniquement terminologique.[27]

[28] As Justice Marie-France Bich explains in *STMicroelectronics Inc. v. Matrox Graphics Inc.*, interpreting a forum selection clause is not different from interpreting other contractual provisions:

> [102] […] lorsqu'on tente d'établir le sens et la portée d'une clause dont on prétend qu'elle constitue une élection de for, on doit privilégier non pas une approche purement littérale mais plutôt une approche contextuelle, centrée sur la découverte de l'intention des parties, découverte qui nécessite évidemment que l'on tienne compte de la lettre de la clause. Autrement dit, il faut comprendre, il me semble, que lorsque la clause n'exprime pas la compétence exclusive du for étranger en termes absolument limpides, on doit alors se livrer à un exercice de lecture ou d'interprétation qui donne bien sûr une grande importance au texte, mais qui n'exclut pas l'examen du contexte. Bref, il s'agit, en cette matière comme en toute autre matière contractuelle, de dégager l'intention des parties, laquelle s'exprime d'abord dans le texte, qui en est le premier révélateur, mais pas seulement dans le texte.[28]

[29] Courts must thus be wary of not seeking to narrow down the interpretation of such clauses to preserve their jurisdiction:

> [O]n ne doit pas aborder les choses en cherchant des motifs de ne *pas* reconnaître la compétence du tribunal étranger et de favoriser la compétence des tribunaux québécois : cette attitude serait contraire au principe qu'énonce

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[26] *Holiday Hospitality Franchising c. Hôtels Côte de Liesse Inc.*, 2018 QCCA 1998, at para 21; *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at para 84; *PIRS, s.a. c. Compagnie d'arrimage de Québec ltée*, 2013 QCCA 31, at para 9. In this regard, forum selection clauses operate differently when they are used to contest the court's jurisdiction and when they are used as a basis to *ground* the court's jurisdiction. When a plaintiff seeks to rely on a clause to ground the jurisdiction of the courts of Quebec (art. 3148, 1(4º) C.C.Q.), it is sufficient to show that the parties have agreed that Quebec would be a proper jurisdiction to hear their dispute. It is not required that Quebec be designated as the *only* proper forum or that the clause require that proceedings be instituted here. See *Famcamp Exploration Ltd. c. Kamaleddine*, 2019 QCCS 4331; *Peartree Financial Services Ltd. c. Explor Resources Inc.*, 2018 QCCS 3733; *Miracle Fakhri c. Dipaolo*, 2012 QCCS 2274.

[27] *PIRS, s.a. c. Compagnie d'arrimage de Québec ltée*, 2013 QCCA 31, at para 9. See also *Holiday Hospitality Franchising c. Hôtels Côte de Liesse Inc.*, 2018 QCCA 1998, at para 9; *9253-8180 Québec Inc. (Fabrik) c. 9134-9928 Québec Inc. (Dynas)*, 2022 QCCA 32, at para 15.

[28] *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at para 102.

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> la Cour suprême dans *GreCon Dimter inc.* quant au respect et à la reconnaissance de la volonté des parties, qui doit primer, et elle serait contraire également à ce qu'on pourrait appeler la politique du bon accueil que l'on doit réserver aux clauses d'élection de for.[29]

[30] This being said, one must not go overboard and approach such clauses as if every reference to a foreign jurisdiction should be seen as an indication of the parties' intent to deprive the courts of Quebec of the jurisdiction they would otherwise have:

> Bien sûr, il ne s'agit pas non plus de faire dire au contrat ce qu'il ne dit pas et de voir une clause d'élection de for dans tout ce qui semble investir une autorité étrangère d'une certaine compétence sur le litige. Il faut donc préserver ici un délicat équilibre interprétatif.[30]

[31] Another point bears emphasizing with respect to the operation of forum selection clauses. Whereas the procedural rule allowing the joinder of causes of action normally implies that jurisdiction is to be evaluated globally,[31] this approach does not apply when a forum selection clause (or arbitration clause) is at issue.

[32] As the Supreme Court emphasized in *GreCon Dimter inc. v. J.R. Normand inc.*,[32] the principle of the autonomy of the parties, essential to achieving legal certainty in the international context, must take precedence over domestic procedural considerations. Even though joinder of causes of action normally promotes the efficient use of judicial resources and the effective administration of justice, these considerations must give way when the parties have agreed to submit a portion of their dispute to another forum.[33]

[33] In such a case, the parties' agreement will operate to oust the Court's jurisdiction over the dispute it covers, even though the agreement does not cover all the claims brought forth against the defendant. In other words, the Court may not choose to disregard the clause and dismiss the declinatory exception because some aspect of the proceedings would not be covered. The Court must give effect to the clause, which may lead to it declining jurisdiction with respect to part of the claim only.[34]

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[29] *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at para 105, referring to *GreCon Dimter Inc. v. J.R. Normand Inc.*, 2005 SCC 46, at paras 22–24; *Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, at para 20; *BC Rail Partnership v. TrentonWorks Ltd.*, 2003 BCCA 597, at para 13; *United European Bank and Trust Nassau Ltd. c. Duchesneau*, 2006 QCCA 652.

[30] *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at para 105.

[31] *Idem*, at para 23. See also, note 22, *supra*.

[32] *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46.

[33] *Air Nostrum Lineas Aereas Del Mediterraneo c. DAC Aviation Internationale Ltée*, 2017 QCCS 5421, at para 32. A similar outcome arises when the nature of one of the causes of action is such that Québec courts may not entertain it, for instance where it consists of a real or mixed action concerning property located abroad (*Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 18; *CGAO c. Groupe Anderson Inc.*, 2017 QCCA 923, at para 10).

[34] *Air Nostrum Lineas Aereas Del Mediterraneo c. DAC Aviation Internationale Ltée*, 2017 QCCS 5421; *SMC Pneumatics (UK) Ltd. c. Bombardier Transportation*, 2007 QCCS 3539; *Groupe Anderson inc. c.*

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3.2 The connecting factors between Quebec and Plaintiff's proceedings against Defendants

[34] Plaintiff claims that the Court's jurisdiction over the present proceedings, as concerns both NCCD and NLS, can be founded on several of the connecting factors provided in subparagraph 3º of article 3148 C.C.Q. It claims that RJHPPM suffered injury in Quebec as a result of the acts of NCCD and NLS, that faults were committed by each of them in Quebec, and that contractual obligations were to be performed in Quebec by NCCD. Defendants contest Plaintiff's argument with respect to each of these elements.

3.2.1 Injury suffered in Quebec

[35] The injury Plaintiff claims to have suffered falls into various categories, each of which must be examined in turn: loss of expected profits on the Revised NLS Proposal and the 2024 Proposal for Modular Builds, damage to reputation, and employee termination costs.

a) Loss of expected profits

[36] As stated above, Plaintiff claims $805,663 for the profits it lost as a result of NCCD's decision not to go ahead with the Revised NLS Proposal pursuant to which RJHPPM would have continued for 3 years to assume responsibility for the management and operations of NLS,[35] as well as $1,818,183 for the profits it would have generated in relation to the 2024 Proposal for Modular Builds.[36] According to Plaintiff, these losses were suffered in Quebec.

[37] Defendants contest Plaintiff's claim. For them, RJHPPM's alleged loss of profits does not constitute injury suffered in Quebec, but merely a financial loss *recorded* here. They argue that throughout the parties' relationship, all payments to RJHPPM were made from bank accounts located in Nunavut and Manitoba,[37] and not from any account located in Quebec. They add that accounts receivable or debts are deemed to be located at the place where they are collectible, *i.e.* at the debtor's domicile, which corresponds to their headquarters in Iqaluit.[38] In support of their argument, Defendants refer in particular to the oft-quoted decision of the Court of Appeal in *Quebecor Printing Memphis Inc. v. Regenair Inc.*[39]

CGAO, 2018 QCCS 3458. A similar outcome arises when the nature of one of the causes of action is such that Québec courts may not entertain it, for instance where it consists of a real or mixed action concerning property located abroad (*Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 18; *CGAO c. Groupe Anderson Inc.*, 2017 QCCA 923, at para. 10). See also *Kron c. Lo*, 2025 QCCS 1074, at paras 22–24.

[35] *Amended Application*, at para 7; *Notice of Declinatory Exception*, at para 18.

[36] Exhibit P-27.

[37] *Notice of Declinatory Exception*, at para 53.

[38] Defendants' Plan of argument, at para 152.

[39] *Quebecor Printing Memphis Inc. c. Regenair Inc.*, 2001 CanLII 27960 (QC CA).

[38] Defendants' argument is without merit. Here is why.

[39] Courts have repeatedly found that the mere fact that damages are *recorded* in Quebec is insufficient as a jurisdictional ground when said damages result from injury that was sustained elsewhere. This was the case in *Quebecor Printing Memphis Inc.*, where the plaintiff had sued its Tennessee-based client for failure to pay for equipment delivered and installed in Tennessee. Since payment by the defendant was due in Tennessee, the Court of Appeal concluded that plaintiff could not claim to have suffered injury in Quebec merely because its domicile was located here.[40] In other words, just because the absence of payment (in Tennessee) resulted in an impoverishment of plaintiff's patrimony (legally located at its Quebec place of domicile), this did not mean that plaintiff had suffered an injury in Quebec.

[40] The difference between injury being *suffered* in Quebec and injury merely being *recorded* in Quebec is best explained by Justice Nicholas Kasirer, then at the Court of Appeal, in *Option Consommateurs v. Infineon Technologies, a.g.*[41]:

> [64] In my view, *Quebecor Printing* stands for the principle that when financial damage is only recorded in Quebec (in French I would say "*comptabilisé*"), that alone is insufficient to ground territorial jurisdiction for the purposes of article 3148(3) C.C.Q. To confer jurisdiction on the sole basis of where the plaintiff records his or her patrimonial damage, irrespective of where the injury took place, would undermine the idea that the substantive locus of injury is a freestanding connecting factor, alongside the others spoken to in article 3148(3) C.C.Q. (which include the place where the fault was "committed/ *commise*", where the injurious act "occurred/*s'[est] produit*" and where the obligation was to be "performed/*exécutée*"). In other words, where the only sign of damage in Quebec turns on the presence of the plaintiff's patrimony being here, the Superior Court cannot rely on article 3148(3) C.C.Q. as the basis for its jurisdiction *ratione loci*. On the other hand, where there is evidence that the financial loss has been suffered in Quebec (in French I would say "subi"), based on a material event that has occurred here, then article 3148(3) C.C.Q. provides that Quebec courts have jurisdiction, subject to *forum non conveniens* considerations pursuant to article 3135 C.C.Q.[42]

[41] Justice Kasirer's reasons make it clear that there is no principle in Quebec law that mere economic loss would be insufficient to ground the courts' jurisdiction. In fact, the relevant distinction is not between the nature of the injury (bodily, moral, financial, etc.),

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[40] *Quebecor Printing Memphis Inc. c. Regenair Inc.*, 2001 CanLII 27960 (QC CA). See also *Green Planet Technologies Ltd. c. Corporation pneus OTR Blackstone/OTR Blackstone Tire Corporation*, 2013 QCCA 56, at para 11; *Richelieu Projects Inc. c. Western Rail Inc.*, 2006 QCCA 840, at para 7; *Sterling Combustion Inc. c. Roco Industrie Inc.*, 2005 QCCA 662, at para 48; *Banque de Montréal c. Hydro Aluminum Wells Inc.*, 2004 CanLII 12052 (QC CA); *Foster c. Kaycan Ltd.*, 2001 CanLII 38391 (QC CA).

[41] *Option Consommateurs c. Infineon Technologies, a.g.*, 2011 QCCA 2116, at para 64, appeal dismissed by *Infineon Technologies AG v. Option Consommateurs*, 2013 SCC 59. See also: *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at para 91.

[42] *Idem*, at para 64.

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but between injury that is sustained in Quebec and damage that is recorded in Quebec as a result of an injury sustained elsewhere.

> [67] This distinction between financial damage that is merely recorded in Quebec, on the basis of the location of the plaintiff's domicile, and injury that is otherwise suffered in Quebec, is a strong theme running through the cases. In *Foster* [*v. Kaycan Ltd.*, 2001 CanLII 38391 (QC CA), par. 7], for example, it is this feature of *Quebecor Printing* that is emphasized by the Court:
>
> > CONSIDERING that the mere fact that Respondent has its head office in Montreal and that any monetary loss would presumably be recorded in Montreal, is not attributive of jurisdiction within the meaning of article 3148 paragraph 3 C.C.Q. […]
> >
> > (Emphasis added.)
>
> [68] [The Court of Appeal's decision in *Bank of Montreal* v. *Hydro Aluminum Wells inc.*, 2004 CanLII 12052 (QC CA)] is cited by the respondents as authority for [their] submission that Ms. Cloutier's financial damage does not suffice as a connecting factor under article 3148(3) C.C.Q. They rely on the following explanation offered by my colleague Brossard, J.A.: "*Si le simple préjudice financier, nécessairement subi au lieu du domicile de la partie demanderesse, suffisait pour donner ouverture à l'application de l'article 3148 C.c.Q., il faudrait alors nécessairement conclure que les articles 3149 et 3150 C.c.Q. sont redondants et inutiles.*" But they neglect to cite Brossard, J.A.'s analysis of where the obligations were to be performed in that case — completely in the United States — and his view that locating the financial damage suffered by the plaintiff in Quebec was an accounting exercise based on domicile alone. Accordingly, in *Hydro Aluminum Wells*, as in *Quebecor Printing* and *Foster*, the locus of the plaintiff's patrimony on its own was held to be insufficient to attribute jurisdiction as that would only be the place where damage was recorded. In those cases, however, the injury was sustained outside of Quebec unlike the circumstance of Ms. Cloutier.
>
> [69] The distinction between financial injury materially suffered in Quebec and financial damage merely recorded here is important in respect of a balanced policy of establishing appropriate "international jurisdiction" for Quebec courts, in the absence of an exceptional grounds for holding the courts to be a *forum non conveniens*. If the legislature had been inclined to establish jurisdiction on the basis of damage recorded in Quebec, why did it not recognize the plaintiff's domicile alone in the connecting factors listed in article 3148 C.C.Q.?
>
> [70] On the other hand, financial loss substantively suffered in Quebec based on material facts arising in the province, as opposed to damage that is merely recorded in the patrimony of a Quebec plaintiff, is a sufficient basis for establishing jurisdiction for the Quebec courts under article 3148(3) C.C.Q.[43]

[42] The distinction that Justice Kasirer underlines between damage and injury was later recognized by the Quebec legislature, and the English version of article 3148(3°)

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[43] *Idem*, at paras 67–70.

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C.C.Q. was amended in 2014 to replace the phrase "damage was suffered in Quebec" by "injury was suffered in Quebec".

[43] In the present case, the evidence submitted by the Defendants themselves supports Plaintiff's contention that its financial loss was not merely recorded but directly suffered in Quebec as it is in Quebec that payment of RJHPPM's fees would have been received.

[44] Indeed, the banking reports filed by Defendants confirm that all payments which NCCD and NLS made to RJHPPM were wired or deposited into RJHPPM's bank account at a Bank of Nova Scotia branch in Boisbriand (Quebec).[44] In this regard, it is irrelevant that wire transfers or direct transfers were made *from* bank accounts located in Nunavut or Manitoba. The injury RJHPPM claims to have suffered is that it did not *receive* payments which it would otherwise have received in Quebec, irrespective of the place from where the funds were sent.

[45] RJHPPM is thus right to argue that the loss of expected profits on the Revised NLS Proposal and the 2024 Proposal for Modular Builds constitutes injury suffered in Quebec within the meaning of article 3148, subparagraph 1(3°) C.C.Q. In itself, this is sufficient to establish jurisdiction.[45]

b) Damage to reputation

[46] RJHPPM claims that it suffered injury to its reputation as a result of NCCD and NLS's termination of their relationship. It claims damages of $50,000 and argues that this injury would have been sustained in Quebec.

[47] Defendants contest that such a claim could serve to ground the court's jurisdiction. They argue that the alleged injury it is not substantial enough and that it is not supported by sufficient factual allegations. Here is how they frame their argument:

> 56. As for the sum of $50,000 claimed by RJHPPM for alleged damages to its reputation, it represents less than 2% of the total amount claimed in the Action. As such, any damage to reputation suffered as a result of conduct occurring in Nunavut cannot be a real and substantial connection with Québec and would clearly be insufficient to demonstrate that Québec Courts have jurisdiction;
>
> 57. In the alternative, RJHPPM's claim for damages to its reputation is a mere characterization of facts and does not bind this Honourable Court;
>
> 58. RJHPPM's claim for damages to its reputation is actually baseless and was made solely in an attempt to ground jurisdiction before the Courts of

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[44] Exhibit D-9.

[45] In view of the Court's conclusions regarding the other grounds of jurisdiction, it is not necessary to determine whether this conclusion would apply to both NCCD and NLS, or only to NCCD. Although Plaintiff's *Amended Application* is not entirely clear in this regard, it should be noted that Plaintiff seeks a solidary condemnation against both NCCD and NLS.

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> Québec. It constitutes an abuse within Article 51 C.C.P. and as such, should be disregarded by this Honourable Court;

[48] Defendants' arguments must be dismissed. Firstly, there is no doubt that injury to one's reputation can ground jurisdiction, even for legal persons. In *Groupe SNC-Lavalin inc. v. Siegrist*, the Court of Appeal explains:

> [100] Le préjudice résultant d'une atteinte à la réputation peut fonder la compétence des tribunaux québécois en vertu de l'art. 3148 al. 3e *C.c.Q.* dans la mesure où le préjudice est effectivement subi au Québec. Le lieu où ce préjudice est subi est une question de fait, mais il convient de préciser que dans le cas où le préjudice résulte d'une perte d'affaires suite à une atteinte à la réputation d'une société, il survient habituellement à l'endroit où la société mène les activités d'affaires qui sont ainsi touchées.[46]

[49] Writing for the Court, Justice Mainville went on to explain that the location of a reputational harm does not depend merely on the location of the plaintiff's domicile, but rather on the place where, in fact, its reputation would have been harmed:

> [102] Puisqu'un préjudice résultant de l'atteinte à la réputation d'une société survient généralement au lieu où elle conduit ses affaires, le lieu du préjudice ne devrait pas faire l'objet d'un long débat lorsque la personne morale ne fait affaire qu'au Québec. Cependant, lorsqu'une société fait affaire dans plus d'un endroit, une analyse plus poussée est requise. La partie qui prétend que les tribunaux québécois ont compétence doit alors soumettre une preuve suffisante pour établir, *prima facie*, que le préjudice a effectivement eu lieu au Québec.

[50] Justice Mainville concluded that Groupe SNC-Lavalin had failed to make such a *prima facie* demonstration: its allegations were vague, simply stating that Defendants had "tarnished the excellent reputation enjoyed by the Plaintiffs in Quebec and throughout the world".[47]

[51] Although Defendants seek to rely on the Court's reasoning in *Groupe SNC-Lavalin inc. v. Siegrist*, this reliance is misplaced.

[52] Contrary to Defendants' assertion that Plaintiff's claim regarding reputational harm is "a mere characterization" that does not bind the Court, Plaintiff's *Amended Application* contains specific factual allegations that describe how its reputation would have been harmed and explain that the alleged reputational harm arose in RJHPPM's dealings with persons located in Quebec.

[53] Plaintiff alleges that its reputation was harmed in relation to the Quebec suppliers and contractors who received Defendants' termination notice without being informed that

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[46] *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at para 100, referring to *Spar Aerospace Ltée v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 R.C.S 205, at paras 26–29,33–35; *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 35.

[47] *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at para 103.

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said termination was made without cause.[48] Its reputation would also have been harmed in relation to the recruiting firm it had hired and which had scheduled interviews with several candidates. According to Plaintiff, when RJHPPM informed this firm that its services would no longer be required, it responded by telling RJHPPM not to call them again.[49] Plaintiff also claims to have suffered embarrassment when it was forced to terminate its relationship with the Lachute factory owner with whom it was negotiating the lease for NLS's new facility, and when it was forced to cancel the negotiations it had started with its own landlord and with its architect in order to move premises to accommodate its increased level of activity.[50]

[54] The fact that the amount sought ($50,000) represents only a fraction of the total amount claimed ($2.7 million) does not mean that it cannot serve to ground the court's jurisdiction — although it may be a consideration in the context of a *forum non conveniens* analysis. Defendants' argument in this regard was directly addressed and dismissed by the Supreme Court in the seminal case of *Spar Aerospace Ltée v. American Mobile Satellite Corp.*,[51] and the Supreme Court's conclusion was reiterated more recently by the Court of Appeal in *Poppy Industries Canada Inc. v. Diva Delights Ltd.*, where the disproportion was even greater since the claim for loss of reputation represented only $10,000 out of a total claim exceeding $1.15 million[52]:

> [38] The trial judge seemed to be concerned by the fact that this claim is substantially smaller than the other two. But this consideration is irrelevant, as the Supreme Court of Canada decided in *Spar Aerospace*. A similar disparity was present in that case: Spar Aerospace was claiming $50,000 for loss of future profits caused by loss of reputation and more than $800,000 for loss of performance incentives. Article 3148 (3) C.C.Q. does not establish jurisdiction on the basis of the amount claimed, it simply requires that the injury be suffered in Québec:
>
>> 37. In their arguments, the appellants seem to conflate the issue of the "damage" suffered in Québec with the issue of the amount of damages claimed in Québec. In this case, we are only concerned with the former as art. 3148 requires that "damage" be suffered in Québec in order to ground jurisdiction [*Note: this was before he 2014 amendment to replace "damage" by "injury"*]. The amount of damages that the respondent is claiming is not a concern for the jurisdiction question but may be one of many factors to be considered in a *forum non conveniens* application, […].[53]

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[48] *Amended Application*, at para 111.

[49] *Amended Application*, at para 158.

[50] *Amended Application*, at paras 112, 114.2,156.

[51] *Spar Aerospace Ltée v. American Mobile Satellite Corp.*, 2002 SCC 78.

[52] *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163. The amounts appear in the judgment of the Superior Court: *Poppy Industries Canada Inc. v. Diva Delights Ltd.*, 2016 QCCS 1458, at para 9 –11.

[53] *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 38, quoting *Spar Aerospace Ltée v. American Mobile Satellite Corp.*, 2002 SCC 78, at para 37.

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[55] Lastly, it is not for the Court to evaluate Plaintiff's chances of success regarding its claim for loss of reputation. It suffices it to note that there is no merit to Defendants' argument that it would be so baseless as to justify its being struck as abusive pursuant to the power conferred by article 51 C.C.P.

c) Severance payments to employees

[56] The third aspect of the injury that Plaintiff claims to have suffered in Quebec corresponds to the $22,962 severance that it paid to six Quebec-based employees who had to be laid off as a result of Defendants' termination of the parties' relationship.

[57] In view of the conclusions above, it is not necessary to consider whether these payments would constitute injury suffered in Quebec within the meaning of article 3148(3°) C.C.Q. Although it appears likely that these amounts were paid in Quebec (where RJHPPM and the employees in question are located),[54] there is no specific allegation that this was indeed the case.

3.2.2 Fault committed in Quebec

[58] Plaintiff alleges that Defendants committed several faults in Quebec, the first of which would be that they sent notices informing RJHPPM's suppliers and contractors that it had terminated its services without informing them that this termination had been made without cause.

[59] Because several of these suppliers and contractors are based in Quebec, where the notices would have been sent and received by them, this clearly constitutes a fault committed in Quebec,[55] irrespective of the fact that such notices may well have been drafted and sent from Defendants' head office in Nunavut.

[60] Plaintiff also claims that both Defendants committed faults in Quebec by not informing RJHPPM of their intent to terminate their relationship and by leading it to believe that their relationship would be renewed, thereby enticing it to continue work and forgo other business opportunities:

> 119. RJHPPM maintains that the manner in which Defendants abruptly terminated all of their agreements with RJHPPM and took an opportunity away from RJHPPM, pursuant to Exhibits P-14 and P-27, is a fault and contrary to the requirements of good faith.
>
> 119.1 Both Defendants were fully aware of their intentions in terms of ending their relationship with RJHPPM and both concealed this information from RJHPPM.

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[54] *Amended Application*, at para. 154.

[55] See for instance *Bombardier Inc. c. Honeywell International Inc.*, 2019 QCCS 481, at para 69 (motion for leave to appeal dismissed by *Honeywell International Inc. c. Bombardier Inc.*, 2019 QCCA 582 (at para 15).

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> 120. […]
>
> 121. For several months leading up to the February 2024 terminations, Defendants, knowingly misled RJHPPM into believing that its three (3) year contract regarding the continued operations of NLS was accepted by Defendants' board of directors and that the signing of an agreement was merely a formality.
>
> 122. Moreover, Synard through his positive statements and by confirming that Defendants' board of directors had approved the Revised NLS Proposal, Exhibit P-14, knowingly misled RJHPPM to believe that Defendants were satisfied with its services and that its contract for the continued operation of NLS was not at risk, thereby causing RJHPPM to forego the opportunity to bid or accept other contracts and protect its business interests.
>
> 123. At all relevant times, Defendants failed to disclose the true status of Defendants' relationship with RJHPPM and knowingly misled RJHPPM to ensure RJHPPM continue to negotiate, prepare and submit the 2024 Proposal for the 2024-2025 modular builds only to take the opportunity for themselves, thereby depriving RJHPPM of profits of $1,818,183.36.
>
> 124. Defendants actively deceived and allowed RJHPPM to continue its work for the NU 3000 Project, by managing the operations of NLS and negotiating the Lease Agreement, Exhibit P-13, on their behalf, all the while knowing they were intending to terminate RJHPPM's contracts and their relationship with RJHPPM.
>
> 125. From August 15, 2023 and until February 8, 2024, Hellstrom and RJHPPM ran all aspects of the NLS operations for the NU 3000 Project.
>
> 126. At no point in time was RJHPPM informed or advised by Defendants of any dissatisfaction with RJHPPM's services or that its business relationship with Defendants was in danger of termination.[56]

[61] These allegations are also sufficient to support Plaintiff's claim that a fault would have been committed in Quebec by both NCCD and NLS. As the Court of Appeal found in *E. Hofmann Plastics Inc. v. Tribec Metals Ltd.*, to the extent that a party's failure to give proper notice of its intention to terminate a contractual relationship constitutes a fault, such fault is to be located at the place where the notice should have been given, that is, at the other party's head office.[57] Indeed, it has long been settled that the *locus* of a fault of omission must be determined by reference to the place where the obligation or duty *ought* to have been performed. The *locus* of a failure to warn a person or inform that person of something is therefore the place where the information would have been useful,

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[56] *Amended Application*, at paras 119–126 (ellipses in the original text omitted).

[57] *E. Hofmann Plastics Inc. c. Tribec Metals Ltd.*, 2013 QCCA 2112, at paras 7–8. See also *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, at paras 59–64.

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and not the place where that notice would have been prepared or from where it would have been sent.[58]

[62] In the absence of any contractual provision suggesting that such prior notice of termination should have been given to Plaintiff elsewhere than in Quebec (where it has its head-office, its directors and its employees, and where its activities are located), the Court concludes that Defendants' alleged fault in this regard was committed in Quebec.

[63] The Court thus concludes that the Plaintiff's allegations are sufficient to establish that both NCCD and NLS committed faults in Quebec.

3.2.3 Obligation to be performed in Quebec

[64] Article 3148, subparagraph 1(3º) C.C.Q. provides that Quebec authorities have jurisdiction where "one of the obligations arising from a contract was to be performed in Québec". For this connecting factor to be met, it is sufficient that the contract requires that *one* of its obligations be performed in Quebec,[59] regardless of whether the contract was entered into elsewhere or whether most of its obligations were to be performed in another jurisdiction, and regardless of whether the proceedings concern the execution or non-execution of the obligation in question.[60]

[65] To demonstrate that an obligation "was to be performed in Québec," it is insufficient to show that a contractual obligation *was* in fact performed in Quebec, or that *if* had been performed, it *would have been* performed here. To meet the condition set out in 3148 (3º) C.C.Q., Plaintiff must demonstrate that the contract itself *required* that performance take place in Quebec.[61] This requirement may, of course, result from the express terms of the contract, but it may also arise implicitly from the nature of the obligation, for instance because it is such that it may *only* be executed in Quebec.[62]

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[58] *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554, at 1568–1570; *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, at para 59; *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (QC CA). In *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, the Court confirms that this applies both in the context of an extracontractual claim and in the context of a contractual claim (at para 60).

[59] *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 27.

[60] *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, at para. 48; *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para. 30.

[61] *Partner Reinsurance Company Ltd. c. Optimum Réassurance Inc.*, 2020 QCCA 490, at para 48; *Maxim Construction Inc. c. Prométal Inc.*, 2019 QCCA 1077, at para 10 (judge sitting alone); *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 28; *Green Planet Technologies Ltd. c. Corporation Pneus OTR Blackstone/OTR Blackstone Tire Corporation*, 2013 QCCA 56, at paras 7–8; *D.D.H. Aviation Inc. v. Fox*, 2002 CanLII 41085, at paras 26–28 (QC CA).

[62] See *Vision Solutions de Procédés Inc. c. Samson Controls Inc.*, 2020 QCCS 2060, at para 31. Courts have also based their conclusion in this regard on the place of performance as imposed by applicable law. See *Mazzetta Company, l.l.c. c. Dégust-Mer Inc.*, 2011 QCCA 717; *MNC Multinational Consultants Inc. c. Natraceutical Group*, 2014 QCCS 5400, at para 80.

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[66] In its outline of argument, Plaintiff claims that "[t]he majority of the NU 3000 Project was managed by Plaintiff from its offices in Blainville, Quebec" and that the majority of the work to be provided by Plaintiff under the 2024 Proposal for Modular Builds "would have been performed in Quebec".[63] It then goes on to provide a long list of actions which it undertook in Quebec in pursuance of the various contracts[64] and concludes:

> Given the extent of the foregoing allegations, it can and must be inferred by this Court that at least one of the obligations under a contract had to be performed in Québec, including because this is where Plaintiff is based and has its office.[65]

[67] Although Plaintiff claims to have executed most of its obligations in Quebec, and although it is reasonable to assume that some of the obligations pursuant to the 2024 Proposal for Modular Builds would certainly have had to be executed in Quebec, this is insufficient. As noted above, Plaintiff bears the onus of alleging specific facts establishing the court's jurisdiction. It cannot ask the Court to infer some form of implicit contractual obligation to perform certain tasks in Quebec merely because it is likely, or even highly likely, that it would have had no choice but to perform them in Quebec.

[68] The situation is however different with respect to the management of NLS under the Initial NLS Proposal[66] and the Revised NLS Proposal.[67] While some management work could have been done elsewhere than at RJHPPM's offices in Quebec or at NLS's facility in Elgin (Quebec), both the Initial and Revised NLS Proposals envision obligations that Plaintiff would have been required to perform in Quebec within the meaning of article 3148 C.C.Q.

[69] For instance, the Initial NLS Proposal required RJHPPM to provide employees to attend NLS's installation,[68] while the Revised NLS Proposal provides that RJHPPM will ensure the packing of the "merchandise, material, [and] equipment currently in Elgin to the new facility location",[69] something that can only be done in Quebec.

[70] These can thus properly be said to have been contractual obligations that *had* to be performed in Quebec within the meaning of article 3148 C.C.Q.

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[63] Plaintiff's *Outline of argument*, at para 118; *Amended Application*, at para 38,101.
[64] Plaintiff's *Outline of argument*, at para 119.
[65] Plaintiff's *Outline of argument*, at para 120.
[66] Exhibit P-7.
[67] Exhibit P-14.
[68] Exhibit P-7, clause 3.0 ("*Providing 3 to 5 RJHPPM Team members to attend site*").
[69] Exhibit P-14, p. 13.

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3.3 Defendants' argument concerning Section 15.0 of the 2023 Modular Contracts

[71] Having concluded that several connecting factors are present that would grant it jurisdiction over Plaintiff's proceedings, the Court now turns to Defendants' argument that such jurisdiction would be ousted because the parties would have agreed to submit the present dispute to the exclusive jurisdiction of the courts of Nunavut.

[72] Defendants claim that the parties would have intended that all disputes relating to their contractual relationship be exclusively decided by the courts of Nunavut. According to Defendants, this agreement would have been reflected in Section 15.0 of the 2023 Modular Contracts:

> **15.0 Governing Law**
>
> This Agreement shall for all purposes be governed by and construed in accordance with, and the rights of the parties shall be governed by, the laws of the Territory of Nunavut and the laws of Canada applicable therein, and NCCD and RJHPPM Services inc. hereby attorn to the non-exclusive jurisdiction of the Courts of Nunavut and irrevocably submit to the jurisdiction of any court sitting in the Territory of Nunavut over any suit, action or proceeding arising out of or relating to this Agreement.

[73] This argument must be dismissed: (1) Plaintiff's claim is not based on the 2023 Modular Contracts, and the proceedings contain no claim that would fall within the ambit of Section 15.0; (2) there is no evidence that the parties would have agreed that Section 15.0 would apply to any contract other than the 2023 Modular Contracts, and no evidence of any agreement among the parties that their dispute would be decided by the courts of Nunavut, and (3) the language of Section 15.0 does not support Defendants' contention that its effect would have been to oust the jurisdiction of the courts of Quebec.

3.3.1 Plaintiff's claim is not based on the 2023 Modular Contracts

[74] Plaintiff's proceedings contain no claim relating to either of the two 2023 Modular Contracts. Although both contracts were terminated by Defendants in early 2014,[70] Plaintiff seeks no damage in this regard. Neither does Plaintiff request the Court to rule on the legality of NCCD's termination. As such, none of the claims contained in Plaintiff's *Amended Application* can be said to constitute a "suit, action or proceeding arising out of or relating to [the 2023 Modular Contracts]" within the meaning of section 15.0.

[75] Under the two 2023 Modular Contracts agreements, RJHPPM undertook to provide specific project management services to assist NCCD in delivering a certain number of modular housing units to be built in 2023 — a total of 22 units, to be precise: 14 pursuant to the August 2023 contract,[71] and 8 pursuant to the September 2023

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[70] *Amended Application*, at para 113 and Exhibit P-39.

[71] Exhibit P-8, Appendix 3.

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contract.[72] They relate to work to be performed by RJHPPM and NCCD once the modular units have arrived at their destination, in Nunavut, including management of the work required to construct the pads upon which the modular units will be installed, transport the units from a point designated as "high water" to the pads, install the units on the pads, and complete the units' exterior and interior finishing. These agreements are self-contained instruments, providing for a list of tasks to be performed in relation to a specific number of housing units. There is no claim that they would be meant as any kind of framework agreements to govern the relationship between RJHPPM and NCCD in relation to other works.

[76] A review of Plaintiff's *Amended Application* demonstrates that its claims are in fact essentially independent from the parties' relationship under the 2023 Modular Contracts.

[77] This is most obvious in Plaintiff's claim relating to Defendants' failure to agree to the Revised NLS Proposal.[73] As explained above, this proposal was meant to extend for a period of 3 years RJHPPM's responsibility for the day-to-day management and operations of NLS, which had first been agreed to by NCCD in August 2023.[74] It envisages fees of approximately $6.8 million, covering the cost of staff tasked with logistics, purchasing, warehousing and shipping, the leasing costs for NLS's new facility, various operating costs (equipment rental and maintenance, tools, health and safety, insurance) and one-time capital costs for the purchase of vehicles. This has nothing to do with the construction work provided by the 2023 Modular Contracts.

[78] Plaintiff claim relating to the profits it expected to generate in relation to the 2024 Proposal for Modular Builds is different. Contrary to Plaintiff's claim under the Revised NLS Proposal, this one *does* relate to the construction of housing units. This is not to say, however, that Plaintiff's claim would fall under Section 15.0 of the 2023 Modular Contracts. The 2024 Proposal for Modular Builds is not an agreement between RJHPPM and NCCD, but rather a proposal submitted to NHC to outline the work NCCD proposes in relation to "the design, procurement, and installation" of 35 single-family dwelling units scheduled to be built in 2024.[75]

[79] There is no suggestion (either in Plaintiff's *Amended Application* or in Defendants' *Notice of Declinatory Exception*) that the relationship between RJHPPM and NCCD in the context of the work required for these 35 units would have been governed by the same terms as those in place with respect to the 22 modular units covered by the two 2023

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[72] *Amended Application*,at para. 55 (the September Modular Contract's Draft Project Schedule (Appendix 3) is not reproduced in Exhibit P-9.

[73] Exhibit P-14.

[74] Exhibit P-7. *Amended Application*, at para 7; *Notice of Declinatory Exception*, at para 18.

[75] Exhibit P-27.

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Modular Contracts. Indeed, the 2024 Proposal for Modular Builds concerns the installation of different types of modular units than those covered by the 2023 Modular Contracts.[76]

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[80] Plaintiff's two other claims do not relate to the 2023 Modular Contracts. The employee termination costs it seeks compensation for were paid to employees who had been hired to assist RJHPPM with NLS' operations.[77] As for the injury to RJHPPM's reputation, it appears to essentially concern the work it was doing in relation to NLS, and there is no indication that it would relate to the 2023 Modular Contracts.

3.3.2 There is no evidence that the parties agreed to submit the present dispute to the courts of Nunavut

[81] Defendants claim that even though Plaintiff's action is not based on the August or September 2023 Modular Contracts, Section 15.0 is nonetheless applicable. They argue that the Revised NLS Proposal and the 2024 Proposal for Modular Builds form part of a "Group of Contracts" that would also comprise the 2023 Modular Contracts and the Initial NLS Proposal, and Section 15.0 would reflect a "common intent" of the parties that all disputes under this "Group of Contracts" would be submitted to the jurisdiction of the courts of Nunavut:

> 30. Section 15.0 reflects the common intent of the parties that all of their disputes arising out of their contractual relationship throughout the Group of Contracts be exclusively decided by the Courts of Nunavut;

[82] This argument is not convincing.

[83] Firstly, there is no evidence that there would have been a "common intent" by RJHPPM and NCCD that all disputes between them should be decided by the courts of Nunavut, or that Section 15.0 would reflect any such intent. Nor is there evidence that the parties intended that the contracts between them should be considered as constituting an indivisible "group of contracts". Indeed, there is nothing in Plaintiff's *Amended Application* that would constitute a factual basis for this, and Defendants have adduced no evidence to support their assertion in this respect.

[84] Even though Defendants' *Notice of Declinatory Exception* is supported by an affidavit of Clarence Synard, president and CEO of both NCCD and NLS, the statement contained at paragraph 30 (reproduced above) cannot be regarded as *evidence* sufficient to establish the existence of such a "common intent."

[85] As mentioned above, in the context of a declinatory exception, the onus is on the plaintiff to demonstrate that the court has jurisdiction. The plaintiff must thus ensure that

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[76] Single-family 3- or 4-bedroom dwellings under the 2024 Proposal for Modular Builds (Exhibit P-27), and multiplexes under the 2023 Modular Contracts (Exhibits P-8 and P-9).

[77] *Amended Application to institute proceedings*, at para 154.

its introductory proceedings contain specific allegations of all facts required to establish the court's jurisdiction and, if these allegations are contested, that there is sufficient evidence to establish those facts on a *prima facie* basis.

[86] In the present case, there was no obligation for Plaintiff to allege, or to establish some form of *prima facie* proof, that Section 15.0 does *not* apply to its claim. This did not change because Defendants chose to argue, in their *Notice of Declinatory Exception*, that there would have been a "common intent" that any dispute between the parties would fall within the ambit of Section 15.0. In other words, Defendants' claim in this regard did not suddenly result in Plaintiff having the burden to *disprove* the existence of such a "common intent".

[87] That it is Plaintiff who bears the burden to allege (or establish *prima facie*) the facts necessary to ground the Court's jurisdiction does not alter the general principle, embodied in article 2803 C.C.Q., that each party bears the burden of establishing the facts on which their respective claims are based:

> **2803.** A person seeking to assert a right shall prove the facts on which his claim is based.
>
> A person who claims that a right is null, has been modified or is extinguished shall prove the facts on which he bases his claim.

[88] Here, it is Defendants who claim that there exists an agreement by which the parties agreed to submit all their disputes to the courts of Nunavut. It is thus Defendants who bear the burden of establishing the existence of such an agreement. This is so because Defendants are not simply seeking to contest Plaintiff's allegations, which would mean that Plaintiff could no longer simply rely on the allegations of its introductory proceedings and would need to provide evidence in support thereof. Instead, Defendants are themselves asserting an independent right (the right to force Plaintiff to respect the alleged agreement to submit disputes to the courts of Nunavut); they thus bear the burden of establishing the facts in support thereof.

[89] Defendants' bare assertion that "*Section 15.0 reflects the common intent of the parties that all of their disputes* […] *be exclusively decided by the Courts of Nunavut*" is not a factual allegation: it is an argument, the expression of an opinion as to the meaning and scope of Section 15.0. That Defendants filed an affidavit stating that "*[t]he facts alleged in the Notice of Declinatory Exception* […] *are true*" does not transform this assertion into some form of factual evidence regarding the parties' intent. Neither does it serve to shift the burden onto Plaintiff's shoulders and force it to adduce evidence disproving Defendants' argument.

[90] Secondly, Defendants' argument that Section 15.0 would apply because the Revised NLS Proposal and the 2024 Modular Builds Proposal would form part of a "group of contracts" is also a legal argument and not a factual one. Defendants provide no evidence or specific factual allegations that this would have been the parties' intent, and

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it is difficult to see how the various agreements and proposals filed in the Court record could truly be seen as constituting a “group of contracts.”

[91] The “group of contracts” doctrine, which has its root in French law, finds application where several contracts are required to carry out a single overall transaction, with each contract being necessary but insufficient on its own to achieve the transaction, with the result that the transaction becomes impossible if any one of the contracts is not performed.[78] In *Billards Dooly's inc v. Entreprises Prébour ltée*, the Court of Appeal found that nothing in the *Civil Code of Quebec* would in such circumstances prohibit courts from considering and interpreting a series of interdependent contracts as forming an indivisible whole:

> [61] Tel que le soulignent Jean-Louis Baudouin et Pierre-Gabriel Jobin […], la notion d’indivisibilité contractuelle est maintenant bien reçue en France en présence de plusieurs contrats « interdépendants », qu’ils soient concurrents ou successifs, mais traduisant une même opération.
>
> [62] En fait, la Cour de cassation n’hésite plus à inférer des conséquences juridiques de l’économie générale d’un ensemble de contrats interdépendants. La haute instance a ainsi reconnu que l’indivisibilité contractuelle tacite pouvait l’emporter sur une clause de divisibilité expresse et qu’une clause contractuelle en contradiction avec l’économie générale de l’opération visée par les parties était sans effet. Elle a aussi précisé que la cause “objective” d’un contrat pouvait se situer au-delà de celui-ci, dans l’opération globale composée d’un ensemble de contrats “formant un tout indivisible”. Conséquence logique de l’indivisibilité, la Cour de cassation a statué que l’anéantissement d’un contrat pouvait entraîner la caducité des autres contrats appartenant au même groupe contractuel.
>
> [63] Rien ne s’oppose dans le *Code civil du Québec* à l’adoption de ces mêmes principes. Au contraire, les articles 1425 et 1426 C.c.Q. nous invitent à le faire afin de donner plein effet à la volonté des parties[79]
>
> [References omitted]

[92] In principle, the existence of a certain proximity between contracts among the same parties does not automatically imply that the forum selection clause contained in

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[78] *Érablière G.F. Marois Inc. c. Fédération des producteurs acéricoles du Québec*, 2016 QCCA 87, at para 28. See also *IBS Capital c. RCGT Financement Corporatif Inc.*, 2020 QCCA 1615, at paras 33–34; *Dunkin’Brands Canada Ltd. c. Bertico Inc.*, 2015 QCCA 624; Jean-Louis Baudouin, Pierre-Gabriel Jobin and Nathalie Vézina, *Les obligations*, 7th ed. (Cowansville: Yvon Blais, 2013), nº 490, p. 588; Pierre-Gabriel Jobin, “Comment résoudre le casse-tête d’un groupe de contrats”, (2012) 46 R.J.T. 9.

[79] *Billards Dooly’s inc c Entreprises Prébour ltée*, 2014 QCCA 842, at paras 61–63, referring to Jean-Louis Baudouin et Pierre-Gabriel Jobin, *Les obligations*, 7th ed., by Pierre-Gabriel Jobin and Nathalie Vézina, (Cowansville: Yvon Blais, 2013) at paras 488–490; Pierre-Gabriel Jobin, “Comment résoudre le casse-tête d’un groupe de contrats“, (2012) 46 R.J.T. 9; *Domtar v. Grantech*, J.E. 2002-1256, at paras 39ss. (QC CA).

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one contract applies to disputes under related contracts.[80] It is not impossible, however, to imagine that in the presence of a true "group of contracts", a court could conclude that the forum selection clause contained in one of the contracts applies to the other contracts. Courts have come to conclusions of this nature in circumstances where the operations envisaged by various agreements were so interrelated as to be indivisible or constitute a single transaction.[81]

[93] There is of course a relationship between the 2023 Modular Contracts and the contracts which would have resulted from the two proposals had they been accepted. All involve the same parties (RJHPPM and NCCD) and relate to the NU 3000 Project. They do not, however, envision a single overall transaction which could only be realized if all of them are performed. As explained above, the operations envisioned by each are distinct, both from a legal perspective and from a purely practical standpoint.

[94] What is more, NLS is not a party to the 2023 Modular Contracts, and there is no indication that it would have been a party to whatever contract would have resulted from the acceptance of the Revised NLS Proposal, which had been submitted to NCCD alone, or from the 2024 Proposal for Modular Builds.

[95] Lastly, it is worth pointing out that the Revised NLS Proposal is meant as an extension of the Initial NLS Proposal,[82] which had itself been presented as being "based on the same principle as the current agreement we [RJHPPM] hold with NCCD for Project Management Services".[83] This is an apparent reference to the Project Management Agreement signed in March 2023 between NCCD and Mr. Hellstrom, which contained a non-exclusive forum selection clause designating the courts of Quebec.[84] Although Plaintiff does not claim that this clause finds application here, the presence of such a

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[80] See *Air Nostrum Lineas Aereas Del Mediterraneo c. DAC Aviation Internationale ltée*, 2017 QCCS 5421 at para 15; *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, at paras 42–44 (leave to appeal to SCC dismissed: 2013 CanLII 45853).

[81] See, for instance: *Acasti Pharma Inc. v. US Nutraceuticals, l.l.c. (Valensa International)*, 2011 QCCS 140, leave to appeal denied by *US Nutraceuticals, l.l.c. (Valensa International) v. Acasti Pharma Inc.*, 2011 QCCA 483; *Famcamp Exploration Ltd. c. Kamaleddine*, 2019 QCCS 4331, at para 21. In other cases, courts have concluded that the relationship between contracts was such that a litigant who is not a party to the forum selection or arbitration clause can nonetheless invoke it or be bound by it. Courts have thus found that a surety may invoke the clause contained in the contract between the creditor and the main debtor: *Mauvalin Inc. v. Big Land Construction Ltd.*, 2020 QCCS 394 (motion to dismiss appeal dismissed by 2020 QCCA 1503; notice of settlement out of court: C.A.M. 500-09-029057-205); *AXC Construction inc. v. Bioénergie AE Côte-Nord Canada Inc.*, 2019 QCCS 3890; *Air Nostrum Lineas Aereas Del Mediterraneo c. DAC Aviation Internationale ltée*, 2017 QCCS 5421; *Construction injection EDM Inc. v. SNC-Lavalin Construction (Atlantic) Inc.*, 2013 QCCS 5049. See also: *PS Here, LLC v. Fortalis Anstalt*, 2009 QCCA 538 (contract's assignee); *9302-7654 Québec Inc. (Team Productions) v. Bieber*, 2017 QCCS 1100, affirmed by 2019 QCCA 285 (contract entered into by a mandatary).

[82] Exhibit P-5.

[83] Exhibit P-5.

[84] Exhibit P-5, Section 13.0 ("*NCCD and Robbie Hellstrom hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of Quebec and irrevocably submit to the jurisdiction of any court sitting in the Province of Quebec over any suit, action or proceeding arising out of or relating to this Agreement*").

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clause casts significant doubt on Defendants' argument that the parties would have intended that all their disputes be heard in Nunavut.[85]

[96] In the absence of any evidence to support Defendants' contention that the parties agreed that Section 15.0 would apply to the claims brought forth by Plaintiff in its *Amended Application*, the Court concludes that Defendants cannot invoke Section 15.0 to seek the dismissal of Plaintiff's proceedings.

3.3.3 Even if Section 15.0 applied, it would not prevent the exercise of the Court's jurisdiction

[97] Even if Defendants had demonstrated that Section 15.0 applies to Plaintiff's claim against NCCD and NLS, this would not have changed the outcome of the present debate. This is because the wording of Section 15.0 does not support Defendants' argument that it requires any proceedings to be instituted before the courts of Nunavut, to the exclusion of the courts of Quebec.

[98] To understand why this is so, it is useful to return to what was said above regarding the binding nature of forum selection clauses. As mentioned, a court must decline jurisdiction when the dispute is covered by a forum selection clause that is both mandatory and exclusive, demonstrating a clear intent on the part of the parties to oust the jurisdiction of the Quebec courts.[86] This requirement that the clause be "exclusive" does not imply that it should designate the foreign court as the *only* forum that can hear the parties' dispute. A forum selection is no less valid if it designates several alternate forums.[87] What is required is that the clause designate one or more forums *to the exclusion of* the Quebec courts.

[99] There is however a fundamental difference between a clause by which the parties agree to submit to the courts of a given forum and not to contest the latter's jurisdiction if proceedings are instituted there (as is often the case of "attornment clauses") and a clause that provides that proceedings can only be instituted in that forum, to the exclusion of other jurisdictions.

[100] As Justice Serge Gaudet points out in *Vision Solutions de Procédés inc. v. Samson Controls inc.*,[88] the fact that the parties agree in advance that a foreign court will have jurisdiction over their dispute and that they will not challenge same is not the equivalent

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[85] In their *Notice of Declinatory Exception*, Defendants argue that this clause was the result of "oversight by NCCD that is against its policies on forum clauses and was never intended to be the actual rule governing the parties on jurisdiction" (at para 32).

[86] *Supra* at paras 26 ss.

[87] See *Almassa International Inc. c. Crédit libanais Sal*, 2024 QCCA 736, at paras 22–25; *United European Bank and Trust Nassau Ltd. c. Duchesneau*, 2006 QCCA 652.

[88] *Vision Solutions de Procédés Inc. c. Samson Controls Inc.*, 2020 QCCS 2060.

of *excluding* the possibility for other courts, such as Quebec courts, to also have jurisdiction:

> [19] Autrement dit, le seul fait que les parties acceptent de se soumettre à une juridiction donnée (« *to attorn to the jurisdiction* » étant l'équivalent sémantique de « *to submit to the jurisdiction* ») ne permet pas en soi de dire que les parties ont entendu exclure la juridiction des autres tribunaux. Il y a en effet une différence entre accepter que les tribunaux d'une juridiction donnée aient compétence sur un litige, advenant qu'ils en soient saisis, et imposer cette compétence à l'exclusion des autres tribunaux.[89]

[101] In that case, Justice Gaudet concluded that a clause providing that "*the parties hereby attorn to the jurisdiction of the Courts of the Province of Ontario sitting in Toronto*" did not deprive Quebec courts of their jurisdiction:

> Par leur « *attornment* » aux tribunaux ontariens, les parties ont certes accepté de se soumettre à la juridiction de ces tribunaux advenant que ces derniers soient saisis, mais rien n'indique que cela ait pour effet d'exclure la juridiction des autres tribunaux. Bref, il n'y a rien dans les termes utilisés à la clause 16 du SRA qui établisse clairement que seuls les tribunaux ontariens peuvent entendre un litige relatif à ce contrat.[90]

[102] The Court agrees with this reasoning, and notes that a similar approach has also been adopted by the Ontario Court of Appeal and the British Columbia Court of Appeal.[91]

[103] In the present case, Section 15.0 neither provides for the exclusive jurisdiction of the Nunavut courts nor excludes the jurisdiction of other courts. In fact, it expressly provides that the Nunavut courts' jurisdiction shall be *non-exclusive*, thereby recognizing that other courts could also have jurisdiction:

> This Agreement shall for all purposes be governed by […] the laws of the Territory of Nunavut […], and NCCD and RJHPPM Services inc. hereby <u>attorn to the non-exclusive jurisdiction of the Courts of Nunavut</u> and irrevocably

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[89] *Vision Solutions de Procédés Inc. c. Samson Controls Inc.*, 2020 QCCS 2060, at para 19. See also *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784; *MFI Export Finance Inc. v. Rother International S.A. de C.V. Inc.*, 2004 CanLII 16200, at paras 41–65 (CS); *Eagle River International Ltd (Faillite de)*, 1999 CanLII 11910 (QC CS) (this decision was referred to by the Supreme Court in *GreCon Dimter Inc. v. J.R. Normand Inc.*, 2005 SCC 46, at para 27).

[90] *Vision Solutions de Procédés Inc. c. Samson Controls Inc.*, 2020 QCCS 2060, at para 20. See also: *Eagle River International Ltd. (Syndic de)*, 1999 CanLII 11910, at para 14 (QC CS), confirmed by *Eagle River International Ltd., (Faillite) Re*, 2000 CanLII 9546 (QC CA), at para 44 (appeal dismissed by *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92); *MFI Export Finance Inc. v. Rother International S.A. de C.V. Inc.*, 2004 CanLII 16200, at paras 41–65 (QC CS).

[91] *Sleep Number Corporation v. Maher Sign*, 2020 ONCA 95; *Yegre EB Ltd. v. Seguin*, 2024 BCCA 365. See also the Court of Appeal's analysis of the caselaw emanating from other Canadian provinces in *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at paras 94–101.

> submit to the jurisdiction of any court sitting in the Territory of Nunavut over any suit, action or proceeding arising out of or relating to this Agreement.[92]
>
> [Emphasis added]

[104] Defendants argue that the Court should not focus on the underlined words, but rather on the words that follow, namely that the parties "*irrevocably submit to the jurisdiction of any court sitting in the Territory of Nunavut over any suit, action or proceeding arising out of or relating to this Agreement*". In their opinion, this phrase would indicate that the parties intended the jurisdiction of Nunavut courts to be exclusive. The Court cannot agree with Defendants' interpretation.

[105] As the Court of Appeal explains in *STMicroelectronics*, the fact that parties agree to submit to a foreign court "*in any claim arising out of*" can in certain circumstances be seen as a "*désignation complète irrévocable et exclusive*" of the foreign court.[93] It is not automatically so, however. Indeed, in *STMicroelectronics*, the Court of Appeal concluded that a clause containing similar wording ("*[Buyer] will submit to the personal jurisdiction*" of the courts of Texas "*in any controversy or claim arising out of the sale contract*") was ambiguous and insufficient to oust the jurisdiction of the courts of Quebec.[94]

[106] In the present case, any doubt that could favour Defendants' interpretation is dispelled by the clause's express reference to the *non-exclusive* nature of the Nunavut courts' jurisdiction. By providing that their submission to the jurisdiction of the Nunavut courts over "*any suit*" would be "*irrevocabl[e]*", the parties did not intend to contradict the preceding words. They simply indicated that neither of them could resile from its undertaking to submit to the non-exclusive jurisdiction of the courts of Nunavut if proceedings were introduced there.

[107] The Court thus concludes that Section 15.0 is not applicable to the present dispute and that even if it were, it would not have required the Superior Court of Quebec to decline jurisdiction over Plaintiff's claim.

4. DEFENDANT'S *FORUM NON CONVENIENS* ARGUMENT

[108] Defendants argue that even if the Court has jurisdiction over Plaintiff's proceedings, it should decline to exercise this jurisdiction pursuant to article 3135 C.C.Q. They claim that "the Courts of Nunavut are in a better position to decide the dispute" and that

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92 Exhibits P-8 and P-9, Section 15.0.

93 *STMicroelectronics Inc. c. Matrox Graphics Inc.*, 2007 QCCA 1784, at para 114.

94 *Ibid*, at paras 118,123–124. The clause at issue read as follows: "Buyer agrees that it will submit to the personal jurisdiction of the competent courts of the State of Texas and of the United States sitting in Dallas County, Texas, in any controversy or claim arising out of the sale contract, and that service process mailed to it at the address appearing on the reverse side hereof by registered mail, return receipt requested, shall be effective service of process in any such court" (at para 14).

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"[a]ll the traditional factors of the *forum non conveniens* analysis weigh in favour of Nunavut as the clearly more appropriate forum" to hear the proceedings.[95]

[109] The Court disagrees and concludes that it should dismiss Defendants' request. An analysis of the overall circumstances of the case demonstrates no compelling impression that the courts of Nunavut would be better placed to hear the dispute, and no exceptional reason justifying the exercise of the power conferred by article 3135 C.C.Q.

4.1 Applicable principles governing the *forum non conveniens* analysis

[110] Article 3135 C.C.Q. provides that a Quebec court having jurisdiction to hear a dispute may, "exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute". The decision to decline jurisdiction is a discretionary one, and the power to do so should be exercised only in exceptional circumstances.[96]

[111] For the Court to decline jurisdiction, it is not sufficient to show that the dispute has few connections with Quebec, or more connections with some other forum, or that holding the trial here would be inconvenient. As the Court of Appeal has often noted, there exists a form of "favourable presumption" towards the forum selected by the plaintiff.[97] To rebut that presumption, the defendant must demonstrate that the totality of the circumstances give rise to a compelling impression pointing toward a single forum,[98] that the authorities of that other forum would be able to assume jurisdiction over the dispute pursuant to their

[95] Defendants' *Notice of Declinatory Exception*, at paras 72–73.

[96] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 67; *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at paras 119–122; *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163, at para 49; *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626, at paras 39–42; *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, at paras. 77ss (leave to appeal to SCC dismissed: 2013 CanLII 45853); *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (QC CA), at para 34; *Oppenheim Forfait GmbH c. Lexus Maritime Inc.*, 1998 CanLII 13001 (QC CA).

[97] *Encocorp çv. Khonaysser Power*, 2023 QCCA 1480, at para 22; *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at para 121; *Coopers & Lybrand c. RSM Richter Inc.*, 2014 QCCA 194 (leave to appeal to SCC dismissed: 2014 CanLII 34287); *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (QC CA), at para 34.

[98] *Encocorp c. Khonaysser Power*, 2023 QCCA 1480, at para 22; *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004, at para 121; *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626, at para 41; *Bennaouar c. Machour*, 2012 QCCA 469, at para 47; *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (QC CA), at para 34.

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own jurisdictional rules,[99] and that exceptional circumstances justify the exercise of the Court's discretionary power under article 3135 C.C.Q.[100]

[112] In and of itself, the fact that the courts of another jurisdiction would be better placed to hear the dispute is not "exceptional": this occurs each time Quebec is not the natural forum to hear the case. To decline jurisdiction each time another forum is more suited would be to disregard the requirement that this be done only "exceptionally":

> [L]e seul fait que les tribunaux d'un autre État soient mieux placés à l'égard d'un litige donné n'a rien d'exceptionnel et se présente chaque fois que le Québec n'est pas le for naturel du litige. Décliner sa compétence sur cette seule base ignore donc l'exigence de la disposition du Code « exceptionnellement ».[101]

[113] The Court must take into account all of the circumstances of the case, such that the factors relevant to its decision may vary from one dispute to another. Over time, however, the case law has identified a number of factors that may be considered in the analysis:

- The place of residence of the parties and witnesses;
- The location of the evidence;
- The place where the contract giving rise to the dispute was formed and performed;
- The existence and content of proceedings already commenced abroad, as well as their stage of advancement;
- The location of the defendant's assets;
- The law applicable to the dispute;
- The advantage enjoyed by the plaintiff in the forum chosen;
- The interests of justice;

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[99] *Droit de la famille — 131294*, 2013 QCCA 883, at para 76; *Bennaouar c. Machour*, 2012 QCCA 469, at paras 21–23; *M.I.B. c. M.-P.L.*, 2005 QCCA 1023, at para 39.

[100] *Encocorp c. Khonaysser Power*, 2023 QCCA 1480, at para 22; *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004; *Droit de la famille – 152222*, 2015 QCCA 1412; *Droit de la famille – 131294*, 2013 QCCA 883; *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269 (leave to appeal to SCC dismissed: 2013 CanLII 45853); *Republic Bank Ltd. c. Firecash Ltd.*, 2004 CanLII 8560 (QC CA), at para 34.

[101] *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626, at para 40, quoting Sylvette Guillemard, Alain Prujiner et Frédérique Sabourin, "Les difficultés de l'introduction du forum non conveniens en droit québécois", (1995) 31 C. de D. 913, 915.

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- The interests of the parties;
- The potential need to have the judgment recognized and enforced abroad.[102]

[114] None of these factors is determinative.[103] Nor is the list exhaustive: other factors may prove relevant in the specific circumstances of a given case. Most importantly, the *forum non conveniens* analysis should not be a matter of counting how many of these traditional factors favour Quebec and how many favour the other jurisdiction. Not only should these factors be considered globally, in light of the overall circumstances of the case, but the Court's analysis should first and foremost "be subordinated to considerations of order and fairness, and not to a mechanical calculation of connections or links".[104]

4.2 Consideration of the relevant factors

4.2.1 Place of residence of the parties

[115] NCCD and NLS are headquartered in Nunavut, whereas RJHPPM is located in Quebec.

4.2.2 Place of residence of the witnesses

[116] Defendants claim that "[n]one of the representatives and foreseeable witnesses of the Defendants are domiciled in Quebec".[105] They then provide a long list of individuals who reside in Nunavut. This demonstration is however not very compelling: with the exception of three individuals to whom they refer in their outline of argument,[106] they do not explain why the testimony of all these individuals would be required or useful.

[117] Defendants also argue that before Nunavut courts, witnesses would by law be entitled to use certain Aboriginal languages in addition to English and French[107]. There is

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[102] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4; *GreCon Dimter Inc. v. J.R. Normand Inc.*, 2005 SCC 46; *Spar Aerospace v. American Mobile Satellite*, 2002 SCC 78; *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004; *Poppy Industries Canada Inc. c. Diva Delights Ltd.*, 2018 QCCA 163; *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626; *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269 (leave to appeal to SCC dismissed: 2013 CanLII 45853);; *Oppenheim Forfait GmbH c. Lexus Maritime Inc.*, 1998 CanLII 13001 (C.A.).

[103] *Groupe SNC-Lavalin Inc. c. Siegrist*, 2020 QCCA 1004; *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626; *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269 (leave to appeal to SCC dismissed: 2013 CanLII 45853); *Spar Aerospace v. American Mobile Satellite*, 2002 SCC 78; *Oppenheim Forfait GmbH c. Lexus Maritime Inc.*, 1998 CanLII 13001 (C.A.).

[104] *Hunt v. T&N plc*, [1993] 4 R.C.S. 289, at 326. This passage is quoted by the Court of Appeal in *Transax Technologies Inc. c. Red Baron Corp. Ltd.*, 2017 QCCA 626.

[105] *Notice of Declinatory Exception*, at para 74.

[106] Defendants' Plan of argument, at para 175.

[107] *Official Languages Act*, RSNWT 1988, c. O-1, s. 9(2).

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however no indication that any of the prospective witnesses would prefer to testify in an Aboriginal language, or that the need for an interpreter (for the Court or the other participants) would be significantly different than before the Superior Court of Quebec.

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[118] Defendants also completely ignore the fact that Plaintiff's witnesses are for their part located in Quebec, including RJHPPM's main representative Robbie Hellstrom and most of the employees it hired in the context of the management of NLS. Importantly, several other "third-party" witnesses are located in Quebec, including RJHPPM's suppliers and contractors who received Defendants' notice of termination,[108] and with respect to whom Plaintiff claims that its reputation has been tarnished.

[119] The companies with whom RJHPPM had been in discussion and with whom Plaintiff's business relationships would have been damaged are also in Quebec. This includes the owner of the Lachute facility with whom RJHPPM had been in discussion for purposes of NLS' new facility; RJHPPM's own landlord, with whom it had been in discussion to relocate its offices[109]; and the recruitment firm that RJHPPM had hired and would have told it not to contact them again.[110]

4.2.3 The location of the evidence

[120] Defendants' claim that the documentation they hold (the contracts at issue, their internal corporate communications, their financial records and key project documentation) would be stored in their headquarters in Iqaluit. The same can however be said about the documentation held by RJHPPM.

[121] In an era where most documents used in litigation are stored in digital form — often on cloud-based platforms accessible from virtually anywhere and at best difficult to locate geographically — one may wonder why courts should still be preoccupied with the physical location of evidence.[111] Indeed, this factor may appear to have little weight where the evidence in question is composed of documents held by the parties themselves, the disclosure of which can easily be compelled by the Court. It may however become more relevant where the documentation at issue is held by third parties.

[122] This seems to be what Defendants argue here when they claim that there is a risk that legal provisions could prohibit the disclosure of certain documents to third parties, adding:

> 184. Given that this Honourable Court does not have jurisdiction to order the Minister Kusugak, NHC and the Inuit Firms to waive the immunity of disclosure

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[108] Amended Application, at para 111.
[109] Amended Application, at para 114.2.
[110] Amended Application, at para 158.
[111] See *Bright c. Site 2020 Inc.*, 2020 QCCS 2532, at para 72.

> in Nunavut, should the Action be allowed to proceed in Quebec, there is a risk that NCCD and NLS will be unable to put forward a proper defense.[112]
>
> [Emphasis added]

[123] Such an argument could be a valid consideration, but Defendants do not indicate what documents could be privileged, or why a Nunavut court would have greater power to force a third party to waive any applicable privilege.

4.2.4 Place where the contract was negotiated and executed

[124] Where the various negotiations between the parties would have taken place is not entirely clear from the parties' proceedings. Defendants are however right in pointing out that both the Revised NLS Proposal and the 2024 Proposal for Modular Builds would have been approved by Defendants' board of directors, and that this would have taken place in Nunavut.[113]

[125] With respect to the place of execution, Defendants insist that the object of the contract was the construction of housing units in Nunavut. This is true, but it does not imply that RJHPPM would have executed its own obligations under the contracts in Nunavut. RJHPPM was not in charge of construction but of project management, and according to its allegations, most of the work it performed prior to termination (and most of the work it would have performed had it not been for this termination) would have been performed in Quebec, at its offices in Blainville.

4.2.5 Existence and content of proceedings commenced abroad

[126] Defendants have instituted proceedings against RJHPPM (and Mr. Hellstrom) before the Nunavut Court of Justice.[114] These proceedings were however commenced only *after* RJHPPM instituted proceedings before the Quebec Superior Court, and after Defendants filed their *Notice of Declinatory Exception*.[115] No information has been filed with respect to the advancement of such proceedings, except that RJHPPM and Mr. Hellstrom have filed a motion contesting the jurisdiction of the Nunavut court.[116]

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[112] Defendants' Plan of argument, at paras 181–184.
[113] *Notice of Declinatory Exception*, at para 81.
[114] Exhibit D-10 (these proceedings also involve Robbie Hellstrom)
[115] It should be noted that in their *Statement of claim* before the Nunavut Court of Justice, NCCD and NLS allege that *prior* to being sued in Québec, they had informed RJHPPM that they would institute proceedings before the courts of Nunavut (Exhibit D-10, at para 54). This is contested by RJHPPM and Mr. Hellstrom in their motion contesting the jurisdiction of the Nunavut court, where they allege that the first indication of NCCD's and NLS's intention to commence proceedings in Nunavut was in pleadings filed in the course of the present proceedings (Exhibit P-53, at para 15).
[116] Exhibit P-53.

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[127] It is difficult to see how the existence of such subsequent proceedings could militate in favour of declining jurisdiction.[117]

4.2.6 The location of the defendant's assets and the potential need to have the judgment recognized and enforced abroad

[128] Defendants allege that NCCD has no assets in Quebec, and that NLS would have no "valuable" asset in the jurisdiction.[118] Although this seems to indicate that NLS would have *some* assets in Quebec, there is no indication that such assets could cover any significant portion of a potential condemnation against NLS. Assuming that Defendants would refuse to honour a judgment rendered against them by the Superior Court of Quebec, this would mean that RJHPPM would presumably need to have such judgment recognized by the courts in Nunavut.

[129] This would thus in principle favour granting the motion, although the Court adds that there is nothing to suggest that NCCD and NLS — which present themselves as "extension[s] of public bodies of Nunavut"[119] — would refuse to abide by a judgment rendered against them in Quebec.[120]

4.2.7 The law applicable to the dispute

[130] In their *Notice of Declinatory Exception*, Defendants argue that pursuant to article 3126 C.C.Q., Plaintiff's claim would be governed by the laws of Nunavut. Here is what article 3126 C.C.Q. provides:

> **3126.** The obligation to make reparation for injury caused to another is governed by the law of the State where the act or omission which occasioned the injury occurred. However, if the injury appeared in another State, the law of the latter State is applicable if the author should have foreseen that the injury would manifest itself there.
>
> In any case where the author and the victim have their domiciles or residences in the same State, the law of that State applies.

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[117] Defendants have not expressly alleged that the Nunavut Court of Justice would have jurisdiction to hear the present proceedings against them (see *Bennaouar c. Machhour*, 2012 QCCA 469, at para 22; *M.I.B. c. M.-P.L.*, 2005 QCCA 1023, at para 39). Given the fact that both NCCD and NLS are domiciled in Nunavut, the Court assumes that this would likely by the case. In this regard, it is irrelevant that RJHPPM and Mr. Hellstrom have contested the Nunavut courts' jurisdiction to hear the proceedings filed *against them* by NCCD and NLS.

[118] *Notice of Declinatory Exception*, at para 88 (emphasis added).

[119] Defendants' Plan of argument, at para 101.

[120] See *Saroukian c. Sorrell Financial Inc.*, 2024 QCCS 3256, at para 147

[131] This provision essentially codifies the *lex loci delicti* rule, that is, the law of the place where the delict or quasi-delict took place.[121] When the defendant's fault and the plaintiff's injury occurred in the same place, the delict is easy to locate and it is the law of that jurisdiction that governs the defendant's extracontractual liability. When they occur in different jurisdictions, then the defendant's liability is in principle governed by the law of the place where the damage occurred, but only if the defendant could have foreseen that the damage would manifest itself there; if he could not, then his liability is governed by the place where the fault took place.[122]

[132] Without deciding the issue, it appears that applying article 3126 C.C.Q. to Plaintiff's claim would likely lead to the application of Quebec law, and not to the law of Nunavut, as Defendants argue. According to Plaintiff's allegations, its injury (the fact that it was not paid) occurred in Quebec, and it appears unlikely that a court would conclude that it was not foreseeable for Defendants that this would be the case. Indeed, as mentioned above, all payments that NCCD and NLS made to Plaintiff were apparently made by wire transfer or direct deposit in RJHPPM's bank account in Quebec.

[133] It is by no means certain that article 3126 C.C.Q. would apply to RJHPPM's claim against NCCD, however. Plaintiff argues that article 3127 C.C.Q. would apply here because the faults alleged against NCCD relate to the nonperformance of contracts.[123] According to Plaintiff, this would lead to the application of Quebec law pursuant to articles 3112 and 3113 C.C.Q., which provide that a contract is governed by "the law of the State with which the act is most closely connected", which is presumed to be "the law of the State where the party who is to perform the prestation which is characteristic of the act [*here, Plaintiff*] has […] his establishment".

[134] This argument is a serious one, but the Court hearing the merits of RJHPPM's action could also conclude that the contractual relationship between RJHPPM and NCCD is in fact more closely connected to Nunavut "in view of its nature and the attendant circumstances" (art. 3112 C.C.Q.), with the result that Nunavut law applies to RJHPPM's claim. Defendants make a similar argument.[124]

[135] The Court does not have to resolve this issue. As the Court of Appeal emphasizes in *Stormbreaker*, when deciding on a *forum non conveniens* application, courts should

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[121] For an analysis of article 3126 C.C.Q. and of the decomposition of *lex loci delicti* into *lex culpa* (place of the wrongful act or "*fait générateur*") and *lex damni* (place of the injury), see Lindy Rouillard-Labbé, "Sources extracontractuelles des obligations", in Pierre-Claude Lafond, ed, *JurisClasseur Québec — Droit international privé* (Montréal: LexisNexis, 2012) (online, update: March 2025), at paras 5–12.

[122] *Wightman c. Widdrington*, 2013 QCCA 1187 (leave to appeal to SCC dismissed: no. 35438, 2014-01-09); *Royal Bank of Canada c. Capital Factors Inc.*, 2013 QCCS 2214, confirmed by *Capital Factors Inc. v. Royal Bank of Canada*, 2004 CanLII 76678 (QC CA).

[123] On the application of article 3127 C.C.Q., see P. Ferland and G. Laganière, "Le droit international privé", in *Collection de droit de l'École du Barreau du Québec*, 2025-2026, vol. 7 (Montréal: Yvon Blais, 2025) 271, at 292.

[124] Defendants' Plan of argument, at paras 197–98. Defendants also claim that the designation of Nunavut law contained in Section 15.0 of the 2023 Modular Contracts would apply (at para 196).

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not put too much emphasis on the issue of applicable law and the possibility that a Quebec court may need to apply foreign law. There is nothing unusual about the fact that a court could be called upon to do so, and Quebec courts are perfectly able to deal with such a possibility, especially when (as here) the foreign law in question is that of another province or territory:

> [99] Quant à cette dernière considération [*i.e.* la loi applicable au litige], elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.
>
> [100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.
>
> [101] C'est l'opinion de Guillemard, Prujiner et Sabourin :
>
>> Il est surprenant que l'application d'une loi étrangère par le tribunal, qui est l'essence même du droit international privé, puisse justifier un déclinatoire de compétence au profit de l'autorité dont il s'agit d'appliquer la loi. D'autant plus que le Code civil du Québec a introduit des dispositions de nature à faciliter la preuve du droit étranger (voir l'article 2809 C.c.Q.) et que les droits dont il était question dans les décisions rapportées n'étaient guère exotiques.
>
> [102] Et de Talpis et Kath :
>
>> 6. Law Applicable to the Dispute
>>
>> This factor is considered in many Quebec cases as well as in the Minister's Commentaries on article 3135 C.c.Q. The principal idea underlying this criterion is that the lack of familiarity with foreign law is a problem for the administration of justice. […]
>>
>> This problem with the frequency of this criterion is, as Guillemard, Prujiner and Sabourin have argued, that treating the applicable law as an important criterion in the decision whether to accept or reject *forum non conveniens* in a particular case is destructive of private international law. Occasionaly, however, there are signs in the jurisprudence that the importance of applicable law is on the decline in Quebec. […][125]

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[125] *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, at paras 99–102, quoting Sylvette Guillemard, Alain Prujiner and Frédérique Sabourin, "Les difficultés de l'introduction du *forum non conveniens* en droit québécois", (1985) 36 C. de D., 913, at 945; Jeffrey Talpis and Shelley L. Kath, "The Exceptional as Commonplace in Quebec *Forum Non Conveniens* Law: *Cambior*, a Case in Point", (2000) 34 R.J.T. 761-869, at 812.

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[136] This reasoning is applicable here. Although the possibility that the dispute may be governed (in whole or in part) by the law of Nunavut does constitute an element in favour of declining jurisdiction, it does not have significant weight.[126]

4.2.8 The advantage enjoyed by the plaintiff in the forum chosen

[137] The only advantage Plaintiff claims to enjoy before the courts of Quebec is that this is where it has its place of business, its directors and its legal counsel. There is no claim that declining jurisdiction would put it in a substantially less favourable position — for instance because its claim could be considered prescribed in Nunavut,[127] because some procedural obstacle would prevent it from pursuing its claim before Nunavut courts, or because Nunavut courts would apply a law that is less favourable to it.[128] This being said, the mere advantage of being able to sue in one's own courts should not be overlooked. In the words of the Court of Appeal in *Stormbreaker*:

> La protection est importante. La partie qui obtient la tenue du procès chez elle est en situation de force. Les acteurs judiciaires et les règles, y compris celles non écrites, lui sont familières. Livrer bataille en terrain connu est un atout. Un amateur de hockey parlerait de l'avantage de la glace. À mon avis, c'est le principal facteur à considérer en l'instance.[129]

[138] In this regard, the Court cannot accept Defendants' argument that Plaintiff's decision to sue in Quebec would be a mere "tactical attempt to secure an advantage" or that it would defy the parties' expectations regarding what forum would hear a potential dispute between them.[130] Defendants would certainly have preferred to be sued in their own jurisdiction, where they would be the ones with "home-ice advantage", but they can hardly claim to be surprised that the dispute would be heard in Quebec.

4.2.9 The interest of justice and the interest of the parties

[139] Defendants have strongly insisted on the fact that the dispute ultimately relates to the construction of housing for the Inuit communities of Nunavut. They insist that the provisions of the *Civil Code of Québec* "must be interpreted in a manner that respects constitutionally protected First Nations and treaty rights and ensures the First Nations

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[126] A more complete analysis of the *forum non conveniens* argument could also require considering whether the foreign courts (here, the courts of Nunavut) could be called upon to apply Québec law should the dispute be referred to them.

[127] See for instance *Dalnoki c. SSQ Life Insurance Company Inc.*, 2011 QCCS 2763. Whether a different prescription period would be applied by the foreign court would of course depend on the conflicts of laws rules of both Québec and the foreign jurisdiction. See in this regard *Evotech Industrial Coatings Inc. c. Teng Inc.*, 2017 QCCS 478, at para 41.

[128] See *Saroukian c. Sorrell Financial Inc.*, 2024 QCCS 3256, at paras 107,153ss

[129] *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, at para 92 (leave to appeal to SCC dismissed: 2013 CanLII 45853).

[130] Defendants' Plan of argument, at para 204.

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meaningful access to justice”,[131] and that this would demand that the proceedings be heard in Nunavut, by a Nunavut judge.

[140] While the issue raised by Defendants is important as a matter of principle, a closer examination of the proceedings shows that it has no practical bearing in the circumstances of this case.

[141] In support of their argument, Defendants refer to the decision of the Supreme Court in *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, which confirmed that the rules of private international law should be interpreted in light of the imperatives of our constitutional order, including constitutionally recognized Aboriginal rights and treaty rights:

> [17] In order to interpret the rules of Book Ten, we must begin by examining the provisions set out in the C.C.Q., and then inquire into whether a proposed interpretation is consistent with the underlying principles of comity, order and fairness. The second step requires interpreting the rules of Book Ten in light of the imperatives of our constitutional order. As with any statute, the provisions of the C.C.Q. in respect of private international law should be interpreted in a manner consistent with the Constitution. Where s. 35 rights are at stake, Book Ten must be interpreted in a manner that respects constitutionally recognized and affirmed Aboriginal rights and treaty rights, and that takes into account access to justice considerations, which are protected by s. 96 courts.[132]
>
> [Emphasis added. Internal references omitted]

[142] Defendants then go on to quote the dissenting judges’ reasons in that same case in support of the argument that the judge hearing a case should be able to understand the socio-economic context of the dispute:

> [243] This Court explained in *Reference re Supreme Court Act*, ss. 5 and 6, 2014 SCC 21, that the purpose of appointing judges from within a province is broader than mere legal competence. The issue was the interpretation of s. 6 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, which requires that three judges of this Court “shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province”. McLachlin C.J. and LeBel, Abella, Cromwell, Karakatsanis and Wagner JJ. wrote:
>
> > The purpose of s. 6 is to ensure not only civil law training and experience on the Court, but also to ensure that

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[131] Defendants’ Plan of argument, at para 214.

[132] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 17 (majority reasons of Chief Justice Wagner and Justices Abella and Karakatsanis), referring to *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, at para 23, 51; J. Walker, Castel & Walker: *Canadian Conflict of Laws* (6th ed. (loose-leaf)), vol. 1, at 1-5; *R. v. Sharpe*, 2001 SCC 2, at para 33; *Solski (Tutor of) v. Quebec (Attorney General)*, 2005 SCC 14, at para 36. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para 82; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, at paras 36–39.

> Quebec's distinct legal traditions and social values are represented on the Court, thereby enhancing the confidence of the people of Quebec in the Supreme Court as the final arbiter of their rights. Put differently, s. 6 protects both the *functioning* and the *legitimacy* of the Supreme Court . . . . [Emphasis in original; para. 49.]
>
> These concerns are material to every province. The Constitution ensures that each province's judges are not just technically competent, but also connected with the province's distinct political and cultural realities.[133]

[143] With respect, the Defendants' assertion that the present proceedings raise issues of significance for the rights of Inuit communities of Nunavut, or implicate issues of significant sociological or cultural importance, appears largely untethered to the specific facts of the case, and it is tempting to see it as a form of "red herring".

[144] It is not contested that the NU 3000 Project results from political decisions taken by Nunavut authorities, and that it relates to the exercise, by Inuit of Nunavut, of their rights recognized under a treaty having the status of a land claims agreement within the meaning of Section 35 of the *Constitution Act, 1982*.[134]

[145] There is however no indication that the constitutional status of the treaty which gave rise to the NU 3000 Project would play any role in the parties' dispute. The proceedings have nothing to do with Inuit communities' right to housing, with the nature, purpose or context of the treaty entered into with the Crown, or with the decision of Nunavut authorities to go forward with the project. The proceedings concern a purely commercial dispute regarding the termination of RJHPPM's project management services.

[146] In their plan of argument, Defendants claim that "a judge in Quebec would be at a significant disadvantage in assessing the factual subtleties of the dispute, such as conducts from RJHPPM which could have led to the decision to terminate RJHPPM's services".[135] As is the case in any dispute, the overall social, economic or cultural context surrounding the parties' relationship may well have some relevance for the resolution of the case. There is however no factual underpinning for Defendants claim, which they have couched in somewhat prudent terms (*i.e.* conducts "which *could* have led to" the termination). Defendants have put forward no allegation that there would be any such "conducts"

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[133] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 243 (dissenting reasons of Justices Brown and Rowe). It is not necessary to enquire as to whether the majority disagreed with this aspect of the dissenting judges' reasons. See however the majority's comment at para 15 ("*There are several aspects of the content of the dissent with which we disagree, but it is not the general practice in this Court for the majority to engage in a point by point refutation of dissenting reasons. Consequently, the fact that we do not mention any particular point raised in the dissent should not be taken as our agreeing with it.*").

[134] *Agreement between the Inuit of the Nunavut Settlement Area and His Majesty the King in right of Canada*, Exhibit D-4, at Section 2.2.1.

[135] Defendants' Plan of argument, at para 219.

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or that any of the "factual subtleties" of the dispute would relate to the specific social, political, economic or cultural environment of Nunavut.

[147] There is also no merit to Defendants' claim that allowing Plaintiff's action to proceed in Quebec "would violate the long-standing principle that a Canadian government or government-funded initiative cannot be sued in another jurisdiction's court".[136] Defendants again cite the dissenting judges in *Uashaunnuat*:

> It is this simple. The Crown of one province cannot be sued in another province's court. In addition to being an incident of the constitutional principle of federalism, this is a statutory rule that can only be set aside if constitutionally challenged.[137]

[148] Defendants offer no support for their contention that this principle could be extended to "government-funded initiatives", a term that is at the same time broad and vague enough to encompass a seemingly infinite variety of entities. Both NCCD and NLS are private entities, incorporated pursuant to the *Canada Business Corporations Act*.[138] The fact that they are indirectly controlled by shareholders that are themselves beneficially owned by land claims organizations[139] does not change their legal status.

[149] The Court wishes to be clear. Nothing in this judgment should be understood as suggesting that the social, cultural, political or economic dimensions of a dispute are irrelevant to a *forum non conveniens* analysis, still less as denying the relevance of Aboriginal and treaty rights or the need to interpret the rules of private international law in a manner consistent with them. For such considerations to carry weight, however, the party invoking them must demonstrate how they are genuinely engaged by the dispute. In the present case, Defendants have failed to do so.

4.3 Conclusion on *forum non conveniens*

[150] The foregoing analysis of the traditional *forum non conveniens* factors shows that they do not all point towards Nunavut — far from it. There certainly are a number of connections between the present dispute and Nunavut. The Defendants are based there, some of the witnesses will undoubtedly be Nunavut residents, and that is where Defendants' assets are located. Defendants also rightly argue that the housing units that are the ultimate objective of the parties' relationship were to be built there, for the benefit of the Nunavut population, at the request of Nunavut authorities.

[151] There are also very substantial connections between the dispute and Quebec. Part of Defendants' activities were in Quebec, where NLS maintained a facility. Defendants

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[136] Defendants' Plan of argument, at para 225.

[137] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, at para 275 (dissenting reasons of Justices Brown and Rowe).

[138] RSC 1985, v. C-44.

[139] *Notice of Declinatory Exception*, at paras 8–12,16.

chose to hire a Quebec-based firm; their representatives held several meetings in Quebec; and they had to know that a substantial proportion of the work would be performed in Quebec, where RJHPPM's officers and employees are located. RJHPPM's services were paid for in Quebec, and this is where it suffered its prejudice. RJHPPM reputation in Quebec was harmed, as were its relations with other Quebec businesses. When Defendants initially contracted with RJHPPM's main representative, Robbie Hellstrom, they even agreed that the agreement should be governed by Quebec law and that they would attorn to the jurisdiction of Quebec courts.

[152] As stated above, the question before the Court is not whether the connections with Nunavut are more important than those with Quebec. Nor is it to determine whether it is more appropriate for the dispute to be heard in Quebec or in the other jurisdiction. In essence, the *forum non conveniens* analysis requires the Court to determine whether the situation is so exceptional — because of the extent of the disproportion between the relationships with each of the two jurisdictions or for other, more specific reasons — as to warrant overriding Plaintiff's choice of forum and compelling Plaintiff to litigate before a forum it did not choose.

[153] In the opinion of the Court, this is not such a case.

[154] Defendants' request that the Court decline jurisdiction will therefore be dismissed.

FOR THESE REASONS, THE COURT:

[155] **DISMISSES** Defendants' *Notice of Declinatory Exception for Lack of Jurisdiction*, dated November 14, 2024;

[156] **WITH LEGAL COSTS**.

PATRICK FERLAND, J.S.C.

Mtre David Stolow
Mtre Danica Garner
KUGLER, KANDESTIN S.E.N.C.R.L., LLP
For plaintiff

Mtre Yves Robillard
MILLER THOMSON S.E.N.C.R.L./LLP
For defendants

Hearing date: April 3 and 4, 2025

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Note au lecteur : La traduction française de ce jugement a été demandée le 22 janvier 2026. Vu le délai de plusieurs semaines annoncé pour sa livraison, le Tribunal estime que retarder la signature du présent jugement dans l'attente de la version traduite causerait une injustice ou un inconvénient grave aux parties au litige. La traduction suivra.

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