



SUPREME COURT OF CANADA

CITATION: Sinclair v. Venezia
Turismo, 2025 SCC 27

APPEAL HEARD: November 7, 2024
JUDGMENT RENDERED: July 31, 2025
DOCKET: 40696

BETWEEN:

Duncan Sinclair and Michelle Sinclair
Appellants

and

**Venezia Turismo, Venice Limousine S.R.L. and
Narduzzi e Solemar S.L.R.**
Respondents

- and -

**Corporate Accountability Lab,
British Columbia Chamber of Commerce and
Ontario Trial Lawyers Association**
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O'Bonsawin and Moreau JJ.

REASONS FOR Côté J. (Wagner C.J. and Rowe, O'Bonsawin and Moreau JJ.
JUDGMENT: concurring)
(paras. 1 to 143)

DISSENTING

Jamal J. (Karakatsanis, Martin and Kasirer JJ. concurring)

REASONS:

(paras. 144 to
297)

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Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O’Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Private international law — Choice of forum — Court having jurisdiction — Presumptive connecting factors — Contract connected with dispute made in province — Rebuttal of presumption of jurisdiction — Canadian traveller booking European vacation through services offered by his credit card company — Traveller injured while in Italy — Traveller bringing action for damages in Ontario against several defendants including three Italian companies — Italian companies bringing motion to dismiss or stay action on grounds that Ontario court lacks jurisdiction — Whether Ontario court can assume jurisdiction over action — Whether there is Ontario contract connected with dispute — If so, whether presumption of jurisdiction rebutted.

S held a premium credit card with Amex Canada that gave him access to a concierge and travel agent service. He booked a trip to Europe for himself, his wife and their son using the concierge service associated with his credit card. Then, while in Italy, but prior to arriving in Venice, S called the concierge service to book transportation from the airport in Venice to their hotel, including a water taxi ride. The Amex Canada agent with whom S spoke secured an estimated quote and booking reservation for the Venetian water taxi services from a third-party travel service provider.

While in transit with S and his family on board, the water taxi crashed into a wooden structure, causing serious injuries to S. S and his wife (the “plaintiffs”) commenced an action in Ontario seeking damages arising out of the accident against a number of defendants, including three Italian companies (the “Italian defendants”),

Amex Canada, the third-party travel service provider and the driver of the water taxi. The Italian defendants brought a motion to dismiss or stay the action as against them on the basis that the Ontario Superior Court of Justice lacked jurisdiction but their motion was dismissed. The motion judge found that the fourth presumptive connecting factor listed in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572 — whether a contract connected with the dispute was made in Ontario — had been established, on the basis of the cardmember agreement between Amex Canada and S and of the contract between Amex Canada and the third-party travel service provider for the water taxi transportation, and that the plaintiffs had established a good arguable case for the court in Ontario to assume jurisdiction.

The Italian defendants appealed to the Court of Appeal, which unanimously allowed the appeal and held that it would be improper for Ontario to assume jurisdiction. A majority held that the motion judge erred in finding that the fourth presumptive connecting factor from *Van Breda* had been established and that, even if it had, the presumption of jurisdiction had been rebutted. Another judge, concurring, was of the view that there was an Ontario contract — the cardmember agreement — and therefore that the fourth presumptive connecting factor had been established, but that the Italian defendants had rebutted the presumption. Accordingly, the action against the Italian defendants was stayed.

Held (Karakatsanis, Martin, Kasirer and Jamal JJ. dissenting): The appeal should be dismissed.

Per Wagner C.J. and **Côté**, Rowe, O'Bonsawin and Moreau JJ.: The Ontario courts do not have jurisdiction over the dispute as it pertains to the Italian defendants. While the cardmember agreement between S and Amex Canada is an Ontario contract that can, for the purposes of this case, ground Ontario's jurisdiction over the dispute, the presumption of jurisdiction has been rebutted because a real and substantial connection between the dispute and Ontario is simply not present. A conclusion to the contrary would result in jurisdictional overreach and would run counter to the principles of order and fairness espoused by the Court in *Van Breda*.

In order to assume jurisdiction over a claim, a court must be satisfied that there is a real and substantial connection between the circumstances giving rise to the claim and the forum in which it is brought. The real and substantial connection test seeks to mitigate the jurisdictional overreach that can arise when the connection between the forum, the subject matter of the dispute, and the defendant is not sufficient for a court to assume jurisdiction. In setting out rules for establishing whether a real and substantial connection exists, courts should bear in mind the objectives of order and fairness. Orderly conflict of laws rules ensure that parties can predict with reasonable confidence whether a court will assume jurisdiction in a case with an international or interprovincial aspect. But, in the search for certainty and predictability in access to justice, courts must be careful not to exclude fairness. Fair conflict of laws rules also provide parties with protection against being pursued in jurisdictions having little or no connection with the transaction or the parties. Because balancing order and fairness can be a challenge, the presumptive connecting factors set out in *Van Breda* were intended

to reconcile fairness with the need for security, stability and efficiency in the design and implementation of a conflict of laws system.

The onus rests on the plaintiff to establish that one or more of the presumptive connecting factors exist. Once the plaintiff has established one of the presumptive connecting factors, the defendant may rebut the presumption of jurisdiction by showing that the factor does not, in the circumstances of the case, point to a real relationship between the dispute and the forum. If the defendant fails to rebut the presumption, the court must accept jurisdiction over the dispute. The assessment of whether a presumptive connecting factor has been established is concerned with the existence of a connection between the jurisdiction and the dispute, whereas the assessment of whether the presumption has been rebutted is concerned with the strength of that connection. The two stages of the analysis taken together provide an opportunity for a court to holistically assess the extent to which a real and substantial connection exists, as required by *Van Breda*. The two *Van Breda* stages are complementary, both aimed at ensuring there is a real and substantial connection between the forum and the dispute. The more broadly one approaches the question of the existence of a presumptive connecting factor, the more relevant is the question of what should be considered at the rebuttal stage.

The existence of a presumptive connecting factor between the subject matter of the litigation and the forum is key to the first stage of the inquiry. Establishing it is an objectively ascertainable and relatively low bar, and while the motion judge applied

the good arguable case standard, neither the majority nor the concurring reasons of the Court of Appeal engage with it. Similarly, in *Van Breda*, the good arguable case standard did not form part of the Court of Appeal's judgment, nor did it factor into the Court's seminal reasons in that case, and it is also absent from *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851, and *Haaretz.com v. Goldhar*, 2018 SCC 28, [2018] 2 S.C.R. 3, and the respective decisions below in those cases. In the instant case, the parties have not raised a question as to whether the standard of the good arguable case should apply within the *Van Breda* framework.

With respect to the fourth presumptive factor — whether a contract connected with the dispute was made in the province — it is incumbent on parties seeking to rely on this factor to plead the facts necessary to make out the essential elements of a contract — namely, offer, acceptance, and consideration, except in cases where the existence of the Ontario contract is obvious and undisputed. It is a critical step and must not be glossed over. A contract is a legal construction and must be established by reference to legal principles. A failure to plead with sufficient particularity the existence of a contract will necessarily foreclose a finding of a real and substantial connection on the basis of that contract. Merely a general sense that a contractual relationship exists is insufficient. Establishing the existence of a contract formed in the relevant jurisdiction is a precondition for the rest of the analysis. The contract's relationship to the forum and the subject matter of the dispute can be assessed with regard to factors such as contract formation, how and where the contract contemplated

performance, the *situs* of the tort, and the location of the parties. These considerations will allow a court to gauge the strength of the connection between the underlying contract on which the plaintiff relies to ground jurisdiction and the forum in which jurisdiction has been presumptively assumed. Parties should not take this as an invitation to plead on the basis of a vague constellation of contracts. If a party pleads a connection on the basis of multiple contracts, the court should assess each one to determine if it can support a connection between the forum and the dispute. Multiple contracts that are each, on their own, insufficient to support the establishment of jurisdiction cannot, together, be taken to ground a real and substantial connection.

Once the court is satisfied that there is indeed a contract that was formed in the province, the next question is whether the contract is connected with the dispute. A contract formed in the relevant forum will be connected with the dispute if a defendant's conduct brings him or her within the scope of the contractual relationship and that the events that give rise to the claim flow from the relationship created by the contract. In cases where there are multiple defendants, jurisdiction should be examined from the perspective of each defendant. This is because when a court takes jurisdiction over a claim, it assumes the authority not only to adjudicate the claim but also to make orders against each defendant. For the power to be exercised legitimately, the court must be satisfied that the requisite connection exists in respect of each person who may be subject to that power.

If a presumptive connecting factor is established, the defendant bears the onus of asserting a rebuttal argument. At this stage, the onus shifts to the defendant challenging jurisdiction, who must prove that the strength of the contract's connection with the forum, the subject matter of the dispute, and the defendant is non-existent or weak to rebut the presumption. If a contract bears only a remote connection to any particular defendant, that contract cannot be said to support the legitimate exercise of judicial authority over that defendant. It may be useful for a court to consider whether the defendant would have reasonably expected to be subject to the forum's jurisdiction for reasons relating to the contract. The analysis relevant to whether the defendant has rebutted the presumption of jurisdiction is case-specific, contextual, and always ultimately concerned with whether the contract does or does not, in substance, ground a real and substantial connection between the province and the dispute. The rebuttal analysis assesses the strength, as opposed to the existence, of the contract's connection with the forum, the subject matter of the dispute, and the defendant challenging jurisdiction.

The instant case is not one of those cases where there is no dispute as to the existence of a contract. It is therefore essential to assess the pleadings with a view to ascertaining what contracts truly existed, what their underlying purpose was, and where they were formed. The plaintiffs bear the onus of showing that an Ontario contract is presumptively connected to their claim; it has to be a contract that is connected with the subject matter of the claim, that is, the events that occurred in Venice, Italy. S was a card member pursuant to a contract between him and Amex Canada, however, the

agreement was not in evidence in the courts below, nor were any of its terms and conditions. Pleading with sufficient particularity is important. Far from being an onerous demand, pleading where a contract was formed is a minimum requirement when arguing that jurisdiction can be established on the basis of that contract. In the instant case, despite the lack of sufficient particularity in the plaintiffs' pleadings, when reading the pleadings generously, it is likely that the cardmember agreement was formed in Ontario. It is therefore accepted, for the purposes of this case, that the cardmember agreement is an Ontario contract and is connected with the dispute as the events that gave rise to the claim — the making of arrangements for water taxi services and the water taxi accident itself — flowed from that agreement. Since S engaged the cardmember concierge service while in Italy for the purpose of making a water taxi reservation, the events flowed from the cardmember agreement. This contract is therefore sufficient to ground the assumption of jurisdiction at the first stage of the test.

However, the record does not bear out the existence of a second contract between Amex Canada and S, specifically for the booking of the water taxi. When S called Amex Canada from Florence, Italy, to book a water taxi for Venice, he was simply accessing the benefits available to him pursuant to the cardmember agreement. When a cardmember makes a travel booking, this does not consummate a new contract between the cardmember and Amex Canada, but is rather an instance of performance by Amex Canada of the underlying cardmember agreement. The chain of events also does not reveal that a contract was formed between Amex Canada and the third-party travel service provider. In order to establish that a contract existed in these

circumstances, the plaintiffs would have to show that S compensated or agreed to compensate the third-party travel service provider for the reservation service. There is no evidence that compensation was stipulated or paid. The pleadings are not sufficient to draw a conclusion in respect of any contractual relationship, let alone any Ontario contract, involving the third-party travel service provider.

In relation to the second stage — whether the presumptive connection is rebutted — the Italian defendants filed evidence that could be used to weigh the strength of the connection at the rebuttal stage and have successfully rebutted the presumption of jurisdiction because the existence of the cardmember agreement does not demonstrate a real and substantial connection between Ontario and the water taxi accident. With respect to the connection to the forum, there is little that can be said given that the particulars of the contract are not in the record. It is clear that the connection between the cardmember agreement and the dispute is weak, to say the least. Weaker yet is the connection between the contract and the Italian defendants. The dispute arose from a tort that occurred in Italy. The tort occurred on a water taxi that was owned by an Italian company, dispatched by a different Italian company, operated by an Italian national, and procured by S while on Italian soil. If the fact that S made a reservation through his credit card were enough to establish a connection with Ontario, it would follow that any travel reservation made using a credit card travel service would provide a sufficient basis for Ontario to assume jurisdiction over foreign disputes based on torts. This would amount to precisely the picture of unfairness, unpredictability and

jurisdictional overreach that *Van Breda* sought to circumvent through its emphasis on a real and substantial connection.

Per Karakatsanis, Martin, Kasirer and **Jamal JJ.** (dissenting): The appeal should be allowed and the order of the motion judge restored. The uncontradicted facts pleaded in the statement of claim and admitted in Amex Canada's statement of defence and crossclaim establish a good arguable case that two contracts connected with the dispute were made in Ontario. Therefore, a presumption is established that the Ontario Superior Court of Justice has jurisdiction over the claims of the plaintiffs against the Italian defendants on the basis of the fourth presumptive connecting factor set out in *Van Breda*. The Italian defendants failed to meet their burden to rebut this presumption of jurisdiction.

Van Breda developed the common law principles of private international law for when a court can assume jurisdiction over a tort claim with an interprovincial or international element, but the process for contesting jurisdiction, including the applicable evidentiary threshold, is governed by each province's law of civil procedure. Under Ontario's law of civil procedure, a plaintiff seeking to establish jurisdiction *simpliciter* over an extraprovincial defendant need only show a good arguable case supporting a presumptive connecting factor. The good arguable case standard is not a high threshold and means no more than a serious question to be tried, or a genuine issue, or that the case has some chance of success. The plaintiff is entitled to rely on the facts pleaded in the statement of claim, which are presumed to be true, and is under

no obligation to file additional evidence, unless the defendant challenges the allegation with evidence or the allegation is devoid of merit or lacks an air of reality. The good arguable case standard ensures that the discrete issue of jurisdiction does not devolve into a trial on the merits of the claim, since jurisdictional challenges are dealt with early in the proceedings when the record is incomplete.

In a case involving the fourth presumptive connecting factor from *Van Breda*, to determine whether that factor is made out, a court proceeds in two steps: first, it identifies the dispute by examining the nucleus of the claims pleaded; and second, it determines whether a contract connected with the dispute was made in the province.

In the instant case, the dispute involves the allegation that the plaintiffs relied on Amex Canada's expertise and representations to organize a safe, seamless travel experience, and the statement of claim alleges the integrally related torts of negligently engaging incompetent persons to provide transportation services and negligently providing those services. The motion judge correctly identified the dispute. The majority's conclusion that the dispute arose from a tort that occurred in Italy does not consider the claims pleaded in the statement of claim as a whole: the pleaded torts are not simply the negligent driving of the water taxi, but also Amex Canada's negligent engagement of the third-party travel service provider, the third-party travel service provider's negligent engagement of the Italian defendants, and the Italian defendants' negligent engagement of the water taxi driver. The statement of claim also expressly pleads that Amex Canada and the third-party travel service provider are vicariously

liable for the torts of the Italian defendants and of the driver. In a case alleging multiple torts or raising claims under multiple heads of liability, focussing on the dispute as a whole rather than isolating the claims against the extra-provincial defendants and evaluating them as if they formed part of a separate action ensures that a court does not inappropriately hear only part of the case in the forum while leaving related claims to be heard in the extra-provincial or foreign court. Further, a narrower approach to identifying the dispute makes it more difficult to show a presumptive connection between the dispute and the forum and undercuts the role of the rebuttal stage to evaluate the strength of the connection between the contract and the dispute.

Based on the facts pleaded and the evidence on the motion, the plaintiffs have established a good arguable case that two contracts connected with the dispute were made in Ontario: (1) the cardmember agreement between the plaintiffs and Amex Canada; and (2) the agreement between Amex Canada and the third-party travel service provider for the booking of the water taxi in Italy on behalf of S.

With respect to the first contract, the statement of claim expressly pleads a contract made in Ontario. It also pleads that the plaintiffs both live in Toronto and that Amex Canada carries on business in Ontario. The motion judge, citing the statement of claim and S's evidence on the motion, noted that the plaintiffs booked their travel through Amex Canada because it claimed to provide a high quality and safe travel experience. She properly found that the Italian defendants' allegedly tortious conduct in their discharging of the water taxi services flowed from this contract, which was

undoubtedly formed in Ontario and which provided for the booking of services such as the water taxi. The majority's reasons, however, do not accept the pleaded allegations as true. While the majority accepts that it is likely that this contract was formed in Ontario, it objects that the agreement was not pleaded with sufficient particularity and that it was not in evidence on the motion. There are three main difficulties with this reasoning. First, the plaintiffs expressly pleaded that a contract was made in Ontario. Second, Amex Canada's statement of defence and crossclaim cannot plausibly be read as denying that the contract was made in Ontario. It pleads that it is based in Ontario and that it invited the plaintiffs, two Ontario residents, to obtain a credit card, an invitation that the plaintiffs accepted. In fact, Amex Canada admits in its statement of defence and crossclaim that the cardmember agreement was made in Ontario. Third, the fact that the cardmember agreement is not in evidence is in no way fatal, as the facts pleaded must be assumed to be true, and the facts relevant for jurisdiction arising out of this contract were admitted by Amex Canada.

With respect to the second contract, the motion judge made no reviewable error in concluding that the plaintiffs established a good arguable case that Amex Canada's contract with the third-party travel service provider was connected with the dispute and was made in Ontario. The motion judge found that their claim, and Amex Canada's admissions in its statement of defence and crossclaim, confirmed that Amex Canada, which is based in Toronto, booked the water taxi on S's behalf by contacting the third-party travel service provider, which made the booking and confirmed this by email to Amex Canada, which in turn forwarded this email to S. The motion judge

concluded that this contract was made in Ontario because a contract is made in the jurisdiction where acceptance is received when acceptance is transmitted electronically and instantaneously. The location of the acceptance of a contract is a finding of fact or mixed fact and law attracting appellate deference, and no palpable and overriding error has been shown. The motion judge's finding that the parties to this contract were Amex Canada and the third-party travel service provider also attracts appellate deference. While the majority disputes that any contract was formed between Amex Canada and the third-party travel service provider for the water taxi booking, Amex Canada admits that it entered into this contract by engaging the third-party travel service provider on behalf of the plaintiffs.

The Italian defendants have not rebutted the presumption of jurisdiction arising from the presumptive connecting factor that was made out. While the Court of Appeal found that the motion judge did not consider the rebuttal stage of the *Van Breda* test, the motion judge did expressly acknowledge the legal requirement for the Italian defendants to rebut the connecting factor. The motion judge just had little to say because the Italian defendants did not address before her how or why the presumptive connecting factor was rebutted. And even if the motion judge forgot to address the rebuttal stage, the Italian defendants did not discharge their burden to rebut the presumption of jurisdiction. The connections between the two pleaded contracts and the dispute are not so weak as to deny the Ontario court jurisdiction over integrally related torts giving rise to joint and several liability and inseparable damages. The two contracts pleaded to have been made in Ontario are intimately related to the dispute.

They serve to establish proximity among all the defendants, including the Italian defendants, and are said to give rise to duties of care in negligence to the plaintiffs. Moreover, it is not alleged that Amex Canada and the third-party travel service provider arranged for the water taxi booking and then left the plaintiffs to their own devices in Venice. Rather, the third-party travel service provider, engaged by Amex Canada, continued to provide services to the plaintiffs to ensure safe transportation up to, and including on, the water taxi ride itself. This allegation is integrally related to the allegation that the plaintiffs relied on Amex Canada's expertise and representations to organize a safe, seamless travel experience.

The rebuttal stage must not consider irrelevant factors. The residence of the water taxi driver and of the Italian defendants in Italy, as well as the birthplace and nationality of the water taxi driver, are irrelevant to jurisdiction *simpliciter* because they do not affect whether the connections between the contracts made in Ontario and the dispute are too weak. Moreover, the rebuttal stage must properly characterize the dispute based on the facts pleaded. The majority's finding that the presumption of jurisdiction has been rebutted is based on a narrow characterization of the dispute as a tort on a water taxi in Italy and does not examine the claims pleaded as a whole, which allege interconnected torts flowing from contracts made in Ontario. The majority's finding that the only connection between the cardmember agreement and the dispute is that S made a non-binding reservation through the third-party travel service provider by way of an agent of Amex Canada is inconsistent with the facts pleaded by the plaintiffs and admitted by Amex Canada: the third-party travel service provider was

contractually bound to assure safe travel for the plaintiffs by recruiting, training and providing suitably qualified and skilled individuals to perform transportation services. Additionally, the majority's claim that the connection between the cardmember agreement and the dispute is attenuated by a lack of evidence that S used his credit card to pay for the water taxi disregards Ontario law, which does not require the plaintiffs to tender evidence at this stage and allows them to rely on their pleading unless contradicted by evidence in the record. As well, the majority's concern that the Italian defendants had no way of knowing if and when they could be hauled before an Ontario court is disconnected from the pleaded claims. Further, the Italian defendants' expectations are not conclusive as to whether an Ontario court should assume jurisdiction, especially since they were not parties to the two contracts connecting the dispute with Ontario.

Finally, there is disagreement with the majority that this case raises the spectre of jurisdictional overreach over foreign service providers whenever Canadians use their credit cards for travel reservations abroad. The plaintiffs are not alleged to have simply used their credit card to book a water taxi at a dock in Venice. It does not involve jurisdictional overreach to hold that their allegations of negligence against the Italian defendants flowing out of their contracts made in Ontario should be adjudicated in Ontario.

Cases Cited

By Côté J.

Applied: *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572; *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851; **referred to:** *Kyko Global Inc. v. M/S Crawford Bayley & Co.*, 2021 ONCA 736; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633; *Moran v. Pyle National (Canada) Ltd.*, [1975] 1 S.C.R. 393; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077; *Hunt v. T&N plc*, [1993] 4 S.C.R. 289; *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416; *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022; *Abaxx Technologies Inc. v. Pasig and Hudson Private Ltd.*, 2024 ONCA 164; *Haaretz.com v. Goldhar*, 2018 SCC 28, [2018] 2 S.C.R. 3; *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181, 38 B.C.L.R. (6th) 99; *Giustra v. Twitter, Inc.*, 2021 BCCA 466, 59 B.C.L.R. (6th) 55; *Eastern Power Ltd. v. Azienda Comunale Energia & Ambiente* (1999), 178 D.L.R. (4th) 409; *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842; *Way v. Schembri*, 2020 ONCA 691, 8 B.L.R. (6th) 158; *Cormier v. Greyhound Canada Transportation ULC*, 2018 ONSC 5600; *Sinclair v. Cracker Barrel Old Country Store, Inc.* (2002), 60 O.R. (3d) 76.

By Jamal J. (dissenting)

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Cassels Brock & Blackwell LLP, 2016 SCC 30, [2016] 1 S.C.R. 851; *Hydro Aluminium Rolled Products GmbH v. MFC Bancorp Ltd.*, 2021 BCCA 182, 48 B.C.L.R. (6th) 106; *Pattni v. Ali*, [2006] UKPC 51, [2007] 2 A.C. 85; *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69; *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022; *Breeden v. Black*, 2012 SCC 19, [2012] 1 S.C.R. 666; *Ecolab Ltd. v. Greenspace Services Ltd.* (1998), 38 O.R. (3d) 145; *Schreiber v. Mulroney* (2007), 88 O.R. (3d) 605; *Vahle v. Global Work & Travel Co.*, 2020 ONCA 224; *GlycoBioSciences Inc. v. Herrero and Associates*, 2023 ONCA 331; *Thind v. Polycon Industries*, 2022 ONSC 2322; *Richter Inc. v. Wing*, 2023 ONSC 3325; *Innis v. Sunwing Travel Group Inc.*, 2024 ONSC 1102; *Inukshuk Wireless Partnership v. 4253311 Canada Inc.*, 2013 ONSC 5631, 117 O.R. (3d) 206; *Essar Steel Algoma Inc., Re*, 2016 ONSC 595, 33 C.B.R. (6th) 313; *Gebien v. Apotex Inc.*, 2023 ONSC 6792; *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, [2012] 1 S.C.R. 636; *Vitkovice Horni a Hutni Tezirstvo v. Korner*, [1951] A.C. 869; *Jenner v. Sun Oil Co.*, [1952] O.R. 240; *Canadian Westinghouse Co. v. Davey*, [1964] 2 O.R. 282; *Muzak Corp. v. Composers, Authors and Publishers Association of Canada Ltd.*, [1953] 2 S.C.R. 182; *Composers Authors and Publishers Association of Canada Ltd. v. International Good Music, Inc.*, [1963] S.C.R. 136; *Antares Shipping Corp. v. The Ship "Capricorn"*, [1977] 2 S.C.R. 422; *The Jean Coutu Group (PJ) Inc. v. British Columbia*, 2025 BCCA 80; *Altria Group, Inc. v. Stephens*, 2024 BCCA 99, 494 D.L.R. (4th) 332; *VM Agritech Ltd. v. Smith*, 2024 BCCA 360, [2025] 4 W.W.R. 273; *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181, 450 D.L.R. (4th) 301; *Wildwood Transport Inc. v. Eagle West Cranes Inc.*, 2011 MBQB 42, 263 Man. R. (2d) 195; *New Brunswick v. Rothmans Inc.*, 2010 NBQB 381, 373 N.B.R. (2d) 157; *NTI Boilers Inc. v. Muelink*

& Grol B.V. Duravent Inc., 2023 NBKB 4; *Ferrari v. Feurer*, 2020 YKSC 29;
Integrated Team Solutions PCH Partnership v. Mitsubishi Heavy Industries, Ltd., 2025
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 405, 190 D.L.R. (4th) 173; *R. v. McGregor*, 2023 SCC 4; *Purple Echo Productions Inc.*
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Estate v. Bel Air Travel Group Ltd. (2008), 92 O.R. (3d) 608; *R. v. G.F.*, 2021 SCC 20,
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APPEAL from a judgment of the Ontario Court of Appeal (Tulloch, Nordheimer and Harvison Young JJ.A.), 2023 ONCA 142, 478 D.L.R. (4th) 683, [2023] O.J. No. 947 (Lexis), 2023 CarswellOnt 2631 (WL), setting aside a decision of Ramsay J. dismissing a motion to dismiss or stay an action. Appeal dismissed, Karakatsanis, Martin, Kasirer and Jamal JJ. dissenting.

Neil Paris and Zachary Parrott, for the appellants.

David Zuber and Patrick Essig, for the respondents.

Hassan Ahmad and *Saad Gaya*, for the intervener Corporate Accountability Lab.

Aubin Calvert, *Tom Posyniak* and *Layne Hellrung*, for the intervener British Columbia Chamber of Commerce.

Tina H. Lie and *Chris G. Paliare*, for the intervener Ontario Trial Lawyers Association.

The judgment of Wagner C.J. and Côté, Rowe, O’Bonsawin and Moreau JJ. was delivered by

CÔTÉ J. —

I. Overview

[1] This appeal requires an application of the two-stage test for establishing jurisdiction *simpliciter* set out in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572. The foundation of any legitimate assumption of jurisdiction is a real and substantial connection between the forum and the dispute. More specifically, this appeal is about whether the fourth presumptive connecting factor identified in *Van Breda* — “a contract connected with the dispute was made in the province” (para. 90) — has been established or, in other words, whether there is a contractual

connection with the province, and, if so, whether the presumption of jurisdiction has been rebutted.

[2] The appellants take the position that the Court of Appeal for Ontario incorrectly applied the contractual connection requirement and then also erred when considering the issue of rebuttal of the presumption. For their part, the respondents submit that the Court of Appeal correctly applied the test established in *Van Breda*.

[3] In the instant case, Duncan and Michelle Sinclair (“the Sinclairs”) were allegedly injured, along with their son, in an accident that occurred in Venice, Italy. The Sinclairs brought an action in Ontario against a number of defendants, some of whom challenged Ontario’s assumption of jurisdiction. Our Court is being asked to determine whether that assumption of jurisdiction is properly grounded. I say that it is not, because the connection between the dispute and Ontario is tenuous, if not non-existent. It certainly does not meet the bar for the real and substantial connection that is necessary to ground an assumption of jurisdiction, for the reasons I explain below.

[4] Mr. Sinclair held an American Express Centurion credit card, which gave him access to a concierge and travel agent service called Centurion Travel Service. This service carries on business in Canada on behalf of Amex Canada Inc. (“Amex Canada”). In July 2017, the Sinclairs contacted Centurion Travel Service to book a European vacation for themselves and their son. Their itinerary included a visit to Venice, Italy.

[5] Prior to arriving in Venice, Mr. Sinclair, who was at that time in Florence, Italy, called Centurion Travel Service to book transportation, including a water taxi ride, from the airport in Venice to their hotel. The agent with whom Mr. Sinclair spoke secured an estimated quote and booking reservation for the Venetian water taxi services from Carey International Inc. (“Carey International”). The water taxi, owned by the respondent Venice Limousine S.R.L. (“Venice Limousine”), was dispatched by the respondent Venezia Turismo (“Venezia Turismo”) and operated by Cristian Dordit. While in transit, the water taxi crashed into a wooden structure, causing injuries to those on board.

[6] After returning to Canada, the Sinclairs commenced an action seeking damages arising out of the accident. The action was brought against Amex Canada, carrying on business as Centurion Travel Service, Carey International, Medov S.R.L. (“Medov”), Venezia Turismo, Venice Limousine, Narduzzi e Solemar S.L.R. (“Narduzzi”), John Doe Corp and Cristian Dordit. Venezia Turismo, Venice Limousine and Narduzzi (collectively “the Italian defendants”¹) moved to dismiss or stay the action as against them for want of jurisdiction.² The motion judge dismissed their motion. The Italian defendants appealed to the Court of Appeal for Ontario, which

¹ Before this Court, Venezia Turismo, Venice Limousine and Narduzzi are respondents. Narduzzi provides port services for ships, vessels or boats in Venice. It is not clear what link it has to this dispute other than the fact that its managing director is also the managing director for Venice Limousine.

² It remains unclear whether Mr. Dordit was a moving party alongside the Italian defendants. The motion judge, at para. 1 of her reasons, states that he was, though in her order he is not listed as a moving party. The parties before our Court did not include the notice of motion in their record.

unanimously allowed the appeal, though in two separate sets of reasons, and held that it would be improper for Ontario to assume jurisdiction.

[7] In cases where parties seek to establish jurisdiction *simpliciter* in a Canadian forum over a foreign dispute, it is critical that they plead with precision and that courts engage in robust reasoning, which includes a thorough review of the contract being relied upon for the assumption of jurisdiction. Courts should be cautious and not accept tenuous forms of real and substantial connection in the jurisdiction *simpliciter* context. In cases where there are multiple relevant contracts, courts should analyze each contract, as opposed to relying merely on a vague “constellation of contracts”, which in the present context means a number of related contracts. If the presumptive connecting factor is established, it is for the defendant to assert a rebuttal. The defendant can do so by showing that the presumptive connecting factor does not point to any real relationship between the subject matter of the dispute and the contract made in the province or merely indicates a weak relationship between them.

[8] In the instant case, there are three purported contracts that are said to ground Ontario’s jurisdiction over the dispute: (1) the Centurion Cardmember Agreement between the Sinclairs and Amex Canada; (2) an arrangement between Amex Canada and Carey International to subcontract the procurement of travel services; and (3) a water taxi contract. While I am prepared to accept, for the purposes of this case, that the first contract was formed in Ontario, I cannot make the same determination for the second and third contracts. In light of the basic tenets of contract

law, I conclude that the pleadings do not support reliance on the second and third contracts, considered separately or together, to make out *Van Breda*'s fourth presumptive factor.

[9] As to the Centurion Cardmember Agreement, although I am prepared to accept that it is an Ontario contract, I find that the presumption of jurisdiction has been rebutted because the connection between the dispute and Ontario is very tenuous, if not entirely non-existent. A real and substantial connection between the dispute and Ontario is simply not present. A conclusion to the contrary would result in jurisdictional overreach and would run counter to the principles of order and fairness espoused by LeBel J. in *Van Breda*.

[10] I would dismiss the appeal.

II. Facts

[11] Mr. Sinclair held a credit card with Amex Canada. This gave him access to a concierge and travel agent service called Centurion Travel Service, which deals with third-party travel suppliers for the provision of travel services, such as car services, flights, and hotel accommodations, at the request of Centurion cardmembers.

[12] Venezia Turismo is an Italian water taxi dispatching consortium company that was created by a number of Venetian water taxi operators to coordinate water taxi services around Venice through a common switchboard for its members. Venice

Limousine is a member of the Venezia Turismo consortium; it owned the water taxi used by the Sinclairs and employed its driver. Venezia Turismo takes orders in Venice from customers seeking water taxis and dispatches the bookings among its members by way of a common switchboard that it runs.

[13] Medov is a limited liability company under Italian law. It is an agency through which certain of the Italian defendants, including Venezia Turismo, hired freelance tour guides. Medov is unrepresented and has not responded to the action.

[14] On July 8, 2017, Mr. Sinclair booked a trip to Europe for himself, his wife, and their son via Amex Canada using the concierge service associated with his Centurion credit card.

[15] On July 24, 2017, while in Florence, Italy, Mr. Sinclair phoned Amex Canada, again using the concierge service associated with his credit card, to book transportation from Venice Marco Polo Airport to the Westin Europa Hotel, his accommodation in Venice. To book this transportation, Mr. Sinclair spoke to Jennifer Chu, a Travel and Lifestyle Consultant for Amex Canada.

[16] On July 25, 2017, at 2:49 a.m., Carey International, a third-party supplier contacted by Amex Canada, emailed Ms. Chu a reservation confirmation and estimated quote for Mr. Sinclair. It named the service provider as “Tripitaly Dr SRL Carey Italy” and presented an estimated quote of US\$764.03 plus incidentals. At 3:12 a.m., Ms. Chu

forwarded the quote and confirmation received from Carey International to Mr. Sinclair via email.

[17] On July 25, 2017, at 11:42 a.m., Venezia Turismo received an email from Medov confirming a water taxi reservation for Mr. Sinclair. On the same date, Venezia Turismo replied to Medov to confirm receipt and called Mr. Dordit to dispatch him to collect the Sinclairs.

[18] Upon arrival in Venice the same day, the Sinclairs were met by a local tour guide facilitated through the Amex Canada travel arrangements. They took a van to a water taxi terminal and boarded a water taxi owned by Venice Limousine and operated by Mr. Dordit. They boarded the vessel with the Italian tour guide. A representative of Carey International was also, apparently, on the vessel. While in motion, the boat struck a large wooden structure, which caused serious injuries to Mr. Sinclair. He required a prolonged hospital stay.

[19] In response to the action brought by the Sinclairs, the Italian defendants brought a motion to dismiss or stay the action as against them on the basis that the Ontario Superior Court of Justice lacked jurisdiction over the matter as against them.

III. Judicial History

A. *Ontario Superior Court of Justice (Ramsay J.)*

[20] The motion judge noted that in *Van Breda*, LeBel J., writing for our Court, outlined the two-stage process by which a court determines whether to assume jurisdiction over a claim. First, the plaintiff must show a real and substantial connection, established by a presumptive connecting factor. Second, the defendant may rebut the presumption by showing no real relationship to the forum. Here, she noted, the parties focused solely on the fourth connecting factor listed in *Van Breda*: whether a contract connected with the dispute was made in Ontario.

[21] The motion judge turned her focus to two contracts: first, the booking of the water taxi between Mr. Sinclair and Amex Canada, or alternatively between Mr. Sinclair and Carey International with Amex Canada acting as Mr. Sinclair's agent; and second, the Centurion Cardmember Agreement between Mr. Sinclair and Amex Canada. Both contracts involved Amex Canada's contractual obligations to the Sinclairs.

[22] The Sinclairs had dealt with Amex Canada for the Centurion Cardmember Agreement and for the booking of the water taxi in Venice, Italy, and those contracts had been formed in Ontario. In the result, a presumptive connecting factor between the subject of the litigation and the court's jurisdiction had been established. Moreover, the Sinclairs had established a good arguable case that the contracts between Amex Canada and them, and the contract between Amex Canada and Carey International for the water taxi transportation, had some connection with the dispute, in order for the court in Ontario to assume jurisdiction. As stated by our Court in *Lapointe Rosenstein*

Marchand Melançon LLP v. Cassels Brock & Blackwell LLP, 2016 SCC 30, [2016] 1 S.C.R. 851, at para. 44, “[i]t is sufficient that the dispute be ‘connected’ to a contract made in the province or territory where jurisdiction is proposed to be assumed”. This merely requires that “a defendant’s conduct brings him or her within the scope of the contractual relationship and that the events that give rise to the claim flow from the relationship created by the contract” (para. 44, citing *Van Breda*, at paras. 116-17). The motion judge stated that “[a] ‘connection’ does not necessarily require that the alleged tortfeasor be a party to the contract” (para. 31).

[23] Having found that presumptive jurisdiction existed, the motion judge then considered *forum non conveniens*, stating that the burden was on the defendants to prove that Italy was clearly a more convenient forum. She found on the evidence before her that the contracts between Amex Canada and the Sinclairs and between Amex Canada and Carey International had all been formed in Ontario. Additionally, she noted that Amex Canada had defended and crossclaimed against the other defendants and that Carey International had delivered a notice of defence. These were all factors that favoured the Sinclairs.

[24] The motion judge dismissed the Italian defendants’ motion and directed that the Ontario action could continue.

B. *Court of Appeal for Ontario*, 2023 ONCA 142, 478 D.L.R. (4th) 683

[25] The Italian defendants appealed from the decision of the motion judge. The Court of Appeal for Ontario was unanimous that Ontario lacked jurisdiction over this dispute. While the majority and concurring reasons differed over whether a presumptive connecting factor had been established, it was found in both sets of reasons that any presumption of jurisdiction that might exist had been successfully rebutted.

(1) Majority Reasons (Nordheimer J.A., Tulloch J.A. (As He Then Was) Concurring)

[26] The majority allowed the appeal and stayed the action against the Italian defendants.

(a) *The Motion Judge Erred in Finding That a Presumptive Connecting Factor Had Been Established*

[27] The majority found that the motion judge had failed to properly apply *Van Breda*. In its view, the real and substantial connection test is focused on preventing jurisdictional overreach, and therefore the application of the presumptive connecting factors should be viewed from the perspective of the defendant who is disputing jurisdiction.

[28] In furtherance of that point, the majority emphasized that a presumptive connecting factor tying one defendant to the forum, who might not be disputing jurisdiction, does not automatically extend jurisdiction over other defendants who challenge it. In the instant case, although Amex Canada accepted Ontario's jurisdiction,

this “d[id] not mean that everyone else, who ha[d] some connection with the subject matter of the claim, [was] then subject to that same jurisdiction” (para. 19). The majority held that a presumptive connecting factor must attach to each individual defendant.

[29] The majority took issue with the Sinclairs’ submission, which was accepted by the concurring judge, that the *Van Breda* approach to jurisdiction had been significantly broadened by the subsequent decision of our Court in *Lapointe*. According to the majority, it was a stretch for the Sinclairs to analogize the factual underpinnings of their claim with the factual underpinnings of the claim in *Lapointe*. Here, the Sinclairs’ claim was founded in tort and therefore any contractual relationship between them and Amex Canada was not relied upon for the claim. The opposite was true in *Lapointe*, where the contractual relationship was at the heart of the dispute.

[30] The majority stated that “[t]here [was] nothing in [*Lapointe*] that suggest[ed] that [our Court] was intending to expand the fourth presumptive connecting factor to the extent that the [Sinclairs] . . . submit[ted]” (para. 26). In the minds of the majority, accepting the Sinclairs’ submission on this point would be inconsistent with *Van Breda*, which sought to limit the territorial reach of Canadian courts. They underscored this point by noting that “the presumptive connecting factors established in *Van Breda* were borne out of the ‘real and substantial connection’ test. They were established in an effort to ensure that Canadian courts only assumed jurisdiction over a dispute that had a real and substantial connection to Canada on the facts and to prevent

Canadian courts from assuming jurisdiction where that connection did not exist” (para. 26).

[31] In the majority’s view, the contractual arrangements that the Sinclairs had with Amex Canada did not contemplate or require the involvement of the Italian defendants. Therefore, as a result of that, “the [Italian defendants could not] be reasonably swept into the jurisdictional reach of Canadian courts based solely on the fact that the [Sinclairs] had a contractual relationship with Amex Canada” (para. 29).

(b) *Even If the Presumptive Connecting Factor Had Been Established, the Presumption Had Been Rebutted*

[32] On this point, the Court of Appeal was unanimous. In the alternative, the majority stated that if it was in error in finding that no presumptive connecting factor had been made out, it would find that the Italian defendants had successfully rebutted the presumption on the basis that the contract between the Sinclairs and Amex Canada had “little or nothing to do with the subject matter of the litigation” (para. 32).

[33] To support its conclusion that despite finding no presumptive connection it would nonetheless be successfully rebutted, the majority noted that nothing in the pleadings demonstrated “that the contract [between the Sinclairs and Amex Canada] contemplated the involvement of the [Italian defendants]”, nor that “would establish that the contract ha[d] any connection to the claim against the [Italian defendants]”

(para. 32). Pointing to the weak connection, the majority found no link between the Sinclairs' contract with Amex Canada and the Italian defendants, stating, at para. 36:

. . . none of the [Italian defendants] would reasonably be expected to be called to answer legal proceedings in Ontario. They [had] accepted a task to be undertaken in Italy. The events underlying the claim [had] occurred in Italy. The companies [were] Italian companies. The driver of the water taxi [was] an Italian national. There [was] simply nothing that connect[ed] the events and the [Italian defendants] to Ontario. The fact that the [Sinclairs had] used a credit card company, that happen[ed] to carry on business in Ontario, to make their travel arrangements [did] not establish a relationship between [them and the Italian defendants] that could sustain a finding of jurisdiction.

As such, in light of this weak and tenuous connection, the majority concluded that even if the fourth presumptive connecting factor were made out, the Italian defendants would have successfully rebutted it.

[34] In conclusion, the majority expressed the view that if the decision of the motion judge were to be upheld, it “would have sweeping implications” by extending the jurisdiction of Ontario’s courts to anyone who subsequently became involved in travel arrangements made via a credit card company that provides travel services and carries on business in Ontario, despite the involvement occurring in another part of the world (para. 44). This, it reasoned, would be counter to *Van Breda*’s cautioning against jurisdictional overreach.

[35] The appeal was allowed, the decision of the Ontario Superior Court of Justice was set aside, and the action against the Italian defendants was stayed on the

basis that the Ontario Superior Court of Justice did not have jurisdiction over those defendants.

(2) Concurring Reasons (Harvison Young J.A.)

[36] In separate reasons, the concurring judge agreed with the majority that the presumptive connecting factor had been successfully rebutted and that the appeal should therefore be allowed. However, she disagreed with the majority's primary conclusion that there was no presumptive connecting factor of an Ontario contract connected to the dispute. She stated that in order to reach this conclusion, the majority was effectively recasting the dissenting opinion in *Lapointe* as the governing precedent, and that its reasons did not take sufficient account of the evolution of the approach to the establishment of a presumptive connecting factor, which, she said, has become "an increasingly functional approach" (para. 49).

(a) *There Was an Ontario Contract; the Presumptive Connecting Factor Had Been Established*

[37] The concurring judge held that the motion judge had properly concluded that the Italian defendants' allegedly tortious conduct in their discharging of the water taxi services flowed from the Centurion Cardmember Agreement, a contract undoubtedly formed in Ontario that provided for the booking of services, such as the water taxi. Drawing on *Lapointe*, she said that this was the requisite threshold to establish the fourth presumptive connecting factor.

[38] The concurring judge stated that our Court has “taken an increasingly functional approach to the question of whether there is a contract ‘connected to’ the dispute” (para. 49); she found the motion judge’s reasons to be in line with that approach in how she outlined the law concerning jurisdiction *simpliciter*, and were properly seized with the fourth presumptive connecting factor. The concurring judge found the motion judge to have properly outlined that in order to establish the fourth presumptive connecting factor, “the [Sinclairs] need[ed] only establish that ‘the events that g[ave] rise to the claim flow[ed] from the relationship created by’ the Ontario contract and that the [Italian] defendants’ negligence br[ought] them ‘within the scope of the contractual relationship’” (para. 55, quoting *Lapointe*, at para. 44). In effect, she found the fourth presumptive connecting factor’s underlying rationale to be that “but for” the contract made in the province, the plaintiff would not have suffered the harm alleged (para. 64).

(b) *The Italian Defendants Had Rebutted the Presumptive Connecting Factor*

[39] However, the concurring judge found that the motion judge had erred in failing to consider whether the presumptive connecting factor had been rebutted. She agreed with the majority that it had been successfully rebutted, and she made a point of saying that the motion judge’s error was understandable given the “paucity of jurisprudence” grappling with the rebuttal stage of the analysis and its relationship to the *forum non conveniens* analysis (para. 83). She also noted that “the more broadly one approaches the question of the existence of a presumptive connecting factor, the

more relevant is the question of what should be considered at the rebuttal stage” (para. 49).

IV. Issues

[40] The issues in this appeal are as follows:

1. Is there an Ontario contract that is “connected with the dispute”?
2. If the presumptive connecting factor outlined in *Van Breda* has been established, has the presumption of jurisdiction been successfully rebutted?

V. Analysis

A. *Governing Principles*

(1) Standard of Review

[41] In *Kyko Global Inc. v. M/S Crawford Bayley & Co.*, 2021 ONCA 736, at para. 13, Hoy J.A. held that “the application of the test for jurisdiction *simpliciter* is a question of mixed fact and law, reviewable for palpable and overriding error, unless an error in the application of the test can be attributed to an extricable question of law”. This Court clarified in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53,

[2014] 2 S.C.R. 633, that, unlike issues involving contractual *interpretation*, the question of whether a contract was *formed* is a question of law reviewable on a correctness standard:

Nonetheless, it may be possible to identify an extricable question of law from within what was initially characterized as a question of mixed fact and law (*Housen [v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235], at paras. 31 and 34-35). Legal errors made in the course of contractual interpretation include “the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor” (*King [v. Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80, 270 Man. R. (2d) 63], at para. 21). Moreover, there is no question that many other issues in contract law do engage substantive rules of law: the requirements for the formation of the contract, the capacity of the parties, the requirement that certain contracts be evidenced in writing, and so on. [Emphasis added; para. 53.]

[42] My colleague in dissent is right to say that deference is owed to a motion judge’s findings of fact (at para. 266), except of course when there is a palpable and overriding error. Here, however, we are not reviewing the motion judge’s findings of fact, but rather her legal conclusions. As noted in *Sattva*, the requirements for the formation of a contract are squarely questions of law. Acceptance is a requirement for contract formation, and ascertaining whether or where acceptance occurred is not a question of fact. In this appeal, the relevant standard of review is correctness, as the Court of Appeal properly noted (at paras. 42-43), because this appeal hinges on the question of whether and where a contract was formed.

(2) The Real and Substantial Connection Test

[43] In order to assume jurisdiction over a claim, a court must be satisfied that there is a real and substantial connection between the circumstances giving rise to the claim and the forum in which it is brought (*Moran v. Pyle National (Canada) Ltd.*, [1975] 1 S.C.R. 393, at pp. 407-8; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, at pp. 1108-10; *Hunt v. T&N plc*, [1993] 4 S.C.R. 289, at pp. 325 and 328; *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, at paras. 23 and 28; *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022, at p. 1054; *Van Breda*, at paras. 22-50 and 67).

[44] The real and substantial connection test seeks to mitigate the jurisdictional overreach that can arise when the connection between the forum, the subject matter of the dispute, and the defendant is not sufficient for a court to assume jurisdiction (*Van Breda*, at para. 99). Just as Canadian law requires proof of a real and substantial connection to a foreign jurisdiction to recognize foreign judgments, comity dictates that Canadian courts not decide matters without a real and substantial connection here (see *Beals*, at paras. 28 and 34-38).

[45] In setting out rules for establishing whether a real and substantial connection exists, courts should bear in mind the objectives of order and fairness. Orderly conflict of laws rules ensure that parties can “predict with reasonable confidence whether a court will assume jurisdiction in a case with an international or interprovincial aspect” (*Van Breda*, at para. 73). But, in the search for certainty and predictability in access to justice, courts must be careful not to exclude fairness. Fair conflict of laws rules also provide parties with “protection against being pursued in

jurisdictions having little or no connection with the transaction or the parties” (*Morguard*, at p. 1108).

[46] As LeBel J. noted in *Van Breda*, balancing order and fairness can be a challenge. The presumptive connecting factors intend to reconcile fairness with the “need for security, stability and efficiency in the design and implementation of a conflict of laws system” (para. 73). They provide an orderly framework that prevents jurisdictional questions from being decided entirely on an *ad hoc*, case-by-case basis, while simultaneously allowing for flexibility and growth.

[47] Writing for a unanimous Court, LeBel J. in *Van Breda*, at para. 90, set out four factors that presumptively allow a court to assume jurisdiction over a dispute in tort cases:

- (a) the defendant is domiciled or resident in the province;
- (b) the defendant carries on business in the province;
- (c) the tort was committed in the province; and
- (d) a contract connected with the dispute was made in the province.

[48] LeBel J. explained that this list is not exhaustive and can be reviewed over time but that the factors, when made out, warrant presumptive effect. The onus rests on the plaintiff to establish that one or more of the listed factors exist: “If the plaintiff succeeds in establishing this, the court might presume, absent indications to the contrary, that the claim is properly before it under the conflicts rules and that it is acting

within the limits of its constitutional jurisdiction . . .” (*Van Breda*, at para. 80, citing J. Walker, “Reforming the Law of Crossborder Litigation: Judicial Jurisdiction”, consultation paper for the Law Commission of Ontario (March 2009), at pp. 19-20 (online); see also para. 91).

[49] Once the plaintiff has established one of the presumptive connecting factors, the defendant may rebut the presumption of jurisdiction by showing that the factor does not, in the circumstances of the case, point to a real relationship between the dispute and the forum (*Van Breda*, at para. 95). If the defendant fails to rebut the presumption, the court must accept jurisdiction over the dispute.

[50] The assessment of whether a presumptive connecting factor has been established is concerned with the *existence* of a connection between the jurisdiction and the dispute, whereas the assessment of whether the presumption has been rebutted is concerned with the *strength* of that connection. I am in agreement with my colleague in dissent on this point (para. 204). The two stages of the analysis taken together provide an opportunity for a court to holistically assess the extent to which a real and substantial connection exists, as required by *Van Breda*.

[51] As noted, only the fourth factor — whether a contract connected with the dispute was made in the province — is at issue in this appeal. I turn now to the principles relevant to establishing this fourth factor and then to the principles governing the rebuttal stage.

(a) *Stage One: Was a Contract Connected With the Dispute Made in the Province?*

[52] The first stage of the analysis is to determine whether a contract “connected with the dispute” was made in the province (*Van Breda*, at para. 90).

[53] I agree with my colleague in dissent that the *existence* of a presumptive connecting factor between the subject matter of the litigation and the forum is key to this first stage of the inquiry (para. 204). My colleague is also of the view that the first step a court should take on a motion challenging jurisdiction is to examine what he calls the “nucleus of the claim” (para. 213; see also para. 240). This step is not drawn from *Van Breda* but rather finds its roots in *Lapointe*, at paras. 37-38, where Abella J. held that “[t]he first step is identifying the dispute” and proceeded to offer two sentences to describe the “nucleus of the claim”. In essence, she briefly set out the dispute before engaging in further analysis. I agree that identifying the dispute is important, as this will necessarily serve as the backdrop for the analysis, but I do not agree that Abella J.’s reasons can be read as requiring the identification of the “nucleus of the claim” as an additional “step”. Rather, it is important that a court’s reasons set out the dispute and demonstrate an understanding of the nature of the claim, as I am doing in these reasons.

[54] Establishing the existence of a contract formed in the relevant jurisdiction is a precondition for the rest of the analysis. It is a critical step and must not be glossed over. A contract is a legal construction and must be established by reference to legal

principles. Except in cases where the existence of the Ontario contract is obvious and undisputed, it is incumbent on parties seeking to rely on the fourth presumptive factor to plead the facts necessary to make out the essential elements of a contract — namely, offer, acceptance, and consideration (see *Lapointe*, at paras. 40-42). Merely a general sense that a contractual relationship exists is insufficient. A failure to plead with sufficient particularity the existence of a contract will necessarily foreclose a finding of a real and substantial connection on the basis of that contract. However, pleading the essential elements of a contract connected with the dispute does not require the plaintiff to plead breach of contract. As with the third-party claims in *Lapointe*, the statement of claim can be founded entirely in tort.

[55] If a party pleads a connection on the basis of multiple contracts, the court should assess each contract to determine if it can support a connection between the forum and the dispute. Parties should not take this as an invitation to plead on the basis of a vague “constellation of contracts”. Multiple contracts that are each, on their own, insufficient to support the establishment of jurisdiction cannot, together, be taken to ground a real and substantial connection. The question has always been whether there is *a* contract formed in the relevant forum that is connected with the dispute. Without such, there is no pathway to establishing the real and substantial connection between the forum and the dispute, which animated LeBel J. in *Van Breda*.

[56] In many if not most cases, it will be unnecessary for courts to undertake a formal contractual analysis to determine whether a contract exists and where it was

formed. Typically, the existence and features of a contract will be obvious from the pleadings (see *Van Breda* and *Lapointe*). In other instances, however, it will not be immediately apparent from the pleadings whether a contract exists, who the parties to that contract are, and where the contract was formed. It is imperative that a court sort out any ambiguity in these details before conducting the rest of the analysis because these details will inform the assessment of the strength of the connection based on the contract.

[57] On the subject of pleadings, I agree with my colleague in dissent that pleadings, in the absence of contradictory evidence, may be accepted for their factual assertions, as I do throughout these reasons. But they cannot be accepted for bare legal propositions or conclusions (*Abaxx Technologies Inc. v. Pasig and Hudson Private Ltd.*, 2024 ONCA 164, at para. 17).

[58] Once the court is satisfied that there is indeed a contract that was formed in the relevant forum, the next question is whether that contract is “connected with the dispute”. Our Court’s decision in *Lapointe* applied *Van Breda*’s fourth presumptive connecting factor, holding that a contract formed in the relevant forum will be connected with the dispute if “a defendant’s conduct brings him or her within the scope of the contractual relationship and [if] the events that give rise to the claim flow from the relationship created by the contract” (*Lapointe*, at para. 44; see also *Van Breda*, at paras. 116-17). A tortfeasor need not be a party to the contract nor have his or her

liability flow immediately from his or her contractual obligations (*Lapointe*, at para. 32).

[59] Establishing this presumptive connecting factor is an objectively ascertainable and relatively low bar (*Haaretz.com v. Goldhar*, 2018 SCC 28, [2018] 2 S.C.R. 3, at para. 30). My colleague refers to Ontario case law that links — without explanation — our Court’s guidance respecting the threshold to establish jurisdiction *simpliciter* with the “good arguable case” standard that has emerged within Ontario’s jurisprudence. Despite the fact that the motion judge applied the “good arguable case” standard at first instance in *Van Breda*, it did not form part of the Court of Appeal’s judgment, nor did it factor into our Court’s seminal reasons in that case. “Good arguable case” is also absent from *Lapointe*, *Haaretz.com*, and the respective decisions below in those cases. Similarly, in the instant case, while the motion judge applied the “good arguable case” standard (at paras. 29-31), neither the majority nor the concurring reasons of the Court of Appeal engage with it. More importantly, as my colleague himself acknowledges, the parties have not raised a question as to whether the standard of the “good arguable case” should apply within the *Van Breda* framework (para. 229). This is, quite evidently, not the appropriate case to pronounce on the applicability of this standard.

[60] Contrary to my colleague’s assertion, whether the “good arguable case” standard applies to jurisdiction *simpliciter* is far from being settled. My colleague relies on S. G. A. Pitel, *Conflict of Laws* (3rd ed. 2025), at pp. 114-15, for the proposition

that invoking the “good arguable case” standard is the “orthodox approach” on a jurisdiction *simpliciter* motion (Jamal J.’s reasons, at para. 228). However, what Pitel merely states is that where there is a factual contradiction between the plaintiff’s and the defendant’s pleadings, the plaintiff must show a good arguable case that its view of the facts will prevail. It is noteworthy that Pitel goes on to reject emphatically the application of the “good arguable case” standard to the legal question of whether a presumptive connecting factor has been established:

It is important to appreciate the specific context in which the lower, good arguable case standard is being used. This should not be conflated with the broader issue of whether the court has jurisdiction *simpliciter*. An example of this error can be seen in cases that require the plaintiff to show a good arguable case that a presumptive connecting factor has been established at common law or that there is a real and substantial connection under the [Court Jurisdiction and Proceedings Transfer Act]. To take jurisdiction, the court should at least have to consider that the plaintiff’s side of the argument on the issue is stronger than the defendant’s. After all, for the other bases of jurisdiction, it needs to be more than just arguable that the defendant was present or resident in the forum or has attorned. [Emphasis added; footnote omitted; p. 115.]

[61] Using mere “arguability” as the standard would mean that courts could assume jurisdiction even where the plaintiff’s case in favour of jurisdiction, though arguable, is plainly weaker than the defendant’s case against jurisdiction. This standard would make sense, for instance, in the context of a motion for interlocutory relief. By contrast, using the standard of “arguability” to actually decide an issue that is totally different in terms of its finality — one as fundamental as jurisdiction *simpliciter* — would raise serious concerns respecting the legitimacy of judicial authority that would require real examination.

[62] With great respect, my colleague’s venture to justify the “good arguable case” standard in the context of jurisdiction *simpliciter*, including his reliance on a cluster of Ontario cases that do not grapple with the propriety of its rationale, only highlights the need for proper submissions on the issue. For the purposes of this appeal, where the parties did not raise the issue and were not on notice that it would be adjudicated upon — suffice it to say that the standard for establishing a presumptive factor is low.

[63] In cases where there are multiple defendants, jurisdiction should be examined from the perspective of each defendant rather than in light of the factual and legal situation writ large. The reason for examining jurisdiction from the perspective of each defendant is that, when a court takes jurisdiction over a claim, it assumes the authority not only to adjudicate the claim but also to make orders against each defendant. For this power to be exercised legitimately, the court must be satisfied that the requisite connection exists in respect of each defendant who may be subject to that power. An assumption of jurisdiction without the requisite connection amounts to judicial overreach. As such, there should be no “bootstrapping”, where the legitimate establishment of jurisdiction over one defendant is taken uncritically to imply jurisdiction over all defendants. This includes cases where, as here, one defendant attorns to the court’s jurisdiction but the others resist it. There must be a presumptive connecting factor that applies to each defendant.

[64] Despite my colleague's statement that I am applying a "narrow interpretation" of the fourth presumptive connecting factor, I say with certainty that this is not the case (see Jamal J.'s reasons, at para. 250). Rather, I am offering thorough and principled reasons by faithfully applying *Van Breda* and drawing on the application of that case by the majority in *Lapointe*. I must also add that I agree with the concurring judge's statement, at para. 49 of her reasons, that "the more broadly one approaches the question of the existence of a presumptive connecting factor, the more relevant is the question of what should be considered at the rebuttal stage".

[65] If stage one is satisfied, a court has presumptive jurisdiction and can proceed on that basis. The defendant bears the onus of asserting a rebuttal argument.

(b) *Stage Two: Has the Presumption of Jurisdiction Been Sufficiently Rebutted?*

[66] At this stage, the onus shifts to the defendant challenging jurisdiction, who must prove that the strength of the contract's connection with the forum, the subject matter of the dispute, and the defendant is non-existent or weak (*Van Breda*, at paras. 81, 92 and 95-97; *Lapointe*, at para. 27; *Haaretz.com*, at para. 40). This stage tests the strength, as opposed to the existence, of the connection between the contract and the forum, the subject matter of the dispute, and the defendant.

[67] First, the contract's relationship to the forum and the subject matter of the dispute can be assessed with regard to factors such as contract formation, how and

where the contract contemplated performance, the *situs* of the tort, and the location of the parties. These considerations will allow a court to gauge the strength of the connection between the underlying contract on which the plaintiff relies to ground jurisdiction and the forum in which jurisdiction has been presumptively assumed.

[68] While the details of contract formation are critical to establishing the *existence* of a connection at the first stage, they, too, can be relevant to analyzing the *strength* of that connection at the rebuttal stage as well. For instance, if a contract was formed in a forum for little more than technical reasons and its subject matter and terms pertain entirely to another jurisdiction, the relationship between the contract and the forum may be said to be weak. Conversely, a contract that is meaningfully tied to the forum in which it was formed will provide a stronger basis for that forum's assumption of jurisdiction.

[69] The connection between the contract and the subject matter of the dispute will similarly depend on the specific terms of the contract. Where the dispute flows directly from the obligations set out in the contract, as in *Van Breda*, the relationship between the contract and the dispute will be strong. By contrast, if the contract is connected with the dispute only remotely through a chain of contracts formed in other jurisdictions, or if the contract does not instruct or govern the defendant in a capacity relevant to the dispute, the contract may be said to bear a weaker relationship with the dispute.

[70] Another factor relevant to the degree of connection between the contract and the subject matter of the dispute is whether the court would need to interpret or adjudicate the contract to decide the dispute. I agree with the Sinclairs that where the contract is merely peripheral or adds context to the dispute but does not itself bear on whether or why the defendant's conduct was tortious, the relationship may be seen to be weak (A.F., at para. 107).

[71] Second, the presumption of jurisdiction may be rebutted as against a defendant if there is no connection or only a weak connection between the contract and that defendant. If a contract bears only a remote connection to any particular defendant, that contract cannot be said to support the legitimate exercise of judicial authority over that defendant. It may be useful for a court, in asking this question, to consider whether the defendant would have reasonably expected to be subject to the forum's jurisdiction for reasons relating to the contract.

[72] My colleague states that "the rebuttal test does *not* inquire into the defendant's reasonable expectations; instead, the *legal consequence* of rebutting a presumptive connecting factor is that it is unreasonable to expect the defendant to be called to answer proceedings in the forum" (para. 218 (emphasis in original)). With respect, I find this distinction formalistic. Asking about the defendant's reasonable (that is, objective) expectations is simply another way of thinking about whether the defendant is meaningfully connected to the forum. I see no reason why courts should not be able to invoke this line of thought when it is useful. Nor do I find this to be

prevented, as my colleague in dissent does (at paras. 205 and 218), by the fact that, in *Van Breda*, LeBel J. cited La Forest J.'s caution from *Tolofson* against constructing a system of law based on the expectations of the parties. LeBel J. cited that passage in his overview of the origins of the real and substantial connection test and, despite doing so, went on later in his reasons to hold that the reasonable expectations of the defendant are a legitimate factor to consider at the rebuttal stage.

[73] The factors set out above are merely examples of factors that may be relevant to whether the defendant has rebutted the presumption of jurisdiction. The analysis is case-specific, contextual, and always ultimately concerned with whether the contract does or does not, in substance, ground a real and substantial connection between Ontario and the dispute. In other words, care must be taken not to lose sight of the forest for the trees.

[74] The Sinclairs, relying on *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181, 38 B.C.L.R. (6th) 99, and *Giustra v. Twitter, Inc.*, 2021 BCCA 466, 59 B.C.L.R. (6th) 55, argue that the rebuttal stage imposes a “heavy” burden on the defendant (A.F., at para. 95). I disagree. As the intervener the British Columbia Chamber of Commerce puts it, “[t]he rebuttal stage of the *Van Breda* framework involves a shift in burden and perspective, not a shift in difficulty” (I.F., at para. 18 (emphasis deleted)). This observation highlights the fact that the two stages of the test work in tandem with an ultimate view to establishing whether there is a real and substantial connection.

[75] In the same vein, the rebuttal analysis must be sensitive to the approach taken at the first stage. In the court below, the concurring judge stated that our Court has “taken an increasingly functional approach to the question of whether there is a contract ‘connected to’ the dispute” (para. 49). I agree with her that “the more broadly one approaches the question of the existence of a presumptive connecting factor, the more relevant is the question of what should be considered at the rebuttal stage” (para. 49). Again, the two stages are complementary, both aimed at ensuring that there is a real and substantial connection between the forum and the dispute.

[76] There has been some academic commentary observing that courts do not reliably address the rebuttal stage but instead focus exclusively on the first stage of the *Van Breda* test (Pitel, at pp. 107-9). It is important that parties plead with sufficient precision to make their positions on each stage of the test clear and that courts offer responsive reasons that address all of the relevant arguments. I hope that the guidance set out in these reasons will facilitate the ability of litigants and courts to do so.

(3) Distinguishing Between Jurisdiction *Simpliciter* and *Forum Non Conveniens*

[77] Before turning to the application of the two stages of the *Van Breda* test in the instant case, it is important to recall that both of these stages, which together make up the test for jurisdiction *simpliciter*, are analytically distinct from the issue of *forum non conveniens*. The issue of *forum non conveniens* is not before our Court in this appeal, but it nonetheless bears recalling the distinction between the two doctrines.

[78] *Forum non conveniens* is a common law doctrine that allows a court to stay a civil action when the court has jurisdiction over the case and the parties. In other words, this doctrine operates only once jurisdiction has already been assumed. *Forum non conveniens* is a discretionary remedy which allows a court properly seized with jurisdiction to decline to exercise it. This remedy is adopted on occasions where an alternative appropriate forum would be a more convenient venue in which to try the action. As a doctrine, it has no bearing on the jurisdictional analysis itself, as it comes into play only after jurisdiction has been established (*Van Breda*, at para. 102).

[79] As explained by our Court in *Van Breda*, the doctrine of *forum non conveniens* “tempers the consequences of a strict application of the rules governing the assumption of jurisdiction” (para. 104). This purpose is grounded in recognition of the fact that the assumption of jurisdiction is based on objective factual connections, which could at times produce rigid or inflexible results that fail to consider the actual circumstances of the parties. As such, the doctrine of *forum non conveniens* recognizes the residual discretion of courts to decline to exercise their jurisdiction (once established) where fairness to the parties and the efficient resolution of the dispute so require (*Van Breda*, at para. 104).

[80] Jurisdiction *simpliciter* is not discretionary. This is a key distinction with the doctrine of *forum non conveniens*. Jurisdiction is assumed on the basis of objective factors. If the assumption of jurisdiction results in unfairness or inefficiency, a party can seek to move the matter to a different forum. In this way, *forum non conveniens* can be relied

upon to address the case-specific, subjective interests of the parties, but it does not bear on the assumption of jurisdiction itself. The two frameworks should not be confused nor conflated.

[81] Some potential confusion regarding the distinction between jurisdiction *simpliciter* and *forum non conveniens* stems from the fact that the jurisdiction *simpliciter* analysis, as formulated by this Court in *Van Breda*, itself has two stages: (1) whether there is a presumptive connecting factor; and (2) whether the presumption of jurisdiction can be rebutted. Just as the two stages of the *Van Breda* test must not be collapsed, special care must be taken not to collapse the rebuttal stage into the distinct doctrine of *forum non conveniens*. In oral argument, counsel for the British Columbia Chamber of Commerce submitted that the rebuttal stage of the presumptive factor analysis is “concerned with legitimacy and [an assessment of] the strength of the [contractual] connection [to the tort in question], whereas *forum non conveniens* is concerned with the interests of the parties and the ends of justice” (transcript, at p. 86). I agree with this submission.

B. *Application*

(1) Stage One: Was a Contract Connected With the Dispute Made in the Province?

[82] I turn now to the application of the *Van Breda* test to the facts of this case. While my colleague is correct to note that both Amex Canada and Carey International

have attorned to Ontario's jurisdiction (at paras. 148, 167 and 172), I disagree that this attornment can be used to "establis[h] a presumption that the Ontario court has jurisdiction over the claims against the Italian defendants" (para. 152).

[83] The first step in applying the fourth presumptive factor is to identify the contract, or all contracts, that could potentially be relevant. I stress again that the exercise of identifying contracts requires specificity; merely a general sense that a contractual relationship arose is not enough. Nor is it sufficient for the plaintiff to show that some sort of non-contractual agreement was reached. This means that a court must be satisfied that offer, acceptance, and consideration — the necessary ingredients of a contract — were present before concluding that a particular contract exists. Again, courts should consider each relevant contract as opposed to more broadly considering the combined effect of a "constellation of contracts".

[84] As stated above, in many cases, there will be no dispute as to the existence of a contract, nor as to its features or place of formation. This is not one of those cases. As a result, it is essential to assess the pleadings with a view to ascertaining what contracts truly existed, what their underlying purpose was, and where they were formed.

[85] To conduct my analysis, I will first set out the positions of the parties and the lower courts with respect to what contracts existed. I will then analyze those positions in light of the rules of contract formation, and I will review the facts in search of any other possible contractual relationships.

(a) *Parties' Positions and Lower Courts' Findings on the Relevant Contracts*

[86] The parties' positions and the lower courts' findings on what contracts were formed, where they were formed, and what their purpose was are framed in varying terms. As such, I survey them before proceeding to my analysis.

(i) The Sinclairs at First Instance

[87] At first instance, the Sinclairs set out their view of the operative contracts at paras. 37-38 of their factum:

The first Ontario contract is between Mr. Sinclair and Amex. The offer and acceptance of that contract occurred in Ontario between two Ontario-based parties. Mr. Sinclair resides in Ontario and contracted with Amex through its Ontario office. The contact information that Amex provided in its travel itinerary for the Sinclairs was for its office in Toronto and included local Toronto phone numbers. Before and during the Sinclairs' trip, Mr. Sinclair was in contact with Amex representatives via those phone numbers and by email.

The second Ontario contract is between Amex and Carey. Jennifer Chu, of Amex's Toronto office, made the arrangements on Mr. Sinclair's behalf for local transportation from the Venice airport through a subcontract with Carey. Carey has an office and registered attorney for service in Ontario. Ms. Chu provided the booking confirmation for those arrangements to Mr. Sinclair as part of Mr. Sinclair's contract with Amex. [Emphasis added; footnotes omitted.]

(A.R., vol. II, at p. 125)

[88] With respect to the first contract, described at para. 37, it is unclear whether the Sinclairs were referring to the Centurion Cardmember Agreement between

Mr. Sinclair and Amex Canada or instead to a separate agreement between Mr. Sinclair and Amex Canada for the booking of the trip. None of these agreements have been produced, so the record does not reveal more information.

(ii) The Italian Defendants at First Instance

[89] The Italian defendants, in their factum in the Ontario Superior Court of Justice, described the contracts in vague terms:

Mr. Sinclair was in Italy when he booked the water-taxi. He did so by placing a call to Amex Canada Inc. This booking was confirmed by Ms. Chiu [*sic*], a representative of Amex Canada Inc., by way of email received by Mr. Sinclair in Italy. It is submitted that this contract was made in Italy.

(A.R., vol. II, at p. 108)

(iii) Motion Judge

[90] At paragraph 31 of her reasons, the motion judge asserted that there were three relevant contracts: (1) a contract between the Sinclairs and Amex Canada for the Centurion Card; (2) a contract between the Sinclairs and Amex Canada for the “booking of the water taxi”; and, (3) a contract between Amex Canada and Carey International for the water taxi transportation (reproduced in A.R., vol. I, at pp. 5-6). She found all three of these contracts to have been formed in Ontario.

(iv) Court of Appeal

[91] The majority of the Court of Appeal focused on the contract between the Sinclairs and Amex Canada, at para. 32:

[The Italian defendants] have rebutted [the presumption of jurisdiction] by demonstrating that the contract, that is the contract between the [Sinclairs] and Amex Canada, has little or nothing to do with the subject matter of the litigation. [Emphasis added.]

[92] The concurring judge did not address this point directly, though she seems to have proceeded on the basis that the relevant contracts were the Centurion Cardmember Agreement as well as a contract for the water taxi in Italy. At paragraphs 77-78 of her reasons, she wrote:

The identity of the party with whom the [Sinclairs] were dealing with was AMEX Canada for the Centurion card and for the booking of the water taxi in Venice Italy, and those contracts were formed in Ontario. The motion judge then found that a presumptive connecting factor between the subject of the litigation and the court's jurisdiction had been established.

To reiterate, as the motion judge properly found here, the [Italian defendants'] allegedly tortious conduct in their discharging of the water taxi services flowed from the Centurion Cardholder Agreement, a contract undoubtedly formed in Ontario, and which provided for the booking of services, such as the water taxi. [Emphasis added.]

[93] She later quoted the motion judge's reasons referring to a contract between Amex Canada and Carey International for the water taxi transportation, but she made no commentary on it herself:

The motion judge then more specifically turned her mind to the particular defendants and concluded, at para. 31, that "the [Sinclairs] have

established a good arguable case that the contracts between AMEX Canada and the [Sinclairs], and the contract with AMEX Canada and Carey International for the water taxi transportation, has some connection with the dispute, for the court in Ontario to assume jurisdiction”. [Emphasis deleted; para. 79.]

(v) The Sinclairs Before Our Court

[94] Before our Court, the Sinclairs have refined their position and now endorse the motion judge’s view that there were three operative contracts, which they describe as follows: (1) the Centurion Cardmember Agreement pleaded in Amex Canada’s statement of defence and crossclaim; (2) the Sinclairs’ travel booking with Amex Canada (which included the water taxi ride); and, (3) a contract between Amex Canada and Carey International whereby Amex Canada hired Carey International to facilitate the Sinclairs’ transportation (A.F., at para. 31).

(vi) The Italian Defendants Before Our Court

[95] While the Italian defendants appear to acknowledge the three contracts as laid out by the Sinclairs, they add certain caveats. With respect to the Centurion Cardmember Agreement, they point out that it was not in evidence in the courts below nor were any of its terms and conditions (R.F., at para. 51). As for the contract Mr. Sinclair made for the water taxi, the Italian defendants here argue that it was not an Ontario contract but rather a contract made in Italy because that is where Mr. Sinclair was at the time of its formation (paras. 53-54). They also seem to question whether

Mr. Sinclair's act of booking a water taxi constituted a contract at all, by placing quotation marks around the word "contract" in their written submissions:

As Mr. Sinclair was in Italy when he made the booking and received the confirming email, this "contract" with AMEX is not an Ontario contract, but rather a contract made in Italy. [Footnote omitted; para. 54.]

[96] Moreover, during oral argument, counsel for the Italian defendants suggested that the contract Mr. Sinclair made for the water taxi was formed "at the dock" in Italy (transcript, at p. 50).

(b) *Analysis of the Contracts*

[97] The foregoing reveals a lack of precision as it relates to the possible contract scenarios. That said, it appears that a consensus has emerged on the existence of three possible contracts:

1. the Centurion Cardmember Agreement between Mr. Sinclair and Amex Canada;
2. the water taxi booking between Mr. Sinclair and Amex Canada; and
3. the "contract" between Amex Canada and Carey International to subcontract the procurement of travel services.

[98] I do not dispute that at least some of these parties entered into contractual relationships with each other. However, the existence of a commercial or consumer transaction is not itself proof of an Ontario contract, nor is the mere assertion that a contract must have existed to set in motion the events necessary for the tortious conduct to occur. The party asserting jurisdiction must point to an actual contract connected with the dispute that was in fact formed in Ontario. For this reason, in the discussion that follows, I analyze each of the three purported contracts against the basic tenets of contract formation. Recall that, in Ontario, a contract is formed based on an offer by one party accepted by the other, or by an exchange of promises, supported by consideration. Put in plainer language, a contract is formed where the last essential act of contract formation occurs. This means, as MacPherson J.A. of the Court of Appeal for Ontario stated, “a contract is formed when and where acceptance is received by the offeror” (*Eastern Power Ltd. v. Azienda Comunale Energia & Ambiente* (1999), 178 D.L.R. (4th) 409 (Ont. C.A.), at para. 23; see also paras. 27-29). This point was repeated and cited by our Court in *Lapointe*: “In Ontario, it is well established that when acceptance of a contract is transmitted instantaneously, acceptance will be considered notified in the place where it is received” (para. 79).

[99] While *Eastern Power* was a 1999 decision that dealt with the electronic transmission of an acceptance by facsimile, its holding has stood the test of time: where a contract is made by electronic communication, the contract is made in the jurisdiction where the acceptance is received (P. M. Perell and J. W. Morden, *The Law of Civil Procedure in Ontario* (5th ed. 2024), at ¶2.598).

(i) Centurion Cardmember Agreement Between Mr. Sinclair and Amex Canada

[100] The Sinclairs bear the onus of showing that an Ontario contract is presumptively connected to their claim; it has to be a contract that is connected with the subject matter of the claim, i.e., the events that occurred in Venice, Italy.

[101] While there is no dispute that Mr. Sinclair was a Centurion cardmember pursuant to a contract between him and Amex Canada, as pointed out by the Italian defendants, the Centurion Cardmember Agreement was not in evidence in the courts below, nor were any of its terms and conditions. Pleading with sufficient particularity is important. Far from being an onerous demand, pleading where a contract was formed is a minimum requirement when arguing that jurisdiction can be established on the basis of that contract.

[102] Generally, a credit card holder pays a fee to a financial services company in exchange for credit card services. A credit card contract, like any contract, is formed in the location where the acceptance was received. But in this case, we have nothing relating to the location in which the Centurion Cardmember Agreement was formed, beyond the assertion made in the Sinclairs' statement of claim that the damages they allegedly suffered arose from "a contract made in Ontario" (A.R., vol. II, at p. 10).

[103] This assertion has not been contested by Amex Canada. With that in mind, despite the lack of sufficient particularity in the Sinclairs' pleadings, when reading the

pleadings generously it is likely that the Centurion Cardmember Agreement was formed in Ontario, as both Mr. Sinclair and Amex Canada are domiciled and have a presence there, although one may argue that this is merely an inference. And of course, establishing jurisdiction on the basis of an inference would ordinarily raise serious concerns regarding the legitimate exercise of judicial power, but I am prepared to accept, for the purposes of these reasons, that this contract was formed in Ontario.

(ii) Water Taxi Booking Between Mr. Sinclair and Amex Canada

[104] In addition to the Centurion Cardmember Agreement, the parties suggest, as did the courts below, that there was a second contract between Amex Canada and the Sinclairs, specifically for the booking of the water taxi. The motion judge made reference to “the booking of the water taxi in Venice Italy” as a contract formed in Ontario between the Sinclairs and Amex Canada (para. 31). The Sinclairs frame it as “Mr. Sinclair’s travel booking with AMEX (which included the water-taxi ride)” (A.F., at para. 31). My colleague in dissent posits that Amex Canada booked the water taxi on Mr. Sinclair’s behalf by contacting Carey International (para. 264).

[105] In my view, the record does not bear out the existence of this “contract”. To understand the nature of this booking, it is necessary to understand the scope of the Centurion Cardmember Agreement. Amex Canada explained in its statement of defence and crossclaim that “Centurion Cardmembers enjoy a number of benefits, including access to dedicated concierge and travel agent services for booking

personalized travel services such as car services, flights and hotel accommodations. All travel bookings are made through Centurion Travel Service” (A.R., vol. II, at p. 14).

[106] There is no indication that cardmembers have to pay an additional fee to access these services outside of the credit card fee itself. In other words, although cardmembers pay for all of the travel reservations that Amex Canada books on their behalf, they do not provide consideration over and above the cardmember fee to Amex Canada for the service of each booking. Thus, when a cardmember makes a travel booking, this does not consummate a new contract between the cardmember and Amex Canada, but is rather an instance of performance by Amex Canada of the underlying cardmember agreement.

[107] When Mr. Sinclair called Amex Canada from Florence, Italy, to book a water taxi for Venice, he was accessing the benefits available to him pursuant to this cardmember agreement. When Amex Canada acted on his request, it was performing that contract. In sum, on the basis of the record, it cannot be established that there was a second contract between the Sinclairs and Amex Canada for the booking of the water taxi.

- (iii) “Contract” Between Amex Canada and Carey International to Facilitate the Water Taxi Service

[108] The Sinclairs suggest, as did the motion judge, that there was a contract between Amex Canada and Carey International relevant to this dispute. In their submissions before the motion judge, the Sinclairs stated:

As part of Amex's arrangements, it subcontracted with Carey to provide services for the Sinclairs in Venice.

...

The second Ontario contract is between Amex and Carey. Jennifer Chu, of Amex's Toronto office, made the arrangements on Mr. Sinclair's behalf for local transportation from the Venice airport through a subcontract with Carey. . . .

...

. . . There was no new contract formed among the Ontario Defendants when Mr. Sinclair requested that Amex arrange transportation from the airport to his hotel in Venice. That arrangement was all part of the contract between Mr. Sinclair and Amex, and Amex's subsequent contract with Carey. [Footnotes omitted.]

(A.R., vol. II, at pp. 120 and 125-26)

[109] The Italian defendants made the following suggestion in their submissions before the Court of Appeal:

Presumably the reservation was made pursuant to an agreement/contract between AMEX Canada Inc. and Carey International Inc. No such agreement was in evidence on the motion.

(A.R., vol. II, at pp. 159-60)

[110] For its part, in its statement of defence and crossclaim, Amex Canada said that it engages third-party suppliers "at the request and on behalf of Centurion Card

members”, but stopped short of alleging the existence or terms of any contract between it and Carey International:

Centurion Travel Service routinely engages third party travel suppliers, at the request and on behalf of Centurion Card members, for the provision of travel services to such Centurion Card members.

(A.R., vol. II, at p. 14)

[111] The facts relevant to this purported contract are as follows. Mr. Sinclair placed a call from Florence, Italy, on July 24, 2017, to procure transportation from Marco Polo Airport in Venice to the Westin Europa Hotel for him and his family (statement of defence and crossclaim, reproduced in A.R., vol. II, at p. 16). He spoke to an agent of Amex Canada, Jennifer Chu, to facilitate this request (C.A. reasons, at para. 8).

[112] On July 25, 2017, at 2:49 a.m., Carey International emailed a reservation confirmation and estimated quote to Ms. Chu. It stated that the service provider was to be “Tripitaly Dr SRL Carey Italy” and offered a quote of “US\$764.03 + incidentals” (affidavit of Duncan Sinclair, reproduced in A.R., vol. II, at pp. 94-96). On July 25, 2017, at 3:12 a.m., Ms. Chu forwarded the quote and confirmation of booking from Carey International to Mr. Sinclair via email (A.R., vol. II, at p. 93).

[113] On July 25, 2017, at 11:42 a.m., Venezia Turismo received an email from Medov confirming a water taxi reservation for Mr. Sinclair (R.R., at pp. 50-51). On the same day, Venezia Turismo called Mr. Dordit (a driver employed by Venice

Limousine) and dispatched him to collect the Sinclairs (cross-examination of Fabio Sacco, reproduced in A.R., vol. III, at p. 63; affidavit of F. Sacco, reproduced in R.R., at p. 11).

[114] Later on July 25, 2017, the Sinclairs arrived in Venice. They took a van to a water taxi terminal and boarded a water taxi owned by Venice Limousine and operated by Mr. Dordit (affidavit of D. Sinclair, at p. 82). They boarded the vessel with an Italian tour guide. A representative of Carey International was also on the vessel (statement of claim, reproduced in A.R., vol. II, at p. 7). The accident occurred while the vessel was in motion.

[115] In my view, and contrary to my colleague's view, this chain of events does not reveal that a contract had formed between Amex Canada and Carey International. My colleague states that Amex Canada "*admits* in its pleading that it entered into this contract by engaging Carey International 'on behalf of the [Sinclairs]'" (para. 268 (emphasis in original; text in brackets in original)). This statement is inaccurate. Not only did Amex Canada never admit that it "entered this contract" with Carey International, but my colleague's statement also stands in contrast to the following excerpt from Amex Canada's statement of defence and crossclaim, at para. 15:

Centurion Travel Service did not make any arrangements for Carey to subcontract water taxi services for the Sinclairs for any part of their trip to Europe, including water taxi services allegedly provided by the Defendant Venezia Turismo in Venice, and was not involved in any such arrangements.

(A.R., vol. II, at p. 16)

[116] My colleague acknowledges this pleading at para. 168 of his reasons. Given that we must accept factual assertions in pleadings as true, absent contrary evidence, I therefore do not accept the contention that a contract existed between Amex Canada and Carey International.

[117] In contacting Carey International's reservation services, Amex Canada was acting not on its own behalf, but as an agent for Mr. Sinclair, as the motion judge herself acknowledged (para. 17; see also statement of defence and crossclaim, at paras. 14 and 24). Amex Canada had actual authority pursuant to the Centurion Cardmember Agreement and the direction given by Mr. Sinclair, and it did in fact act on his behalf (G. H. L. Fridman, *Canadian Agency Law* (3rd ed. 2017), at pp. 161-62). And, when an agent enters into a contract on behalf of its principal, it is the principal who becomes a party to the contract, not the agent (*Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842, at para. 15).

[118] This raises the possibility that a contract may have been formed between Mr. Sinclair and Carey International, with Amex Canada acting as an agent for Mr. Sinclair. In this scenario, Mr. Sinclair, through his agent, would have made an offer to compensate Carey International for reserving the water taxi on his behalf. The contract in this instance would have been for the booking service, not the water taxi itself. The reservation confirmation from Carey International to Amex Canada would be evidence of performance. This is what Amex Canada, in its statement of defence and crossclaim, suggested had occurred:

On or about July 25, 2017, Mr. or Mrs. Sinclair contacted Centurion Travel Service to request an additional booking with Carey for transportation services from Venice International Airport to the Westin Europa Hotel. As requested by Mr. or Mrs. Sinclair, Centurion Travel Service made the requested booking on behalf of Mr. Sinclair, and Carey charged Mr. Sinclair for this service, using Mr. Sinclair's Centurion Card.

(A.R., vol. II, at p. 16)

[119] It is possible, as a matter of law, for a reservation to constitute a contract. The most typical example of a reservation contract is when a buyer pays a fee to a seller to reserve his or her right to purchase something at a later date. The fee is consideration for the reservation, separate and apart from the price that the buyer will later pay in consideration for the purchase itself (*Way v. Schembri*, 2020 ONCA 691, 8 B.L.R. (6th) 158, at para. 23). However, when not supported by consideration, a reservation does not constitute a contract.

[120] In this case, the facts necessary to establish that the reservation from Carey International constituted a contract with Mr. Sinclair have not been alleged. In order to establish that a contract existed in these circumstances, the Sinclairs would have to show that Mr. Sinclair compensated or agreed to compensate Carey International for the reservation service. We have no evidence that compensation was stipulated or paid. The quote provided in the reservation confirmation was an estimate of what Mr. Sinclair would have to pay to a different service provider, Tripitaly Dr SRL Carey Italy, for the water taxi ride itself. It was not a fee owing to Carey International for the reservation service.

[121] Mr. Sinclair's Amex Canada statement of account for the period of July 6 to August 5, 2017, shows three stand-alone charges by "Carey Washington": the first on July 20 for US\$323.75, the second on July 24 for US\$314.85, and the third on July 25 for US\$222.19. The charge on July 25, the day Carey International provided the reservation confirmation, matches the price listed on the Sinclairs' travel itinerary for a transfer service by Carey Limo from the airport in Florence to a hotel, which took place on July 21. That could not have been consideration for the reservation. The charges on July 20 and 24 predate the reservation confirmation. When asked to identify what these three charges were for, Mr. Sinclair was unable to say (R.R., at p. 63). Based on this record, it cannot be concluded that there was consideration flowing from Mr. Sinclair to Carey International. This stands in contrast to the assertion by Amex Canada in its statement of defence and crossclaim that Carey International "charged Mr. Sinclair for this service, using Mr. Sinclair's Centurion Card" (A.R., vol. II, at p. 16), an assertion on which my colleague in dissent relies (Jamal J.'s reasons, at paras. 168, 179 and 289).

[122] In these circumstances, it is simply not possible to infer that there was a contract between Mr. Sinclair and Carey International, because there are many possible contractual arrangements that could account for Carey International's role. For example, it is plausible that Amex Canada had an underlying service contract with Carey International, predating the request for the water taxi booking, to provide reservations at the request of its cardmembers. Another possibility on these facts is that Carey International was in a contractual relationship with any of Medov, Venezia

Turismo, Venice Limousine, or Tripitaly Dr SRL Carey Italy, whereby Carey International would solicit reservations and receive commission or some other form of payment from those companies. All of this is to say that the pleadings are not sufficient to draw a conclusion in respect of any contractual relationship, let alone any Ontario contract, involving Carey International.

(iv) Water Taxi Contract

[123] The Sinclairs argue that one or more Ontario contracts governed or led to the water taxi ride during which the accident occurred. The contract actually relating to the provision of the water taxi is obviously the contract closest to the dispute and is thus the most relevant contract for the jurisdiction issue. As I have already concluded, the contract contemplating water taxi services in Venice, as advanced by the Sinclairs, either did not exist or was not formed in Ontario. By contrast, the Italian defendants argue that the water taxi contract was formed at the dock in Venice. Whether the Italian defendants are correct in this contention or not does not change the fact that the Sinclairs have not demonstrated that the water taxi contract was formed in Ontario. As such, either possibility leads us to the same result.

[124] As described above, the genesis of the water taxi contract was a call that Mr. Sinclair made to Ms. Chu while he was in Italy. Mr. Sinclair then received an email, sent from Carey International and forwarded to him by Ms. Chu, containing a “reservation” and an “estimated quote” for the water taxi. There is no indication that Carey International was taking on an obligation on behalf of Venezia Turismo, Venice

Limousine, or Mr. Dordit, nor acting as an agent of any of them by conveying the quote and reservation. The quote set out in that email was merely an estimate of what Mr. Sinclair would have to pay when he entered into a contract at a later time with either Venezia Turismo or Venice Limousine through Mr. Dordit.

[125] Many important details about the water taxi ride are unknown. There is no indication of how much Mr. Sinclair agreed to pay for the water taxi or of whether he paid at all, let alone whether he paid with his Centurion Card. Nonetheless, it is obvious to me that when Mr. Sinclair arrived at the dock, he would have entered into a contract with one or more of the Italian defendants, whereby he was to pay a sum of money (presumably approximating the quote set out in the reservation) and they were to provide the water taxi ride. I have no doubt that the water taxi was not intended to be complimentary. My point is not to find as a fact that the water taxi contract was formed in Italy. Rather, I point out that the Sinclairs have not shown how it could have been formed in Ontario. Even mere conjecture weighs against their case.

[126] There would also have been at least two other Italian contracts connected to the water taxi ride: a dispatching agreement between Venezia Turismo and Venice Limousine and an employment or independent contracting agreement between Venice Limousine and Mr. Dordit. Of course, neither of these contracts is operative for the purpose of establishing Ontario's jurisdiction over the dispute because neither was formed in Ontario.

[127] In conclusion, while I accept for the purposes of these reasons that the Centurion Cardmember Agreement is an Ontario contract, the record is otherwise insufficient to establish that the other contracts alleged to be connected with the dispute were made in Ontario. As such, *Van Breda*'s fourth presumptive connecting factor — which requires that a contract *connected* with the dispute be made in the province — has not been established regarding the latter two contracts. This is because the Sinclairs have not proven them to have been formed in Ontario.

[128] Assuming that the Centurion Cardmember Agreement was made in Ontario, I turn to whether it was “connected with” the dispute as *Van Breda* requires. The events that gave rise to the claim are the making of arrangements for water taxi services and the water taxi accident itself. Because Mr. Sinclair engaged the Centurion cardmember concierge service while in Italy for the purpose of making a water taxi reservation, I am prepared to assume that these events “flowed” from the Centurion Cardmember Agreement — in other words, that the contract made in the province is “connected with” the dispute. That contract is therefore sufficient to ground the assumption of jurisdiction at the first stage of the test. Despite this, I find that the Italian defendants have successfully rebutted the presumption, as I explain below.

[129] As I have stated, this conclusion stems from a thorough and principled approach that is faithful to, and consistent with, *Van Breda* and *Lapointe*, at para. 44. My colleague does not agree. He insists that I have unfairly characterized the dispute in an attempt to recast my dissent in *Lapointe* as being the law, at the expense of binding

precedent (Jamal J.'s reasons, at para. 250). This allegation of his is both inaccurate and unproductive. Indeed, I have recognized, adopted, and applied the standard for establishing a presumptive connecting factor in a way that is consistent with both *Van Breda* and *Lapointe*. In so doing, those of us in the majority reach the same conclusion as a unanimous Court of Appeal, i.e., that Ontario lacks jurisdiction over this matter as against the Italian defendants because the presumption of jurisdiction has been rebutted.

(2) Stage Two: If the Fourth Presumptive Connecting Factor Is Satisfied, Is It Properly Rebutted?

[130] Having reached the conclusion that two of the three contracts were not formed in Ontario, there is no need to proceed to the second stage of the analysis in relation to those two contracts, as there is no jurisdiction presumptively established to rebut. However, as indicated above, I have proceeded on the basis that the Centurion Cardmember Agreement can properly be said to constitute an Ontario contract connected with the dispute, which requires that I now assess whether that presumptive connection is rebutted.

[131] Assuming that the fourth presumptive factor has been presumptively made out with respect to the Centurion Cardmember Agreement, I conclude that the Italian defendants have rebutted the presumption of jurisdiction because the existence of the Centurion Cardmember Agreement does not demonstrate a real and substantial connection between Ontario and the water taxi accident.

[132] As a starting point, I disagree with my colleague's statement that "[t]he Italian defendants made effectively no submissions to the motion judge on rebuttal" (para. 153). While the main thrust of the Italian defendants' arguments centred around challenging the existence of any contracts connecting the subject matter of the dispute and Ontario, they listed rebuttal as one of the three main issues facing the motion judge (A.R., vol. II, at p. 104, para. 19), they raised the matter of rebuttal at multiple junctures (at pp. 105 and 108), and they cited case law in which courts have found the presumption of jurisdiction to have been rebutted (pp. 105-6). Additionally, as my colleague notes at para. 174 of his reasons, the Italian defendants filed evidence that could be used to weigh the strength of the connection at the rebuttal stage. Thus, it is an unfair characterization to say that the Italian defendants "made effectively no submissions to the motion judge on rebuttal" (para. 153; see also paras. 149 and 278).

[133] I note that Amex Canada does not dispute Ontario's jurisdiction over the claim as against it and that, similarly, Carey International has attorned to Ontario's jurisdiction. But as I outlined above, any admission made by one or more defendants cannot be used to bind other defendants. Thus, the analysis should proceed from the perspective of the Italian defendants, who collectively dispute Ontario's jurisdiction over the claim as it pertains to them. The analysis should therefore focus on the extent of the connection between the Centurion Cardmember Agreement and the Italian defendants in the context of this dispute.

[134] As stated above, the rebuttal analysis assesses the strength of the contract's connection with the forum, the subject matter of the dispute, and the defendants challenging jurisdiction. With respect to the connection to the forum, there is little that can be said given that the particulars of the contract are not in the record. At the very least, we know that Amex Canada has an office in Ontario, and we can assume that Amex Canada agents residing in Ontario fulfilled Amex Canada's obligations in respect of Mr. Sinclair. I have no difficulty acknowledging the connection between the Centurion Cardmember Agreement and Ontario.

[135] The problem comes at the next consideration: the strength of the connection between the contract and the subject matter of the dispute. Here, the dispute arose from a tort that occurred in Italy. The tort occurred on a water taxi that was owned by an Italian company, dispatched by a different Italian company, operated by an Italian national, and procured by Mr. Sinclair while on Italian soil. The only connection between the Centurion Cardmember Agreement and the dispute is that Mr. Sinclair made a non-binding reservation through Carey International by way of an Amex Canada agent. There is not even evidence that Mr. Sinclair used his Centurion credit card to pay for the water taxi, thus further attenuating the connection between the Centurion Cardmember Agreement and the dispute.

[136] If the fact that Mr. Sinclair made a reservation through his Amex Canada agent were enough to establish a connection with Ontario, it would follow that any travel reservation made using a credit card travel service would provide a sufficient

basis for Ontario to assume jurisdiction over foreign disputes based on torts. This would “impose a heavy burden that is difficult to justify” (*Cormier v. Greyhound Canada Transportation ULC*, 2018 ONSC 5600, at para. 27, quoting *Sinclair v. Cracker Barrel Old Country Store, Inc.* (2002), 60 O.R. (3d) 76 (C.A.), at para. 21). Service providers in tourist industries spanning the globe would have no way of knowing if and when they could be hauled before an Ontario court simply because, unbeknownst to them, one of their clients had arranged for their services using an Ontario credit card. This would amount to precisely the picture of unfairness, unpredictability, and jurisdictional overreach that LeBel J. sought to circumvent in *Van Breda* through his emphasis on a real and substantial connection.

[137] In *Van Breda*, Mr. Berg had entered into a contract whereby Club Resorts Ltd. was to provide him and his wife, Ms. Van Breda, with room and board at a resort in Cuba and, in exchange, Mr. Berg was to provide tennis lessons to the resort’s guests. Ms. Van Breda suffered catastrophic injuries while exercising at the resort in Cuba. She and Mr. Berg sued in both contract and tort. In the instant case, by contrast, the Centurion Cardmember Agreement merely contemplated the provision of travel agent services in general. It did not dictate the location or nature of travel for cardmembers, nor did Amex Canada have any particular relationship with Italy as Club Resorts did with Cuba. By comparison with the contract in *Van Breda*, it is clear that the connection between the Centurion Cardmember Agreement and this dispute is weak, to say the least.

[138] This weak connection is compounded when considered in light of this Court’s holding in *Lapointe*. In that case, wind-down agreements between General Motors of Canada Ltd. and a number of its dealerships across the country contained a clause requiring each dealer to obtain independent legal advice before the agreements could be executed. A slew of dealers later started a national class action and alleged that they had received negligent legal advice. Firms inside and outside of Ontario were implicated, and when several Quebec law firms challenged Ontario’s jurisdiction over the claims against them, our Court affirmed the jurisdiction because the contract in that case clearly contemplated the involvement of third-party lawyers, despite the Quebec law firms not being parties to the wind-down agreements. My colleague holds, albeit in relation to the first stage, that the “relevant circumstances allowing a court to assume jurisdiction based on a connected contract will vary with the contract” (para. 215(4) (emphasis added)). I certainly agree with him. Indeed, in *Lapointe*, the source of liability for the Quebec law firms — the independent legal advice they provided — was far closer to the main contract than in the instant case, where the source of liability is a water taxi ride not even contemplated at the time of the Sinclairs’ original Italian travel booking. This, again, indicates a weak connection between the Centurion Cardmember Agreement and this dispute.

[139] Weaker yet is the connection between the contract and the Italian defendants. Unlike in *Van Breda*, where the defendant was a party to the Ontario contract, the Italian defendants were not parties to the Centurion Cardmember Agreement and were not informed that Mr. Sinclair had used an Amex Canada agent

to make a reservation. In fact, they had no relationship with Amex Canada, and it is unclear if they had any connection at all to Carey International, whose connection with Amex Canada is itself unclear. The Italian defendants provide water taxi services in a heavily trafficked tourist destination to travelers from across the globe, many of whom arrange for their travels using credit cards. It cannot be said that, simply by virtue of working with tourists, the Italian defendants must be prepared to answer legal proceedings in far-flung jurisdictions. Again, this result would distort the imperative of a meaningful connection grounding the legitimate assumption of jurisdiction.

[140] The rebuttal stage is a critical component of the *Van Breda* test, given that it tests the *strength* of the real and substantial connection. It is for this reason that courts should not overlook it. My colleague in dissent says the factors I rely on, as does a unanimous Court of Appeal, to weigh the strength of the connection at the rebuttal stage are “irrelevant” (Jamal J.’s reasons, at para. 273; see also para. 283). I obviously do not agree. My colleague also disagrees with the Court of Appeal’s unanimous view that the motion judge erred in failing to consider the rebuttal stage (C.A. reasons, at paras. 32 and 81). He appears to take the position that the motion judge’s passing reference to the defendant’s ability to rebut the presumption is sufficient to show that she considered the issue, and that her failure to elaborate implies that she concluded that the burden was not discharged. With respect, it is not sufficient for a motion judge to merely state the law, but fail to engage with it.

[141] In sum, accepting that the Centurion Cardmember Agreement is an Ontario contract, the inescapable conclusion is that its connection to this dispute is weak, if not non-existent. To hold otherwise would be to vastly expand the ability of Ontario to assume jurisdiction on the basis of simple credit card transactions made by Ontarians while travelling around the world. This would not be in keeping with the spirit of order and fairness that animated LeBel J. in *Van Breda*. As such, I find that the presumption has been successfully rebutted.

VI. Conclusion

[142] Accepting that the Centurion Cardmember Agreement was formed in Ontario, I find that the presumption has been successfully rebutted because there is no real and substantial connection between the subject matter of the dispute and the forum. As for the other contracts alleged, they were not formed in Ontario, so there is no presumptive connecting factor to be rebutted. Therefore, Ontario courts do not have jurisdiction over this dispute as it pertains to the Italian defendants.

[143] I would dismiss the appeal, with costs throughout to the respondents.

The reasons of Karakatsanis, Martin, Kasirer and Jamal JJ. were delivered by

JAMAL J. —

I. Introduction

[144] When Canadians are injured by alleged wrongdoers, access to the courts to resolve their claims for compensation can be essential for them to receive access to justice. When the alleged wrongdoers include both residents and non-residents of the province where the claim is brought, questions can arise as to whether a Canadian court has jurisdiction over some or all of the claims raised in the dispute.

[145] In *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, this Court established a two-stage common law test for a court of a province to assume jurisdiction over tort claims where some of the events giving rise to the claim occurred outside the province or outside Canada. At the first stage, the plaintiff must establish one of four non-exhaustive presumptive connecting factors that, *prima facie*, entitle a court to assume jurisdiction over a dispute. At the second stage, the defendant may rebut the presumption of jurisdiction by establishing facts that demonstrate that the presumptive connecting factor points to no real relationship or to only a weak relationship between the subject matter of the litigation and the forum. Under the *Van Breda* test, jurisdiction may be established on a relatively “low threshold” (*Van Breda*, at para. 109; *Haaretz.com v. Goldhar*, 2018 SCC 28, [2018] 2 S.C.R. 3, at para. 32).

[146] At issue on this appeal is whether the Ontario Superior Court of Justice can assume jurisdiction over tort claims brought by Ontario residents against foreign defendants that are pleaded to be integrally related to tort claims against corporate defendants over which jurisdiction is not contested. The basis for jurisdiction invoked

against the foreign defendants is the fourth presumptive connecting factor in *Van Breda*: a contract connected with the dispute was made in Ontario.

[147] The appellants, Duncan and Michelle Sinclair (“the Sinclairs”), booked a trip to Europe with an Ontario-based travel service provider, Amex Canada Inc. The Sinclairs allege that they contracted with Amex Canada because of its expertise in organizing a high quality and safe travel experience. Amex Canada arranged certain details of the Sinclairs’ trip, including water taxi transportation in Venice, by subcontracting with Carey International Inc., a specialized travel service provider with an office in Ontario.

[148] The Sinclairs were injured on the water taxi arranged by Amex Canada and Carey International, Mr. Sinclair seriously so. They claimed damages in tort against Amex Canada, Carey International, and several Italian defendants, alleging that they are jointly and severally liable for negligently engaging incompetent persons to provide transportation services and negligently providing those services. The torts are pleaded to be intimately related to, and to flow from, the Sinclairs’ contract with Amex Canada and Amex Canada’s contract with Carey International, both of which are said to have been made in Ontario. In response, several of the Italian defendants (excluding the driver of the water taxi, who has not participated in these proceedings, and thus has not contested jurisdiction) brought a motion challenging the Ontario Superior Court’s jurisdiction over the claims against them. Amex Canada and Carey International have attorned to the Ontario court’s jurisdiction.

[149] The motion judge dismissed the Italian defendants' motion. At the first stage of the *Van Breda* test, she found that the Sinclairs met the low threshold to show a good arguable case that a contract connected with the dispute was made in Ontario. This established a presumption that the Ontario Superior Court has jurisdiction over the dispute. At the second stage of the *Van Breda* test, the Italian defendants made effectively no submissions to rebut the presumption of jurisdiction, and thus failed to discharge their burden of rebuttal. As a result, the Ontario court could take jurisdiction over the claims against them.

[150] The Court of Appeal for Ontario overturned the motion judge's decision and stayed the action against the Italian defendants. The majority held that the motion judge erred in law by finding a presumptive connecting factor of a contract connected with the dispute that was made in Ontario, and, in the alternative, ruled that any such factor had been rebutted. The concurring judge would have found such a presumptive connecting factor, but agreed with the majority that this factor had been rebutted.

[151] I would allow the appeal and affirm that the Ontario Superior Court has jurisdiction over the claims against the Italian defendants.

[152] At the first stage of the *Van Breda* test, the Sinclairs met the low threshold to establish a good arguable case that a contract connected with the dispute was made in Ontario, based on the facts pleaded and the admissions of Amex Canada, which are assumed to be true unless contradicted by evidence in the record. The Sinclairs' statement of claim pleads two such contracts: the Sinclairs' contract with Amex

Canada, and Amex Canada's contract with Carey International. The integrally related tort claims against all the defendants are alleged to flow from these contracts. The Sinclairs allege that they relied on Amex Canada's expertise and representations to organize a high quality and safe travel experience, and assert that all the defendants are jointly and severally liable for negligently engaging incompetent persons to provide transportation services and negligently providing those services. This establishes a presumption that the Ontario court has jurisdiction over the claims against the Italian defendants.

[153] At the second stage of the *Van Breda* test, the Italian defendants failed to meet their burden to rebut the presumption of jurisdiction. The Italian defendants made effectively no submissions to the motion judge on rebuttal, and in any event, the connection between these two contracts and the dispute is sufficiently strong to allow the Ontario court to assume jurisdiction.

[154] As a result, the claims against the Italian defendants may proceed before the Ontario Superior Court, alongside the claims against Amex Canada, Carey International, and the Italian water taxi driver.

II. Background

[155] The pleadings in this case have not closed, nor has there been documentary production or discovery. At this early stage, the facts are based on allegations and

admissions in the pleadings, which are assumed to be true unless contradicted by evidence in the record.

A. *The Sinclairs Book a Trip to Europe Through Amex Canada's Invitation-Only Centurion Travel Service*

[156] In July 2017, Duncan and Michelle Sinclair, who live and work in Toronto, took their son to Europe to celebrate his high school graduation. The Sinclairs booked their trip through Amex Canada, an Ontario corporation carrying on business under the name Centurion Travel Service. Amex Canada provides travel-related services in Canada and is registered with the Travel Industry Council of Ontario.

[157] The Sinclairs had access to Centurion Travel Service because they are Centurion cardmembers. The Centurion Card is an invitation-only charge card issued by Amex Canada's affiliate, Amex Bank of Canada, which issues American Express cards in Canada.

[158] Mr. Sinclair has been an American Express cardmember since 1993. He previously held an American Express Platinum Charge Card and has been a Centurion cardmember since January 2015. Mr. Sinclair is the primary cardmember, while Ms. Sinclair is a supplementary cardmember.

[159] The Sinclairs plead that they booked their trip through Amex Canada's Centurion Travel Service because Amex Canada "held itself out as a high-end provider

of superior, full-service, travel packages” and because they “trusted AMEX Canada Inc. to, among other things, provide a high quality and safe travel experience” (statement of claim, at para. 12, reproduced in A.R., vol. II, at p. 6). Amex Canada “made all the arrangements” for the family’s “transportation to and within Italy”, including “subcontracts for transportation” with Carey International (affidavit of Duncan Sinclair, at para. 5, reproduced in A.R., vol. II, at p. 81). Mr. Sinclair trusted Amex Canada “to do [its] due diligence in ensuring [his] family would receive safe, high-quality transportation service[s]”, and relied on Amex Canada’s “past recommendations in accepting Carey International as [his family’s] service provider in Venice” (para. 6).

B. *Mr. Sinclair Calls Amex Canada’s Travel Concierge Service To Book a Water Taxi in Venice*

[160] On July 24, 2017, while in Florence, Italy, Mr. Sinclair telephoned Amex Canada’s Centurion Travel Service in Toronto to book transportation for his family from the Venice airport to their hotel. Mr. Sinclair spoke with a “Travel and Lifestyle Consultant” representing Amex Canada and asked her to make the arrangements.

[161] On July 25, 2017, the same Amex Canada representative emailed Mr. Sinclair to confirm his family’s transportation from the Venice airport to their hotel. She forwarded Mr. Sinclair an email to Amex Canada from “Carey International, Travel Arranger”, which has an office in Toronto, confirming Mr. Sinclair’s reservation for chauffeured transportation from the Venice airport, including a water taxi to his

hotel. Carey International's estimated quote to Amex Canada for this transportation was US\$764.03 plus incidentals. Carey International's email to Amex Canada stated: "Thank you for choosing Carey. We promise to provide uncompromising service" (affidavit of D. Sinclair, Exhibit B, at p. 94).

C. *The Sinclairs Are Injured on the Water Taxi Booked by Amex Canada and Carey International*

[162] On July 25, 2017, an Italian tour guide provided by Carey International met the Sinclairs at the Venice airport and took them by minivan to a water taxi terminal. The Sinclairs and the tour guide boarded a water taxi under the control of its driver, Cristian Dordit. A representative of Carey International was also on the water taxi.

[163] Within a few minutes of leaving, the water taxi crashed violently into a wooden structure. All the passengers, including the Sinclairs and their son, were thrown by the impact and injured. Mr. Sinclair was seriously injured, suffering a cracked skull, fractures to his vertebrae, and a gaping leg wound. These injuries required an extended hospital stay in Italy, doses of radiation, and numerous procedures, which included neurosurgery, skin graft surgery, and the implantation of a stabilizing halo device attached with bolts drilled into Mr. Sinclair's skull. After Mr. Sinclair returned to Canada in August 2017, he received additional surgery and medical treatment in Vancouver and medical treatment in Toronto.

D. *The Sinclairs Claim Compensation in Ontario*

[164] In May 2019, the Sinclairs commenced an action before the Ontario Superior Court against Amex Canada, Carey International, Medov S.R.L., Venezia Turismo, Venice Limousine S.R.L., Narduzzi e Solemar S.L.R., John Doe Corp., and Cristian Dordit. Mr. Sinclair claims general damages of \$800,000 and special damages of \$350,000. Ms. Sinclair claims general damages of \$500,000.

[165] The Sinclairs' claim relies on their Centurion cardmember agreement with Amex Canada, and Amex Canada's subcontract with Carey International, and seeks recovery against all the defendants in negligence. The statement of claim alleges that the defendants, their employees, servants, and agents (1) breached their individual and collective duties of care in providing transportation services to ensure the Sinclairs' safety; (2) engaged the services of incompetent employees and agents, who breached their duties to ensure the Sinclairs' safety; and (3) failed to take steps to screen the water taxi driver, Mr. Dordit, who was negligent in his care, control, and operation of the water taxi. Amex Canada and Carey International are alleged to be vicariously liable for the actions of the remaining defendants, who acted as their agents.

[166] The statement of claim pleads r. 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which authorizes service on defendants outside Ontario without a court order on several grounds, including "in respect of a contract where . . . the contract was made in Ontario" (r. 17.02(f)(i)). The statement of claim asserts that the Sinclairs suffered damages "in respect of a contract made in Ontario and governed by the law of Ontario" (para. 38).

E. *Amex Canada Attorns to Ontario's Jurisdiction and Crossclaims Against Carey International and the Italian Defendants*

[167] In August 2019, Amex Canada filed a statement of defence and crossclaim against all the other defendants. It pleads that Centurion cardmembers, like the Sinclairs, “enjoy a number of benefits, including access to dedicated concierge and travel agent services for booking personalized travel services such as car services, flights and hotel accommodations” (A.R., vol. II, at p. 14, para. 6). It also states that “[a]ll travel bookings are made through Centurion Travel Service”, which “routinely engages third party travel suppliers, at the request and on behalf of Centurion Card members, for the provision of travel services to such Centurion Card members” (para. 6).

[168] Amex Canada admits that it booked the Sinclairs’ trip using “third party travel suppliers who provide services to Centurion Card members, among others” (statement of defence and crossclaim, at para. 12). It also admits that it “made the requested booking” of the water taxi on behalf of Mr. Sinclair and that Carey International “charged Mr. Sinclair for this service, using Mr. Sinclair’s Centurion Card” (para. 14). Even so, Amex Canada claims that it “did not make any arrangements for Carey [International] to subcontract water taxi services” and that it “was not involved in any such arrangements” (para. 15). In effect, Amex Canada admits that it contracted with Carey International but denies that it made arrangements for Carey International to subcontract to other vendors.

[169] Amex Canada denies that it owed the Sinclairs any duty of care in providing transportation services to them and says that its only duty was to secure travel arrangements under the Centurion Cardmember Agreement. Amex Canada claims that it is not responsible or liable for the actions, conduct, or omissions of third-party suppliers that it engaged on the Sinclairs' behalf.

[170] Amex Canada also asserts that, in selecting third-party suppliers like Carey International, it "imposed a duty on those suppliers to provide services in a responsible and safe manner" (statement of defence and crossclaim, at para. 21). It says that "Carey [International] was contractually bound, among other things, to recruit, train and provide suitably qualified and skilled individuals to perform transportation services" (para. 21).

[171] Finally, Amex Canada crossclaimed against all the other defendants for contribution and indemnity regarding any amounts that it may be found liable to pay the Sinclairs, relying on the Sinclairs' allegations of negligence against all the defendants except Amex Canada itself.

F. *Carey International Attorns to Ontario's Jurisdiction*

[172] In November 2019, Carey International filed a notice of intent to defend. Carey International is represented by the same counsel as Amex Canada.

G. *The Italian Defendants Dispute Ontario's Jurisdiction*

[173] Before the close of pleadings, Venezia Turismo, Venice Limousine S.R.L., and Narduzzi e Solemar S.L.R. (“Italian defendants”) moved to dismiss the action as against them for lack of jurisdiction or to stay the action based on the doctrine of *forum non conveniens*. The Italian defendants are represented by the same counsel as Amex Canada and Carey International.

[174] The Italian defendants filed the following evidence on the motion. Venezia Turismo is a water taxi dispatching consortium company. Its members are various water taxi operators, including Venice Limousine S.R.L., which owned the water taxi that transported the Sinclairs and employed the water taxi driver, Mr. Dordit. On July 25, 2017, Venezia Turismo received an email from another Venetian company, Medov S.R.L., about Mr. Sinclair’s water taxi booking, including his flight information, name, and confirmation of his booking. Venezia Turismo responded to Medov S.R.L. and confirmed Mr. Sinclair’s booking. When Venezia Turismo receives a request for water transportation, it looks for the nearest available water taxi. In this case, that was Mr. Dordit, who transported the Sinclairs on the day of the accident.

[175] At the time of the jurisdiction motion, there was an ongoing criminal case in Venice involving Mr. Dordit regarding the water taxi incident. He has not responded to the statement of claim or crossclaim or otherwise appeared in these proceedings.

III. Judicial History

A. *Ontario Superior Court of Justice (Ramsay J.)*

[176] The motion judge dismissed the Italian defendants' motion to dismiss the action as against them for lack of jurisdiction or to stay the action based on the doctrine of *forum non conveniens*. She held that the Sinclairs' claims against the Italian defendants can continue in Ontario with their claims against Amex Canada and Carey International.

[177] The Sinclairs relied on the fourth presumptive connecting factor in *Van Breda*, "[a] contract connected with the dispute [that] was made in the province" (motion judge's reasons, at para. 11, reproduced in A.R., vol. I, at p. 3, citing *Van Breda*, at para. 90). Under Ontario civil procedure law, the Sinclairs only needed to show a "good arguable case" for a connecting factor for the court to assume jurisdiction (motion judge's reasons, at para. 29, citing *Ontario v. Rothmans Inc.*, 2013 ONCA 353, 115 O.R. (3d) 561 ("*Rothmans (Ont.)*"), at paras. 54, 110 and 118-19). The motion judge noted that this "is not a high threshold" (para. 30, citing *Tucows.com Co. v. Lojas Renner S.A.*, 2011 ONCA 548, 106 O.R. (3d) 561, at para. 36).

[178] The motion judge found that the Sinclairs had established a good arguable case that two contracts connected with the dispute were made in Ontario. First, the pleadings, and "especially the admissions made by AMEX Canada" in its statement of defence and crossclaim, establish a good arguable case that the Centurion Cardmember Agreement between Amex Canada and the Sinclairs was "formed in Ontario" and has "some connection to the dispute" (paras. 19 and 39). The Sinclairs booked their trip with Amex Canada and relied on its representations that it would provide a "high

quality and safe travel experience” (para. 20, citing statement of claim, at para. 12). Amex Canada admitted that it booked the Sinclairs’ travel arrangements, including the water taxi, and that “it routinely engages third party travel suppliers at the request and on behalf of Centurion card members” (para. 27).

[179] Second, the motion judge found a good arguable case that Amex Canada and Carey International contracted in Ontario for the Sinclairs’ water taxi services. Amex Canada admitted that it made the booking for Mr. Sinclair and “charged Mr. Sinclair’s Centurion Card” (para. 15). An email from Carey International, which has an office in Toronto, to Amex Canada in Toronto confirmed the reservation. Amex Canada then forwarded this email to Mr. Sinclair. Therefore, the motion judge found a good arguable case that the contract between Amex Canada and Carey International was made in Ontario because Amex Canada, as Mr. Sinclair’s agent, received the booking confirmation in Ontario.

[180] The motion judge noted that the Italian defendants did not need to be parties to these two contracts; their allegedly tortious conduct simply needed to bring them “within the scope of the contractual relationship”, and “the events that g[ave] rise to the claim [had to] flow from the relationship created by the contract” (para. 31, citing *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851, at para. 44). She noted that the Sinclairs’ statement of claim pleads that the defendants breached their duties of care by negligently

providing transportation services and by negligently engaging employees to provide those services, which is sufficient for an Ontario court to assume jurisdiction.

[181] Finally, the motion judge declined to stay the proceedings against the Italian defendants based on the doctrine of *forum non conveniens*. The Italian defendants had not proven that Italy is clearly a more convenient forum. It was unclear why the criminal proceedings against Mr. Dordit would make Italy a more convenient forum. The Italian defendants had also not specified which witnesses, aside from the parties and the investigating officer, may be called at trial; the Sinclairs would likely have more witnesses on damages alone. Other factors also favoured hearing the claims against the Italian defendants in Ontario: the contracts between Amex Canada and the Sinclairs and between Amex Canada and Carey International were made in Ontario; Amex Canada had crossclaimed against the Italian defendants; Carey International had filed a notice of intent to defend in Ontario; and Amex Canada, Carey International, and the Italian defendants were all represented by the same counsel.

B. *Court of Appeal for Ontario, 2023 ONCA 142, 478 D.L.R. (4th) 683*

[182] The Italian defendants appealed only the motion judge's decision on jurisdiction. The Court of Appeal for Ontario overturned that decision and ruled that the Ontario court lacks jurisdiction over the claims against the Italian defendants.

(1) Majority (Nordheimer J.A., Tulloch J.A. (As He Then Was) Concurring)

[183] The majority ruled that the Sinclairs had not shown that a contract connected with the dispute was made in Ontario, but in any event, the Italian defendants had rebutted any presumption of jurisdiction arising from such a connecting factor.

[184] The majority held that the motion judge erred at the first stage of the *Van Breda* test by finding a contract connected with the dispute made in Ontario. The majority accepted that the Sinclairs' contract with Amex Canada "was made in Ontario", but concluded that this contract "has little relevance to the subject matter of the litigation" (para. 35).

[185] The majority ruled that the motion judge erred in law by not considering the question of jurisdiction from the perspective of the Italian defendants contesting jurisdiction, and that this justified appellate review on a correctness standard. As the majority noted, "[a] plaintiff must establish territorial competence against each party and cannot 'bootstrap' its claim against the defendant by establishing jurisdiction against a different party" (para. 19, citing *Hydro Aluminium Rolled Products GmbH v. MFC Bancorp Ltd.*, 2021 BCCA 182, 48 B.C.L.R. (6th) 106, at para. 10).

[186] The majority stated that courts must avoid taking an "overly expansive view of the fourth presumptive connecting factor in tort cases" (para. 27). It noted that "some authorities subsequent to *Van Breda* have failed to apply the decision with the care and rigour that was intended" (para. 17), citing with approval Côté J.'s dissenting reasons in *Lapointe*, in which she stated that "the scope of *Van Breda*'s fourth connecting factor should be limited to claims in tort where the defendant's liability in

tort flows immediately from his own contractual obligations, and where that contract was ‘made in’ Ontario” (para. 27, citing *Lapointe*, at para. 87).

[187] The majority also stated that “[a]ny contractual relationship between the [Sinclairs] and Amex Canada is not relied upon for the claim” (para. 23). They saw “nothing in the contractual relationship between the [Sinclairs] and Amex Canada that required the [Italian defendants’] involvement” (para. 24). They highlighted that “the [Italian defendants] did not have any contractual obligations with the [Sinclairs], either directly or indirectly”, and that the Sinclairs’ contract with Amex Canada “did not contemplate or require the involvement of the [Italian defendants]” (para. 29).

[188] The majority ruled that, even if the Sinclairs could invoke the fourth presumptive connecting factor in *Van Breda*, the Italian defendants had rebutted the presumption of jurisdiction. In the majority’s view, the motion judge failed to address the rebuttal issue. The Italian defendants had shown that the contract between the Sinclairs and Amex Canada “has little or nothing to do with the subject matter of the litigation”, and “there is nothing pleaded that would demonstrate that the contract contemplated the involvement of” or has “any connection to the claim against the [Italian defendants]” (para. 32).

[189] The majority noted several factors indicating the lack of connection between the Sinclairs’ contract with Amex Canada and the claim against the Italian defendants. The accident occurred in Italy and was caused by the alleged negligence of an Italian driver, who was born and lives in Venice. The water taxi is owned by an

Italian company, which is owned by another Italian company, and neither of these companies is alleged to have an ongoing contractual relationship with Amex Canada or Carey International. Nor is there “anything in the contractual relationship between Amex Canada and/or Carey International, Inc. and the [Sinclairs] that contemplated that the [Italian defendants] would be engaged in the carrying out of that contractual relationship” (para. 33). The contract between the Sinclairs and Amex Canada that “was made in Ontario . . . has little relevance to the subject matter of the litigation” (para. 35). The contract “is not pleaded with any particularity. . . . [N]o provisions from the contract . . . are pleaded and there is no breach of the contract pleaded” (para. 35).

[190] The majority warned that upholding the motion judge’s decision would have “sweeping implications”: “. . . any person who books a trip through a credit card company that provides travel services and carries on business in Ontario would, through that fact alone, extend the jurisdiction of this province’s courts to anyone who may subsequently become involved in those travel arrangements, regardless of where in the world that involvement occurs” (para. 44). In the majority’s view, “that result would constitute the very type of jurisdictional overreach that the decision in *Van Breda* was cautioning against” (para. 44).

(2) Minority (Harvison Young J.A., Concurring in the Result)

[191] Harvison Young J.A., concurring in the result, disagreed with the majority’s main conclusion that the Sinclairs had not shown a presumptive connecting factor of a contract connected with the dispute that was made in Ontario. However, she

agreed with the majority that the Italian defendants had rebutted the presumption of jurisdiction.

[192] To the concurring judge, the majority's reasons "effectively recast the dissenting opinion of Côté J. in *Lapointe* . . . as the governing precedent" and did not take a sufficiently functional approach to the question of when a contract is connected with a dispute (para. 48). The motion judge did not fail to review the position of each defendant separately, nor did she "bootstrap" the Sinclairs' claim against the Italian defendants by establishing jurisdiction against a different party (para. 50). To the concurring judge, the majority engaged in "a mechanical rather than a functional reading of the motion judge's reasons" (para. 50).

[193] The concurring judge noted that the majority in *Lapointe* rejected Côté J.'s "unduly narrow" approach to the fourth connecting factor in *Van Breda* because it would "undermin[e] the flexibility required in private international law" (para. 62, citing *Lapointe*, at para. 32). She explained that the majority in *Lapointe* held that "nothing in *Van Breda* suggests that the fourth factor is unavailable when more than one contract is involved, or that a different inquiry applies in these circumstances", and that *Van Breda* does not otherwise "limit this factor to situations where the defendant's liability flows immediately from his or her contractual obligations, or require that the defendant be a *party* to the contract" (para. 56, citing *Lapointe*, at para. 44 (emphasis in original)). The concurring judge underscored that "Côté J.'s solo dissent . . . is not the law" (para. 57) and that later lower court jurisprudence across Canada has taken a

“broad and expansive interpretation” to the fourth connecting factor (para. 59). In the concurring judge’s view, the majority sought to resurrect a narrow approach to the fourth connecting factor “from the jurisprudential graveyard” (para. 69). Instead, all that is required is that “a defendant’s conduct brings him or her within the scope of the contractual relationship and that the events that give rise to the claim flow from the relationship created by the contract” (para. 62, citing *Lapointe*, at para. 44).

[194] The concurring judge concluded that the motion judge made no reviewable error in ruling that the Sinclairs had established the presumptive connecting factor of a contract connected with the dispute that was made in Ontario. The Sinclairs were dealing with Amex Canada “for the Centurion card and for the booking of the water taxi in Venice Italy, and those contracts were formed in Ontario” (para. 77). The Italian defendants’ “allegedly tortious conduct in their discharging of the water taxi services flowed from the Centurion Cardholder Agreement, a contract undoubtedly formed in Ontario, and which provided for the booking of services, such as the water taxi” (para. 78). According to the concurring judge, the motion judge “specifically turned her mind” (para. 79) to the Italian defendants and held that the Sinclairs had “established a good arguable case that the contracts between AMEX Canada and the [Sinclairs], *and the contract with AMEX Canada and Carey International for the water taxi transportation*, ha[ve] some connection with the dispute, for the court in Ontario to assume jurisdiction” (para. 79 (emphasis in original), citing motion judge’s reasons, at para. 31).

[195] Even so, the concurring judge agreed with the majority that the motion judge did not consider whether the presumptive connecting factor had been rebutted, and that although the Italian defendants had “not vigorously pursued” this argument on appeal, they had rebutted this presumptive connecting factor (para. 82).

IV. Issue

[196] There is no dispute that the Ontario Superior Court has jurisdiction over the Sinclairs’ claims against Amex Canada and Carey International. Nor has Mr. Dordit, the Italian water taxi driver, disputed jurisdiction. The only issue is whether the Sinclairs’ claims against the Italian defendants can proceed in Ontario, alongside their claims against Amex Canada, Carey International, and Mr. Dordit.

V. Analysis

[197] I begin by reviewing the common law test set out in *Van Breda* for jurisdiction over a tort claim with an international or interprovincial element. I then review the low threshold under Ontario procedural law to plead facts supporting a good arguable case for a presumptive connecting factor and the standard of appellate review of a preliminary ruling on jurisdiction. Finally, I apply all these rules to this case.

A. *The Van Breda Test for Assumed Jurisdiction in Tort Cases*

- (1) The Three Bases for Jurisdiction at Common Law Over an Action *In Personam*

[198] An action *in personam* is an action in which a plaintiff seeks to impose a personal obligation on a defendant, such as an obligation to pay damages for breach of contract or in tort (S. G. A. Pitel, *Conflict of Laws* (3rd ed. 2025), at p. 61, fn. 9, citing *Pattni v. Ali*, [2006] UKPC 51, [2007] 2 A.C. 85, at paras. 19-23). At common law, a Canadian court has jurisdiction *in personam* over an out-of-province defendant on three bases: presence-based jurisdiction, consent-based jurisdiction, or assumed jurisdiction (*Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, at para. 82).

[199] Presence- and consent-based jurisdiction over an out-of-province defendant are known as the “traditional” grounds of jurisdiction (*Chevron*, at para. 82; *Van Breda*, at para. 79; see also S. G. A. Pitel and V. Black, “Assumed jurisdiction in Canada: identifying and interpreting presumptive connecting factors” (2018), 14 *J. Priv. Int. L.* 193, at p. 193). Presence-based jurisdiction arises when the out-of-province defendant is personally served with the originating process while in the province or territory of the forum (*Chevron*, at para. 83, citing J.-G. Castel, *Introduction to Conflict of Laws* (4th ed. 2002), at p. 83, and T. J. Monestier, “(Still) a ‘Real and Substantial’ Mess: The Law of Jurisdiction in Canada” (2013), 36 *Fordham Int’l L.J.* 396, at p. 449; Pitel, at p. 67; see also pp. 60 and 68-74; J. Walker, *Canadian Conflict of Laws* (7th ed. (loose-leaf)), at §§ 3.01-3.03). Consent-based jurisdiction arises when the out-of-province defendant consents to submit to the court’s jurisdiction, also known as attornment (*Chevron*, at para. 84; *Van Breda*, at para. 79; Pitel, at pp. 60 and 74-79; Walker, at §§ 2.02-2.03). Neither of these grounds for jurisdiction is at issue in this case.

[200] Assumed jurisdiction arises when a court assumes jurisdiction over an out-of-province defendant because there is a “‘real and substantial connection’ . . . between the circumstances giving rise to the claim and the jurisdiction where the claim is brought” (*Lapointe*, at para. 25; see also *Van Breda*, at paras. 22-24; Pitel, at pp. 60-61 and 79-116; Walker, at § 4.01). This is the basis for jurisdiction alleged in this case.

(2) The *Van Breda* Test for Jurisdiction *Simpliciter*

[201] In *Van Breda*, LeBel J., speaking for the Court, revised the common law real and substantial connection test for assumed jurisdiction in tort cases (para. 79; see also *Chevron*, at para. 84; *Lapointe*, at para. 26). The *Van Breda* decision set out the “rules and principles governing the assumption of jurisdiction by the courts of a province over tort cases in which claimants sue in Ontario, but at least some of the events that gave rise to the claims occurred outside Canada or outside the province” (para. 68 (emphasis added)). This Court’s decision in *Lapointe* further clarified these principles where the claimed connecting factor is a contract connected with the dispute that was made in the province.

[202] *Van Breda* established a two-stage test for jurisdiction *simpliciter*. At the first stage, the plaintiff bears the burden of establishing one of four non-exhaustive presumptive connecting factors that, *prima facie*, entitle a court to assume jurisdiction over a dispute involving a tort claim with an international or interprovincial aspect: (1) the defendant is domiciled or resident in the province; (2) the defendant carries on business in the province; (3) the tort was committed in the province; or (4) a contract

connected with the dispute was made in the province (*Van Breda*, at paras. 80, 90 and 100; *Lapointe*, at paras. 26-27). At the second stage, the defendant may rebut the presumption of jurisdiction by establishing facts that demonstrate that “the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them” (*Van Breda*, at para. 95; see also para. 100; *Lapointe*, at para. 27).

[203] A plaintiff need only establish one connecting factor for a court to assume jurisdiction (*Van Breda*, at paras. 80 and 100; *Lapointe*, at para. 27). Courts can also identify new presumptive connecting factors by considering how similar the proposed factor is to these four factors and how it is treated in the case law, in statute law, or in the private international law of other legal systems committed to order, fairness, and comity (*Van Breda*, at paras. 91-92).

[204] The first stage of the *Van Breda* test identifies the *existence* of a presumptive connecting factor between the subject matter of the litigation and the forum, while the second stage evaluates its *strength* (*Van Breda*, at paras. 92, 95 and 97; *Lapointe*, at paras. 27 and 49). LeBel J. explained that “[a]ll presumptive connecting factors generally point to a relationship between the subject matter of the litigation and the forum” (*Van Breda*, at para. 92; *Lapointe*, at para. 27). A relationship based on the plaintiff establishing a connecting factor makes it “reasonable to expect that the defendant would be called to answer legal proceedings in that forum” (*Van Breda*, at para. 92; *Lapointe*, at para. 27). As a result, a court assuming jurisdiction

based on a connecting factor is “consistent with the principles of comity, order and fairness” (*Van Breda*, at para. 92).

[205] Importantly, the *Van Breda* test is based on showing the presence of a presumptive connecting factor, and not on the defendant’s subjective or objective expectations. In *Van Breda*, at para. 38, LeBel J. cited La Forest J.’s statement in *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022, at pp. 1046-47, that “a system of law built on what a particular court considers to be the expectations of the parties or what it thinks is fair, without engaging in further probing about what it means by this, does not bear the hallmarks of a rational system of law”.

[206] The *Van Breda* test balances the need for flexibility and predictability, or fairness and order, which has been a “constant theme” of the law of jurisdiction in Canada over the past 35 years (*Van Breda*, at para. 66; *Lapointe*, at para. 28). It promotes predictability and order by allowing parties to “predict with reasonable confidence whether a court will assume jurisdiction in a case with an international or interprovincial aspect” (*Van Breda*, at para. 73; see also *Lapointe*, at para. 29). It also promotes fairness and flexibility in the selection and application of the presumptive connecting factors by considering the need for “fairness and justice to all parties engaged in litigation” (*Van Breda*, at para. 75; *Lapointe*, at para. 30).

[207] It is useful to consider how this Court has applied the *Van Breda* test.

[208] This Court's decision in *Van Breda* addressed two separate disputes: the Van Breda dispute and the Charron dispute. In the Van Breda dispute, the plaintiffs Viktor Berg and Morgan Van Breda stayed at a resort managed by Club Resorts Ltd. in Cuba. Mr. Berg agreed to provide tennis lessons at the resort in exchange for room and board for himself and his spouse, Ms. Van Breda. An Ontario-based travel agent arranged this agreement. Ms. Van Breda was severely injured at the resort while exercising on a metal structure that collapsed. Ms. Van Breda, her relatives, and Mr. Berg sued several defendants in the Ontario Superior Court, and certain defendants were served outside Ontario. This Court concluded that the travel agent, representing Club Resorts, had entered into a contract with Mr. Berg in Ontario that extended benefits to Ms. Van Breda, who was injured while Mr. Berg was performing the contract. This contract was therefore connected with the dispute, and the strength of this connection was not rebutted. As a result, this Court held that the Ontario Superior Court had jurisdiction over Ms. Van Breda's tort claim.

[209] In the Charron dispute, Dr. Claude Charron and his wife booked an all-inclusive vacation package at a hotel in Cuba managed by Club Resorts. The vacation package included scuba diving. Dr. Charron drowned while on a scuba dive at the hotel. His wife, children and estate sued several defendants in the Ontario Superior Court. The statement of claim was served on two defendants in Ontario and on several foreign defendants, including Club Resorts, outside Ontario. This Court found that the Ontario Superior Court had jurisdiction over the dispute because Club Resorts was carrying on business in Ontario — the second presumptive connecting factor in *Van Breda* — and

its presence in Ontario was sufficiently connected with the dispute. This was because “[i]ts business activities in Ontario were specifically directed at attracting residents of the province, including the Charron family, to stay as paying guests at the resort in Cuba where the accident occurred” (para. 123).

[210] This Court’s decision in *Lapointe* distilled many of the principles from *Van Breda* and elaborated on the fourth presumptive connecting factor of a contract connected with the dispute that was made in the province. In the wake of the 2008 financial crisis, the federal government had required General Motors of Canada Ltd. (“GM Canada”) to close dealerships across the country as a condition of the company’s bailout. Over 200 dealerships were closed. GM Canada offered compensation to each dealer pursuant to a wind-down agreement and required each dealer to obtain independent legal advice regarding the agreement and to provide a certificate signed by the retained lawyer. A group of 207 dealers started a national class action in Ontario, alleging that GM Canada had forced them to sign the wind-down agreement contrary to provincial franchise laws and that the law firm of Cassels Brock & Blackwell LLP had given negligent legal advice to some of the dealers. Cassels Brock sought contribution and indemnity from the third-party law firms, including several from Quebec, which had given the individual dealers independent legal advice.

[211] This Court affirmed the Ontario Superior Court’s jurisdiction over the claims against the Quebec law firms. At the first stage of the *Van Breda* test, this Court held that the wind-down agreement was “clearly connected” to the dispute because it

contemplated the involvement of third-party lawyers whose advice was central to the dispute (para. 47). This remained so even though the Quebec law firms were not parties to the wind-down agreement. At the second stage of the *Van Breda* test, this Court held that the strength of this presumptive connecting factor was not rebutted.

(3) *Van Breda's Fourth Presumptive Connecting Factor: A Contract Connected With the Dispute That Was Made in the Province*

[212] *Van Breda* and *Lapointe* identified several guiding principles for applying the presumptive connecting factor of a contract connected with the dispute that was made in the province (*Lapointe*, at para. 31).

[213] First, in determining whether the fourth presumptive connecting factor is made out, a court proceeds in two steps: (1) the court identifies the dispute by examining the “nucleus of the claim” as a whole (*Lapointe*, at paras. 37-38); (2) the court then determines “whether a contract connected with this dispute was made in Ontario” (para. 39, citing *Van Breda*, at para. 90).

[214] Second, a court uses the traditional rules of contract formation to evaluate whether a contract was “made” in the province. Parties to a contract can tailor these rules and principles to influence whether a court can assume jurisdiction. This promotes certainty (*Lapointe*, at para. 31).

[215] Third, the fourth presumptive connecting factor must be applied to promote “flexibility and commercial efficiency” (*Lapointe*, at para. 32; see also para. 33). In this regard, this Court provided the following guidance:

- (1) To engage the fourth presumptive connecting factor, “all that is required is a connection between the claim and a contract that was made in the province where jurisdiction is sought to be assumed” (*Lapointe*, at para. 32).
- (2) The alleged tortfeasor need not have been a party to the contract (*Lapointe*, at para. 32; see also para. 44); a defendant’s liability need not immediately flow from their own contractual obligations (para. 44). “It is sufficient that the dispute be ‘connected’ to a contract made in the province or territory where jurisdiction is proposed to be assumed” (para. 44, citing *Van Breda*, at para. 117). This Court in *Lapointe* explained that “[t]his merely requires that a defendant’s conduct brings him or her within the scope of the contractual relationship and that the events that give rise to the claim flow from the relationship created by the contract” (para. 44, citing *Van Breda*, at paras. 116-17). Requiring the alleged tortfeasor to be a party to the contract “would unduly narrow the scope of *Van Breda*” and would “undermin[e] the flexibility required in private international law” (*Lapointe*, at para. 32).

(3) “[N]othing in *Van Breda* suggests that the fourth factor is unavailable when more than one contract is involved, or that a different inquiry applies in these circumstances” (*Lapointe*, at para. 44).

(4) The relevant circumstances allowing a court to assume jurisdiction based on a connected contract will vary with the contract. In *Lapointe*, the contract contemplated and required the involvement of the defendants challenging jurisdiction (para. 47); the contract was governed by the law of the forum (para. 48); and the underlying structure of the business relationships and the litigation involving the contract were deeply rooted in the forum (para. 48).

(5) This Court underscored that “[f]lexibility in applying the fourth [presumptive connecting] factor does not amount to jurisdictional overreach” (*Lapointe*, at para. 33). A party claiming that a court has jurisdiction need not show the strongest possible connection between the claim and the forum, nor does the presence of another forum connected with the dispute undermine the existence of jurisdiction (paras. 34-35).

(4) *Van Breda’s Guidance on Rebutting the Presumption of Jurisdiction*

[216] At the second stage of the *Van Breda* test, to rebut the presumption of jurisdiction arising from a presumptive connecting factor, the out-of-province or foreign defendant has the burden of “establish[ing] facts which demonstrate that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them” (*Van Breda*, at para. 95).

[217] The rebuttal analysis depends on which presumptive factor is engaged:

- (1) For the presumptive connecting factor of a contract connected with the dispute that was made in the province, “the presumption can be rebutted by showing that the contract has little or nothing to do with the subject matter of the litigation” (*Van Breda*, at para. 96; see also *Lapointe*, at para. 27).
- (2) For the presumptive connecting factor of the defendant carrying on business in the province, “the presumption can be rebutted by showing that the subject matter of the litigation is unrelated to the defendant’s business activities in the province” (*Van Breda*, at para. 96).
- (3) For the presumptive connecting factor of the commission of a tort in the province, it would appear to be difficult to rebut the presumption of jurisdiction, “although it may be possible to do so in a case

involving a multi-jurisdictional tort where only a relatively minor element of the tort has occurred in the province” (*Van Breda*, at para. 96).

[218] In each of these cases, this Court noted, “it is arguable that the presumptive connecting factor points to a weak relationship between the forum and the subject matter of the litigation and that it would accordingly not be reasonable to expect that the defendant would be called to answer proceedings in that jurisdiction” (*Van Breda*, at para. 97; see also para. 92). Importantly, the rebuttal test does *not* inquire into the defendant’s reasonable expectations; instead, the *legal consequence* of rebutting a presumptive connecting factor is that it is unreasonable to expect the defendant to be called to answer proceedings in the forum.

(5) The Relationship Between Jurisdiction *Simpliciter* and Forum Non Conveniens

[219] The real and substantial connection test does not require “showing ‘the strongest’ possible connection between the claim and the forum where jurisdiction is sought to be assumed” (*Lapointe*, at para. 34, citing *Van Breda*, at para. 34). As this Court has affirmed, jurisdiction under the *Van Breda* test “may sometimes be established on a rather low threshold” (*Van Breda*, at para. 109). The *Van Breda* test sets a “relatively low bar” (*Goldhar*, at para. 30, per Côté J.; see also para. 32). More than one court can have jurisdiction over a dispute (*Van Breda*, at para. 15; *Lapointe*, at para. 35).

[220] Even if a court concludes that it has jurisdiction under *Van Breda*'s low threshold, this does not necessarily mean that the court should assume jurisdiction (*Van Breda*, at paras. 101-2; *Breeden v. Black*, 2012 SCC 19, [2012] 1 S.C.R. 666, at para. 22; *Lapointe*, at para. 51). A defendant may raise the doctrine of *forum non conveniens*, under which a court exercises discretion to decline jurisdiction because another forum is “clearly more appropriate” (*Breeden*, at para. 37 (emphasis in original); see also *Van Breda*, at paras. 103 and 108-9; *Lapointe*, at para. 52).

[221] The *forum non conveniens* doctrine is concerned with fairness to the party contesting jurisdiction and the efficiency and convenience of the proceedings (*Van Breda*, at para. 104; *Lapointe*, at para. 52). In applying this doctrine, a court may consider a broad range of factors varying with the context, including the location of parties and witnesses; the cost of transferring the case to another jurisdiction; the impact of a transfer on the conduct of the litigation; the cost of declining to stay the action; the possibility of conflicting judgments; and potential problems related to the recognition and enforcement of judgments (*Van Breda*, at para. 110; *Lapointe*, at para. 53).

[222] Courts must clearly distinguish between the *existence* and *exercise* of jurisdiction (*Van Breda*, at para. 101). A court first determines whether jurisdiction exists, and then evaluates whether it should be exercised or whether another forum is more appropriate (*Van Breda*, at para. 101; *Lapointe*, at para. 35; Walker, at § 2.01). As this Court has emphasized, “whether another forum is more appropriate” under the

forum non conveniens doctrine “plays no part in the analysis for assuming jurisdiction” (*Lapointe*, at para. 35; see also *Van Breda*, at paras. 101-2).

B. *The Low Threshold To Establish Jurisdiction Under Ontario Procedural Law*

[223] Although *Van Breda* developed the common law principles of private international law for when a court can assume jurisdiction over a tort claim with an interprovincial or international element, the process for contesting jurisdiction, including the applicable evidentiary threshold, is governed by each province’s law of civil procedure. As LeBel J. cautioned in *Van Breda*, the Court’s comments “about the development of the common law principles of the law of conflicts are subject to provisions of specific statutes and rules of procedure” (para. 68 (emphasis added)). In short, nothing in *Van Breda* disrupted the settled procedural rules in each of the common law provinces; indeed, the law in that case is expressly stated to be subject to those rules.

[224] As noted above, as a matter of private international law, the threshold to establish jurisdiction *simpliciter* under the *Van Breda* test is low (*Van Breda*, at para. 109; *Goldhar*, at paras. 30 and 32). The same is true under Ontario’s law of civil procedure. A plaintiff seeking to establish jurisdiction *simpliciter* over an extraprovincial defendant need only show a “good arguable case” supporting a presumptive connecting factor, based on “either the allegations in the statement of claim or a combination of the allegations in the statement of claim and evidence filed on a jurisdiction motion” (*Rothmans (Ont.)*, at para. 54, citing *Tucows.com Co.*, at para.

36, *Ecolab Ltd. v. Greenspace Services Ltd.* (1998), 38 O.R. (3d) 145 (Div. Ct.), at pp. 149-54, and *Schreiber v. Mulroney* (2007), 88 O.R. (3d) 605 (S.C.J.), at para. 18; see also *Vahle v. Global Work & Travel Co.*, 2020 ONCA 224, at para. 12; *GlycoBioSciences Inc. v. Herrero and Associates*, 2023 ONCA 331, at para. 6; *Thind v. Polycon Industries*, 2022 ONSC 2322, at para. 29; *Richter Inc. v. Wing*, 2023 ONSC 3325, at paras. 37-38; *Innis v. Sunwing Travel Group Inc.*, 2024 ONSC 1102, at para. 35; P. M. Perell and J. W. Morden, *The Law of Civil Procedure in Ontario* (5th ed. 2024), at ¶¶2.605-2.607; Pitel, at pp. 114-15).

[225] The “good arguable case” standard is “not a high threshold and means no more than a ‘serious question to be tried’ or a ‘genuine issue’ or that the case has ‘some chance of success’” (*Tucows.com Co.*, at para. 36; *Inukshuk Wireless Partnership v. 4253311 Canada Inc.*, 2013 ONSC 5631, 117 O.R. (3d) 206, at para. 19; *Essar Steel Algoma Inc., Re*, 2016 ONSC 595, 33 C.B.R. (6th) 313, at para. 35; see also *Gebien v. Apotex Inc.*, 2023 ONSC 6792, at para. 193; *Thind*, at para. 29; *Richter*, at paras. 37-38; Perell and Morden, at ¶2.606).

[226] To show a “good arguable case” for a presumptive connecting factor, the plaintiff is entitled to rely on the facts pleaded in the statement of claim, which are presumed to be true. The plaintiff is under no obligation to file additional evidence, unless the defendant challenges the allegation with evidence or the allegation is devoid of merit or lacks an air of reality (*Rothmans (Ont.)*, at paras. 108-19; Perell and Morden, at ¶¶2.606-2.607; *Thind*, at para. 29). As this Court has similarly directed, allegations

in the statement of claim “should be accepted as pleaded unless contradicted by evidence adduced by the defendants” (*Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, [2012] 1 S.C.R. 636, at para. 38). The statement of claim “frames the action for the purposes of analysing the assumption and exercise of jurisdiction” (*Goldhar*, at para. 21).

[227] Under Ontario law, a jurisdiction motion is “not occasion to test the adequacy of the pleadings for the purpose of disclosing a reasonable cause of action” (Perell and Morden, at ¶2.605; see also *Rothmans (Ont.)*, at para. 106; *Vahle*, at para. 13). It is also “unnecessary and inappropriate” on a jurisdiction motion to “weigh evidence going to the merits of the litigation” (*Vahle*, at para. 13). The issues on a jurisdiction motion are “whether the statement of claim asserts the core elements of a cause of action known to law and appears capable of amendment to cure any pleadings deficiencies and whether the claimant has established a good arguable case that the cause of action is sufficiently connected to Ontario to found jurisdiction” (para. 13; see also *Rothmans (Ont.)*, at para. 106; Perell and Morden, at ¶2.605).

[228] The rationale for the “orthodox approach” of the low standard of a good arguable case in the jurisdiction *simpliciter* context is that preliminary jurisdiction motions are brought at an early stage of the proceedings, before pleadings have closed and before documentary production and discovery (Pitel, at p. 114). As this Court has observed, rulings on jurisdiction motions are “usually interlocutory decisions made at the preliminary stages of litigation” and address issues that are “typically raised before

the trial begins” (*Van Breda*, at para. 72). A court must evaluate the issues “on the basis of the pleadings, the affidavits of the parties and the documents in the record before the judge” (para. 72). As a result, LeBel J. noted for the Court, “[i]ssues of fact relevant to jurisdiction must be settled in this context, often on a *prima facie* basis. These constraints underline the delicate role of the motion judges who must consider these issues” (para. 72).

[229] My colleague Côté J. asserts that “whether the ‘good arguable case’ standard applies to jurisdiction *simpliciter* is far from being settled” (para. 60), even though no party or intervener challenged the applicability of that standard. She also does not identify the standard for establishing a presumptive connecting factor, noting only that it “suffice[s] . . . to say that the standard for establishing a presumptive factor is low” (para. 62). However, my colleague goes on to consider whether the Sinclairs have met their onus in establishing a presumptive connecting factor and calls into question the adequacy of the pleadings for this purpose. With great respect for the contrary view, this Court must identify the standard the Sinclairs had to meet in establishing a presumptive connecting factor. For this purpose, the Court must necessarily draw on the settled law in Ontario that governs this case — the “good arguable case” standard — which no party or intervener has questioned.

[230] The “good arguable case” standard has been adopted by Canadian courts, including this Court on multiple occasions, in deciding jurisdictional matters for more than 70 years. Its origin can be traced to a 1951 decision of the House of Lords, which

considered a claim for a breach of contract allegedly committed in England by a foreign company (*Vitkovice Horni a Hutni Tezirstvo v. Korner*, [1951] A.C. 869). In his speech, Lord Simonds found that the plaintiff seeking to obtain leave to serve *ex juris* did not have to satisfy the court that the breach had occurred in England, as this would amount to trying the action. The plaintiff only had to make out a good arguable case that this was so (pp. 878-80). The standard was soon adopted for jurisdictional determinations by courts in Ontario (*Jenner v. Sun Oil Co.*, [1952] O.R. 240 (H.C.J.), at pp. 245 and 251; see also *Canadian Westinghouse Co. v. Davey*, [1964] 2 O.R. 282 (C.A.), at p. 284) and in a series of decisions of this Court over the course of three decades (*Muzak Corp. v. Composers, Authors and Publishers Association of Canada Ltd.*, [1953] 2 S.C.R. 182, at pp. 187-88 and 194; *Composers Authors and Publishers Association of Canada Ltd. v. International Good Music, Inc.*, [1963] S.C.R. 136, at pp. 143-44; *Antares Shipping Corp. v. The Ship “Capricorn”*, [1977] 2 S.C.R. 422, at pp. 446-47).

[231] The “good arguable case” standard continues to be applied by courts in various Canadian common law jurisdictions as the standard to establish the facts for a presumptive connecting factor (see, e.g., *The Jean Coutu Group (PJ) Inc. v. British Columbia*, 2025 BCCA 80, at para. 12; *Altria Group, Inc. v. Stephens*, 2024 BCCA 99, 494 D.L.R. (4th) 332, at para. 50; *VM Agritech Ltd. v. Smith*, 2024 BCCA 360, [2025] 4 W.W.R. 273, at paras. 8-9 and 56; *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181, 450 D.L.R. (4th) 301, at para. 16; *Wildwood Transport Inc. v. Eagle West Cranes Inc.*, 2011 MBQB 42, 263 Man. R. (2d) 195, at para. 34; *New Brunswick v. Rothmans Inc.*, 2010 NBQB 381, 373 N.B.R. (2d) 157, at paras. 18, 59-62 and 122; *NTI Boilers Inc. v.*

Muelink & Grol B.V. Duravent Inc., 2023 NBKB 4, at paras. 15-16; *Ferrari v. Feurer*, 2020 YKSC 29, at para. 22; *Integrated Team Solutions PCH Partnership v. Mitsubishi Heavy Industries, Ltd.*, 2025 ONCA 297, at para. 8). It is also acknowledged as the prevailing approach in the academic commentary (see Perell and Morden, at ¶¶2.606-2.607; Walker, at § 9.01[1] and [4]; Pitel, at pp. 114-15).

[232] My colleague cites the work of Prof. Stephen G. A. Pitel, who has long suggested that courts should apply the “good arguable case” standard only in establishing the facts relevant to jurisdiction, rather than to the broader issue of whether jurisdiction is actually made out (see Côté J.’s reasons, at para. 60, citing Pitel, at p. 115; see also S. G. A. Pitel, “Nuances in the Analysis of Jurisdiction: *Schreiber v. Mulroney*” (2008), 34 *Adv. Q.* 126, at pp. 129-30) — even if courts have not always reflected this nuance in their reasons (see, e.g., *Rothmans (Ont.)*, at para. 54; *Schreiber*, at paras. 18 and 28). But Professor Pitel does not question the application of the “good arguable case” standard to jurisdiction motions, nor does he suggest that this area of law is “far from being settled”. To the contrary, the jurisprudence outlined above demonstrates that the standard is settled law in Ontario, and no party or intervener suggests otherwise. Where, as here, the facts underlying a presumptive connecting factor are in dispute, the “good arguable case” standard clearly applies.

[233] The “good arguable case” standard has earned broad and enduring acceptance because it is practical. As I have said, jurisdictional challenges are dealt with early in the proceedings when the record is incomplete. The “good arguable case”

standard ensures that the discrete issue of jurisdiction does not devolve into a trial on the merits of the claim. This principled rationale motivated the elaboration of the standard by Lord Simonds in *Korner* (at p. 879) and has since been repeatedly affirmed (see Walker, at § 9.01[4]; *Ontario New Home Warranty Program v. General Electric Co.* (1998), 36 O.R. (3d) 787 (Gen. Div.), at p. 799; *Canadian Westinghouse*, at p. 284; *AG Armeno Mines and Minerals Inc. v. PT Pukuafu Indah*, 2000 BCCA 405, 190 D.L.R. (4th) 173, at para. 25; see also *Van Breda*, at para. 72).

[234] The parties to this appeal acknowledged that the motion judge applied the “good arguable case” standard (see A.F., at para. 27; R.F., at para. 33) and took no issue with that standard. Again, this makes good sense, given that it is settled law in Ontario. This Court has said that absent “rare and exceptional circumstances, we should not overrule a precedent without having been asked to do so by a party” (*R. v. McGregor*, 2023 SCC 4, at para. 23).

[235] Questioning the “good arguable case” standard without argument also risks inadvertently disturbing other legal principles. For example, my colleague asserts without authority that jurisdiction *simpliciter* is “totally different in terms of its finality” from, for example, a motion for interlocutory relief (para. 61). But the jurisprudence on the finality of jurisdiction motions appears at best unsettled (compare *Purple Echo Productions Inc. v. KCTS Television*, 2008 BCCA 85, 76 B.C.L.R. (4th) 21, at para. 37, and *CE Design Ltd. v. Saskatchewan Mutual Insurance Co.*, 2021 SKCA 14, 455

D.L.R. (4th) 417, at paras. 80-81). This is not an appropriate case in which to settle this controversy.

[236] To sum up, the “good arguable case” standard prevailing in Ontario is deeply rooted in the jurisprudence and reflects decades of collective judicial wisdom. In the absence of any argument or authority questioning its application, that standard must be applied in this appeal.

C. *The Standard of Appellate Review of a Preliminary Jurisdiction Decision*

[237] Whether a motion judge erred in applying the legal test for jurisdiction *simpliciter* is a question of mixed fact and law reviewable for palpable and overriding error, unless an error in applying the test can be traced to an extricable error of law, which attracts a standard of correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 33-36; *Kyko Global Inc. v. M/S Crawford Bayley & Co.*, 2021 ONCA 736, at para. 13; *Airia Brands Inc. v. Air Canada*, 2017 ONCA 792, 417 D.L.R. (4th) 467, at para. 39; *Deadman v. Jager Estate*, 2019 ABCA 481, 96 Alta. L.R. (6th) 222, at paras. 9-10).

[238] In *Van Breda*, this Court directed appellate courts to defer to a motion judge’s findings of fact and mixed fact and law made on a preliminary jurisdiction challenge (para. 113). In the *Van Breda* dispute, for example, this Court deferred to the motion judge’s findings on whether there was a contract connected with the dispute

that had been made in Ontario, on who was entitled to the benefit of the contract, and on who was brought within the relationship under the contract (para. 116).

[239] In the Charron dispute, this Court refused to reweigh evidence of whether the out-of-province defendant was carrying on business in Ontario. It observed that the motion judge had “considered this evidence at a preliminary stage on the basis of the parties’ pleadings” (para. 121). The Court noted that “[t]he nature and weight of this evidence has been challenged in this Court”, but cautioned that since the motion judge “made findings about its content and about what it meant . . . deference must be shown” (para. 121; see also para. 122).

D. *Application to This Case*

- (1) Based on the Facts Pleaded and Evidence on the Motion, the Sinclairs Established a Good Arguable Case of a Contract Connected With the Dispute That Was Made in Ontario

[240] The Sinclairs rely on the fourth presumptive connecting factor in *Van Breda*: a contract connected with the dispute that was made in Ontario. To determine whether this factor is made out, a court proceeds in two steps. First, the court identifies the dispute by examining the nucleus of the claims pleaded. Second, the court determines whether a contract connected with the dispute was made in Ontario (*Lapointe*, at paras. 36-39; *Van Breda*, at para. 117).

(a) *The Dispute Involves Negligently Engaging Incompetent Persons To Provide Transportation Services and Negligently Providing Those Services*

[241] In *Van Breda* and *Lapointe*, this Court identified the dispute in each case by examining the subject matter of the litigation based on the claims pleaded as a whole, rather than by isolating the claims against the extra-provincial defendants and evaluating them as if they formed part of a separate action. As this Court noted, the connecting factors serve to “connect the legal situation or the subject matter of the litigation with the forum” (*Van Breda*, at para. 82 (emphasis added); see also paras. 92 and 94-97; *Lapointe*, at paras. 1, 25 and 27).

[242] In the *Van Breda* dispute, this Court identified the dispute as a claim in negligence by analyzing all “[t]he events that gave rise to the claim” based on the pleaded allegations (at paras. 116-17), beginning with the contract between Ms. Van Breda’s spouse and Club Resorts that was arranged by a travel agent in Ontario. The Court did not examine in a silo the tortious activities on the beach in Cuba that led to Ms. Van Breda’s injuries.

[243] In *Lapointe*, this Court reviewed the pleadings as a whole to identify the dispute as a claim in professional negligence. The Court analyzed “[t]he nucleus of the claim against Cassels Brock, as well as that of Cassels Brock’s third party claim against the local lawyers who signed certificates of independent legal advice” (para. 38). It examined the nexus of the third-party negligence claims against the Quebec lawyers with the claims against Cassels Brock and concluded that they arose out of the wind-

down agreement made in Ontario. The Court did not focus on the professional negligence claims against the Quebec lawyers in isolation, by examining the Quebec lawyers' contracts with their Quebec clients.

[244] In a case alleging multiple torts, as in this case, or a case raising claims under multiple heads of liability, focussing on the dispute as a whole ensures that a court does not inappropriately hear only part of the case in the forum while leaving related claims to be heard in the extra-provincial or foreign court. Such a bifurcation of related claims is incompatible with any notion of access to justice, fairness, or efficiency. As LeBel J. explained in *Van Breda*, at para. 99:

I should add that it is possible for a case to sound both in contract and in tort or to invoke more than one tort. Would a court be limited to hearing the specific part of the case that can be directly connected with the jurisdiction? Such a rule would breach the principles of fairness and efficiency on which the assumption of jurisdiction is based. The purpose of the conflicts rules is to establish whether a real and substantial connection exists between the forum, the subject matter of the litigation and the defendant. If such a connection exists in respect of a factual and legal situation, the court must assume jurisdiction over all aspects of the case. The plaintiff should not be obliged to litigate a tort claim in Manitoba and a related claim for restitution in Nova Scotia. That would be incompatible with any notion of fairness and efficiency.

[245] Plainly, the narrower a court defines “the dispute” under the fourth presumptive connecting factor, the more difficult it will be to show a presumptive connection between the dispute and the forum. A narrow approach also undercuts the role of the rebuttal stage to evaluate the strength of the connection between the contract and the dispute. It bears repeating that this Court in *Lapointe* adopted a broad approach

to the fourth presumptive connecting factor over the dissenting views of Côté J., who expressly advocated for “a narrow interpretation” (para. 87). Such a narrow interpretation conflicts with this Court’s repeated recognition that the *Van Breda* test for jurisdiction *simpliciter* establishes a low threshold. This low threshold preserves a court’s flexibility in assessing jurisdiction over defendants or claims with an international or interprovincial element. Concerns as to whether the court should decline jurisdiction can be addressed under the flexible and discretionary *forum non conveniens* doctrine.

[246] In this case, the motion judge correctly identified the dispute as involving integrally related allegations of negligence flowing out of the Sinclairs’ contract with Amex Canada. She correctly noted that the statement of claim pleads torts of negligently engaging incompetent persons to provide transportation services and negligently providing those services, which are pleaded to flow from the Sinclairs’ contract with Amex Canada under the Centurion Cardmember Agreement (motion judge’s reasons, at paras. 20-22 and 31). The concurring judge in the Court of Appeal also correctly described the dispute as involving the Sinclairs’ allegations of “tortious conduct” flowing from Amex Canada’s “contractual obligations to [the Sinclairs]” under the Centurion Cardmember Agreement (paras. 77-78).

[247] Although the majority of the Court of Appeal correctly noted that the Sinclairs’ claim is founded in tort (paras. 9, 23 and 35), it incorrectly asserted that “there is no breach of the contract pleaded” (para. 35) and that “[a]ny contractual relationship

between the [Sinclairs] and Amex Canada is not relied upon for the claim” (para. 23). While the Sinclairs’ claim does not seek damages for breach of contract, it does expressly plead breaches of duties of care by all the defendants flowing from the Sinclairs’ contract with Amex Canada.

[248] The Sinclairs could, of course, have claimed damages against Amex Canada for breach of contract or based on concurrent liability in contract and tort, with the contract providing evidence of a relationship of sufficient proximity to impose a duty of care in negligence (*Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, at pp. 204-6; *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12, at pp. 26-30; J. D. McCamus, *The Law of Contracts* (3rd ed. 2020), at pp. 796-97). But the Sinclairs were not required to do so. *Prima facie*, they were entitled to “sue in either or both” (*BG Checo*, at p. 26) and “to assert the cause of action that appears to be most advantageous to [them] in respect of any particular legal consequence” (*Rafuse*, at p. 206). Although the Sinclairs’ contract with Amex Canada may be relevant to Amex Canada’s defence to limit or negate the duty of care in negligence alleged (*Rafuse*, at pp. 205-6; *BG Checo*, at p. 26), those are issues to be determined at the trial on the merits, not at the preliminary stage of determining jurisdiction.

[249] My colleague Côté J. does not expressly analyze the “nucleus of the claim” to identify the dispute based on the claims pleaded in the statement of claim, yet she declares that “the dispute arose from a tort that occurred in Italy” (para. 135). With

great respect, this conclusion does not consider the claims pleaded in the statement of claim as a whole. The pleaded torts are not simply the negligent driving of the water taxi, but also Amex Canada's negligent engagement of Carey International, Carey International's negligent engagement of the Italian defendants, and the Italian defendants' negligent engagement of the water taxi driver, Mr. Dordit (statement of claim, at para. 29(a) and (b)). The statement of claim also expressly pleads that Amex Canada and Carey International are "vicariously liable" for the torts of the Italian defendants and Mr. Dordit, who are pleaded to have acted as Amex Canada and Carey International's agents (para. 35). The statement of claim thus asserts a series of integrally related tort claims.

[250] My colleague's approach bears some similarity to her dissent in *Lapointe*, in which she adopted a "narrow interpretation" of what constituted a contract connected with the dispute (para. 87). In this case, my colleague proposes to apply a similarly narrow interpretation to what constitutes "the dispute", thereby once again taking a narrow approach to the *Van Breda* test. As Harvison Young J.A. fairly noted in her concurring reasons, the majority in the Court of Appeal "effectively recast the dissenting opinion of Côté J. in *Lapointe* . . . as the governing precedent" (para. 48); my colleague now does likewise but through another device. Such an approach was rejected by this Court in *Van Breda* and *Lapointe*, both of which are binding precedents for the purpose of this appeal.

(b) *The Statement of Claim Pleads Two Contracts Connected With This Dispute That Were Made in Ontario*

[251] I now consider whether the statement of claim pleads a contract connected with the dispute that was made in Ontario. I agree with the motion judge and the concurring judge of the Court of Appeal that the uncontradicted facts pleaded in the statement of claim, and admitted in Amex Canada's statement of defence and crossclaim, establish a good arguable case that two such contracts were made: (1) the Sinclairs' agreement with Amex Canada for the Centurion Card; and (2) the agreement between Amex Canada and Carey International for the booking of the water taxi in Italy on behalf of Mr. Sinclair.

[252] With respect, neither the majority of the Court of Appeal nor my colleague applies the "good arguable case" standard. The "good arguable case" standard was, however, properly stated and applied by the motion judge (at paras. 29-31) and the concurring judge in the Court of Appeal (para. 79). Both properly found that the Sinclairs have established a good arguable case that their contract with Amex Canada and Amex Canada's contract with Carey International are contracts connected with the dispute that were made in Ontario.

(i) The Sinclairs' Contract With Amex Canada

[253] The first alleged contract connected with the dispute that was made in Ontario is the Sinclairs' contract with Amex Canada, the Centurion Cardmember Agreement. The Sinclairs' statement of claim expressly pleads "a contract made in Ontario" (para. 38). The Sinclairs also plead that they both live in Toronto and that Amex Canada carries on business in Ontario. The majority of the Court of Appeal

accepted that the Sinclairs' contract with Amex Canada "was made in Ontario" (para. 35), while the concurring judge stated that this contract was "undoubtedly formed in Ontario" (para. 78; see also para. 77).

[254] The Sinclairs' contract with Amex Canada is pleaded as being connected with the dispute. The motion judge, citing the Sinclairs' statement of claim and Mr. Sinclair's evidence on the motion, noted that the Sinclairs booked their travel through Amex Canada because it claimed to provide a high quality and safe travel experience. Amex Canada's alleged negligence in engaging Carey International and Carey International's alleged negligence in retaining the Italian defendants are at the core of the dispute. I therefore agree with the concurring judge in the Court of Appeal that "the motion judge properly found [that the Italian defendants'] allegedly tortious conduct in their discharging of the water taxi services flowed from the Centurion Cardholder Agreement, a contract undoubtedly formed in Ontario, and which provided for the booking of services, such as the water taxi" (para. 78).

[255] I also agree with the concurring judge in the Court of Appeal that the motion judge did not "bootstrap" her conclusion of jurisdiction against the Italian defendants by finding jurisdiction against Amex Canada and Carey International (paras. 50-55). The concurring judge highlighted that this point was not even argued on the appeal (at para. 51), even though it was the majority's main basis for intervening with the motion judge's decision (paras. 18-29).

[256] The majority of the Court of Appeal reached its conclusion about “bootstrapping” based on the need to avoid “an overly expansive view of the fourth presumptive connecting factor” (para. 27). In doing so, the majority followed the call in Côté J.’s dissent in *Lapointe*, at para. 87, for a “narrow interpretation” of the fourth presumptive connecting factor. The majority of the Court of Appeal highlighted that “[a]ny contractual relationship between the [Sinclairs] and Amex Canada is not relied upon for the claim” (para. 23); that “[t]here is nothing in the contractual relationship between the [Sinclairs] and Amex Canada that required the [Italian defendants’] involvement” (para. 24); and that “the contract between the [Sinclairs] and Amex Canada did not create a contractual relationship between the [Sinclairs] and the [Italian defendants]” (para. 24). It also stated that, in its view, “the [Italian defendants] did not have any contractual obligations with the [Sinclairs], either directly or indirectly” (para. 29).

[257] With respect, these observations of the majority of the Court of Appeal are contrary to the clear direction of this Court in *Lapointe*: the fourth presumptive factor must be applied flexibly (*Lapointe*, at paras. 32-33); the alleged tortfeasors (the Italian defendants) need not be parties to the contract (para. 32); the events that give rise to the claim need only flow from the relationship created by the contract (para. 44); and the same analysis applies where more than one contract is involved (para. 44). The pleadings assert that the Sinclairs’ contract with Amex Canada involved recommending and engaging third parties to provide travel services. Amex Canada admits that those travel services were not to be provided by Amex Canada itself. Clearly, an employee

of Amex Canada was not expected to drive the water taxi in Venice. The fourth presumptive connecting factor is therefore made out based on the unrefuted pleaded allegations. I see no error in the motion judge's decision on this point.

[258] My colleague's reasons, in effect, do not accept the pleaded allegations as true. She accepts that it is "likely" that the Centurion Cardmember Agreement was formed in Ontario but objects that the agreement was not pleaded with sufficient particularity, nor was the agreement itself in evidence on the preliminary jurisdiction motion (para. 103). She says it is "merely an inference" that the cardmember agreement was made in Ontario (para. 103).

[259] With great respect, there are three main difficulties with this reasoning. First, the Sinclairs expressly pleaded that "a contract [was] made in Ontario" (statement of claim, at para. 38). This allegation must be assumed to be true, unless contradicted by evidence on the motion. There was no such evidence. It also bears repeating that the motion judge and all three judges of the Court of Appeal expressly stated that the Sinclairs' contract with Amex Canada was made in Ontario (motion judge's reasons, at paras. 31 and 39; C.A. reasons, at para. 35 (majority) and at paras. 77-78 (concurrence)).

[260] Second, Amex Canada's statement of defence and crossclaim cannot plausibly be read as denying that the Centurion Cardmember Agreement was made in Ontario. Amex Canada pleads that it is based in Ontario and that it invited the Sinclairs, two Ontario residents, to become Centurion cardmembers, an invitation the Sinclairs

accepted (para. 4). As is well known, pleadings must be read “as generously as possible” at an early stage of the litigation because cases should be determined on their merits based on evidence presented at trial (*Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 451; see also *Holland v. Saskatchewan*, 2008 SCC 42, [2008] 2 S.C.R. 551, at para. 15; *PMC York Properties Inc. v. Siudak*, 2022 ONCA 635, 473 D.L.R. (4th) 136, at para. 31; *Shaulov v. Law Society of Ontario*, 2023 ONCA 95, 166 O.R. (3d) 241, at para. 15). A jurisdiction motion is not an occasion to test the adequacy of the pleadings for the purpose of disclosing a reasonable cause of action. Instead, a court should ask whether the pleadings are capable of amendment to cure any deficiencies (Perell and Morden, at ¶2.605; *Rothmans (Ont.)*, at para. 106; *Vahle*, at para. 13). Applying these principles, it cannot be doubted that Amex Canada pleads that the Centurion Cardmember Agreement was made in Ontario.

[261] Further, Amex Canada admits in its statement of defence and crossclaim that the Centurion Cardmember Agreement was made in Ontario. Amex Canada’s crossclaim expressly relies on the allegations in the Sinclairs’ statement of claim as a basis of jurisdiction over the Italian defendants, including the presumptive connecting factor of a “contract made in Ontario” (see statement of defence and crossclaim, at para. 31). Under Ontario law, Amex Canada’s admission of this in its pleading dispenses with the need for proof of this alleged fact, unless Amex Canada moves to withdraw the admission in its pleading and receives leave of the court to do so, which it has not done (*Rules of Civil Procedure*, rr. 23.06, 25.07 and 51.05).

[262] Third, the fact that the Sinclairs' cardmember agreement with Amex Canada is not in evidence is in no way fatal. The facts pleaded must be assumed to be true, and the facts relevant for jurisdiction arising out of this contract were admitted by Amex Canada (although it denies liability on the merits). The Sinclairs had no duty to tender further evidence on the jurisdiction motion.

[263] In any event, if, like many ordinary Canadians, the Sinclairs have not kept a copy of the Centurion Cardmember Agreement, that contract would be produced by Amex Canada during discovery. It bears noting that counsel for the Italian defendants, who is also counsel for Amex Canada, produced a copy of Mr. Sinclair's charge card bill with Amex Canada at Mr. Sinclair's cross-examination and asked him questions about certain Carey International charges on this bill. Mr. Sinclair had not provided this document to the Italian defendants or their counsel (A.R., vol. III, at pp. 11-16). If the Italian defendants had access to Mr. Sinclair's charge card bill through their counsel, it can be inferred that they would have had access to the Centurion Cardmember Agreement as well. As a result, any objection that the Sinclairs' contract with Amex Canada is not in evidence falls away.

(ii) Amex Canada's Contract With Carey International

[264] The motion judge found a good arguable case that a second contract connected with the dispute was made in Ontario: Amex Canada's contract with Carey International regarding the water taxi booking. She found that the Sinclairs' claim, and Amex Canada's admissions in its statement of defence and crossclaim, confirmed that

Amex Canada, which is based in Toronto, booked the water taxi on Mr. Sinclair's behalf by contacting Carey International, which made the booking and confirmed this by email to Amex Canada. Amex Canada then forwarded this email to Mr. Sinclair (paras. 15 and 17-18).

[265] As the motion judge explained, this contract was made in Ontario because "[t]he jurisprudence in Ontario establishes that when acceptance of a contract is transmitted electronically and instantaneously, the general rule applies and the contract is made in the jurisdiction where the acceptance is received" (para. 16, citing *Eastern Power Ltd. v. Azienda Comunale Energia & Ambiente* (1999), 178 D.L.R. (4th) 409 (Ont. C.A.), at paras. 23 and 27-29, and *Inukshuk Wireless Partnership*, at paras. 25-29). She also noted that in cases of "near instantaneous communications like emails, a contract may be made in two different jurisdictions" (para. 18, citing *Inukshuk Wireless Partnership*).

[266] The motion judge's finding that acceptance of the booking contract was received in Toronto is a finding of fact or mixed fact and law attracting appellate deference (*Van Breda*, at para. 116). By contrast, my colleague invokes a less deferential standard to intervene by relying on this Court's decision in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, for the proposition that "whether and where a contract was formed" is a question of law (Côté J.'s reasons, at paras. 41-42). But *Sattva* merely holds that "the requirements for the formation of [a] contract" are substantive rules of law (para. 53). Although the legal requirements

for contract formation are questions of law, the *location* of the acceptance of the contract in this case was a factually suffused finding that the motion judge was entitled to make.

[267] No palpable and overriding error has been shown with the motion judge's finding as to where the contract was formed. I therefore agree with the concurring judge in the Court of Appeal that the motion judge did not err in concluding that the water taxi booking was "formed in Ontario" (C.A. reasons, at para. 77). The majority of the Court of Appeal did not address this point.

[268] My colleague disputes that any contract was formed between Amex Canada and Carey International for the water taxi booking (para. 115). But Amex Canada *admits* in its pleading that it entered into this contract by engaging Carey International "on behalf of the [Sinclairs]" (statement of defence and crossclaim, at paras. 22 and 24). Indeed, this contract is the basis for Amex Canada's crossclaim against Carey International: Amex Canada pleads that it imposed a duty on Carey International "to provide services in a responsible and safe manner" and that Carey International "was contractually bound, among other things, to recruit, train and provide suitably qualified and skilled individuals to perform transportation services" (para. 21). The motion judge also found that the parties to this contract were Amex Canada and Carey International, a finding that attracts appellate deference (*Van Breda*, at para. 116).

[269] The motion judge thus made no reviewable error in concluding that the Sinclairs met the low bar to establish a good arguable case that Amex Canada's contract with Carey International was a contract connected with the dispute that was made in Ontario.

[270] I pause here to note that, contrary to my colleague's assertion, the presumption of jurisdiction against the Italian defendants does not rely on the attornment of Amex Canada and Carey International to Ontario's jurisdiction (para. 82). Jurisdiction is presumed because the contracts are connected with the dispute, properly defined.

(iii) Whether the Sinclairs Formed a Contract "At the Dock" With the Italian Defendants Is Irrelevant at This Stage of the Proceedings

[271] Finally, my colleague concludes that the only operative contract that would be connected with the dispute is a contract that may have been formed "at the dock" in Venice between Mr. Sinclair and one or more of the Italian defendants (paras. 123-26). No such contract was pleaded by the Sinclairs or Amex Canada.

[272] With great respect, my colleague's conclusion is at odds with the settled Ontario law regarding the task of a motion judge on a motion challenging jurisdiction *simpliciter*: to assume that the pleaded facts are true, unless contradicted by evidence in the record, and to determine whether a good arguable case for the facts supporting a presumptive connecting factor has been made out. My colleague's refusal to engage

with the “good arguable case” standard is especially mistaken, given her focus on the adequacy of the pleadings in this case. I repeat here this Court’s direction in *Van Breda* that “all [its] comments about the development of the common law principles of the law of conflicts are subject to provisions of specific statutes and rules of procedure” (para. 68). Such rules of procedure may not have been relevant to the Court in *Van Breda*, as the Court largely deferred to the motion judges’ assessments of the pleadings and evidence (paras. 113, 116 and 121). Those judges had applied the “good arguable case” standard (see *Van Breda v. Village Resorts Ltd.* (2008), 60 C.P.C. (6th) 186 (Ont. S.C.J.), at paras. 20, 23 and 28; *Charron Estate v. Bel Air Travel Group Ltd.* (2008), 92 O.R. (3d) 608 (S.C.J.), at para. 21). However, under my colleague’s approach to this appeal, the applicable Ontario procedural rules on a jurisdiction motion must be considered.

[273] Even if it were appropriate at this stage to examine whether or not a contract was made at the dock, such a finding would be irrelevant. At this preliminary stage, the Sinclairs have met the low bar to establish a good arguable case of a contract connected with the dispute that was made in Ontario, based on one or both of the contracts discussed above.

[274] Only one such contract made in Ontario is required under *Van Breda* and *Lapointe*. My colleague accepts that at least the Centurion Cardmember Agreement was likely made in Ontario, and therefore accepts that this presumptive connecting factor has been made out. Here, however, the Sinclairs have pleaded two such contracts,

and the Italian defendants have not rebutted the presumption of jurisdiction flowing from either of them. I address the issue of rebuttal next.

(2) The Italian Defendants Did Not Rebut the Presumptive Connecting Factor

[275] In my view, the Italian defendants did not meet their burden to rebut the presumption of jurisdiction arising from the pleaded presumptive connecting factor. They did not establish facts demonstrating that either of the two contracts connected with the dispute that were made in Ontario points to no real relationship or to only a weak relationship between the subject matter of the litigation and the forum (*Van Breda*, at paras. 95 and 100; *Lapointe*, at para. 27).

(a) *The Motion Judge Considered the Issue of Rebuttal*

[276] The majority of the Court of Appeal stated that “[t]he motion judge did not consider” the rebuttal stage of the *Van Breda* test (para. 32). The concurring judge agreed that “the motion judge erred in failing to consider” the rebuttal stage (para. 81).

[277] I respectfully disagree. In my view, the motion judge did consider the rebuttal stage. She cited *Van Breda* and noted that, at the rebuttal stage, the defendants must “advanc[e] facts which show that the presumptive connecting factor does not point to any real relationship between the subject matter of the case and the forum or merely indicates a weak relationship between them” (para. 10). She did not have more to say about rebuttal because the Italian defendants did not address how or why the

presumptive connecting factor was rebutted. The full extent of the Italian defendants' written submissions on this point before the motion judge was to argue that "there is no real and substantial connection [between any contract entered into in Ontario and] the subject matter of the dispute", and that "if the [motion judge] finds that a presumptive connecting factor exists that has not been rebutted", then the court should stay the proceedings under the doctrine of *forum non conveniens* (factum before the Superior Court, at paras. 38-39, reproduced in A.R., vol. II, at p. 108). Similarly, at the Court of Appeal, the Italian defendants' written submissions on this point stated only that the Sinclairs' contract with Amex Canada and Amex Canada's contract with Carey International were "too weak to support a real and substantial connection" with the subject matter of the dispute (factum before the Court of Appeal, at paras. 56-57, reproduced in A.R., vol. II, at p. 163).

[278] I acknowledge that it would have been preferable for the motion judge to have expressly stated that the presumptive connecting factor was not rebutted because the Italian defendants made no submissions on this point, or because the Ontario contracts pointed to a sufficiently strong connection between the dispute and the forum in any event (Pitel (2025), at pp. 107-8). Even so, I cannot say that the motion judge erred in law by somehow forgetting to address the rebuttal stage, after she expressly acknowledged the legal requirement for the Italian defendants to rebut the connecting factor at the second stage of the *Van Breda* test. I read the motion judge's reasons as concluding that the Italian defendants simply did not discharge their burden at the rebuttal stage. Her reasons must be read generously, functionally, and contextually,

given the record and submissions made by the parties, and based on a presumption of a correct understanding and application of the law (*R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at paras. 69-74; *R. v. Gerrard*, 2022 SCC 13, [2022] 1 S.C.R. 279, at para. 2).

[279] I would also note, by way of comparison, that this Court in *Lapointe* addressed the rebuttal stage simply by writing that “[t]he strength of [the] connection was not rebutted” (para. 49). Similarly, in *Van Breda*, this Court stated that the foreign defendant had “failed to rebut the presumption of jurisdiction” with respect to the Van Breda dispute, without further analysis (para. 117). In my view, the motion judge reached the same conclusion here. Her decision is reviewable only for error of law or palpable and overriding error of fact or mixed fact and law. No such errors have been shown.

(b) *In Any Event, the Italian Defendants Failed To Discharge Their Burden To Rebut the Presumptive Connecting Factor*

[280] Assuming, however, that the motion judge forgot to address the rebuttal stage, I conclude that the Italian defendants did not discharge their burden. When the connecting factor of a contract connected with the dispute that was made in the province is relied on for presumptive jurisdiction, *the rebuttal stage must focus on showing why the connection between the contract and the dispute is too weak to justify the court assuming jurisdiction.*

[281] The Italian defendants did not show that the connections between the Sinclairs' contract with Amex Canada and the dispute, or between Amex Canada's contract with Carey International and the dispute, are too weak to justify the Ontario court assuming jurisdiction. The dispute involves the Sinclairs' allegation that they relied on Amex Canada's expertise and representations to organize a safe, seamless travel experience, and the statement of claim alleges the integrally related torts of negligently engaging incompetent persons to provide transportation services and negligently providing those services. The two contracts pleaded to have been made in Ontario are intimately related to that dispute. They serve to establish proximity among all the defendants, including the Italian defendants, and are said to give rise to duties of care in negligence to the Sinclairs. The pleading alleges that all the defendants, including the Italian defendants, are jointly and severally liable, and claims inseparable damages for these integrally related torts.

[282] Nor is it alleged that Amex Canada and Carey International arranged for the water taxi booking and then left the Sinclairs to their own devices in Venice. The claim as pleaded connects the torts of negligently engaging incompetent persons to provide transportation services and negligently providing those services. The statement of claim pleads that the Sinclairs were met at the Venice airport by an Italian tour guide provided by Carey International, "who AMEX Canada Inc. had hired" (para. 13), and that the guide took the Sinclairs by minivan to a designated water taxi. The statement of claim further pleads that the Sinclairs and the Italian tour guide provided by Carey International then boarded the water taxi under the control of the driver, Mr. Dordit,

and that a “representative or employee of the defendant Carey International, Inc. was also on the water taxi” (para. 16). As a result, Carey International, engaged by Amex Canada, continued to provide services to the Sinclairs to ensure safe transportation up to, and including on, the water taxi ride itself. This allegation is integrally related to the allegation that the Sinclairs relied on Amex Canada’s expertise and representations to organize a safe, seamless travel experience.

(c) *The Rebuttal Stage Must Not Consider Irrelevant Factors*

[283] With respect, none of the factors cited by the majority of the Court of Appeal or my colleague establish that the Italian defendants rebutted the presumption of jurisdiction.

[284] The majority noted that the driver, Mr. Dordit, was born and resides in Venice and is an Italian national, and that the other Italian defendants are Italian companies (C.A. reasons, at paras. 33 and 36). It bears repeating that Mr. Dordit has not responded to these proceedings and thus has not disputed Ontario’s jurisdiction. In any event, although the residence of Mr. Dordit and the Italian corporate defendants in Italy may be relevant under the *forum non conveniens* analysis, it is irrelevant to jurisdiction *simpliciter*. To displace the presumption of jurisdiction arising from a contract connected with the dispute that was made in Ontario, the Italian defendants must show that the connections between the contracts made in Ontario and the dispute are too weak — not merely that they live elsewhere.

[285] Finally, even if Mr. Dordit had contested jurisdiction, his birthplace and nationality are irrelevant to both the jurisdiction *simpliciter* and *forum non conveniens* analyses. They are irrelevant to the jurisdiction *simpliciter* analysis because they do not affect whether the connections between the contracts made in Ontario and the dispute are too weak. They are irrelevant to the *forum non conveniens* analysis because they do not affect whether the Ontario court should decline jurisdiction to ensure fairness to the parties and the efficient resolution of the dispute.

(d) *The Rebuttal Stage Must Properly Characterize the Dispute Based on the Facts Plead*

[286] My colleague finds that the Italian defendants rebutted the connection between the contracts made in Ontario and the dispute because “the dispute arose from a tort that occurred in Italy” (para. 135). She explains that “[t]he tort occurred on a water taxi that was owned by an Italian company, dispatched by a different Italian company, operated by an Italian national, and procured by Mr. Sinclair while on Italian soil” (para. 135).

[287] Setting aside the issues of nationality and residence, which are irrelevant to jurisdiction *simpliciter*, my colleague’s finding that the presumption of jurisdiction has been rebutted is based on a narrow characterization of the dispute — as a tort on a water taxi in Italy — rather than an examination of the claims pleaded as a whole, which allege interconnected torts flowing from contracts made in Ontario.

[288] My colleague also asserts that “[t]he only connection between the Centurion Cardmember Agreement and the dispute is that Mr. Sinclair made a non-binding reservation through Carey International by way of an Amex Canada agent” (para. 135). Again, with respect, this characterization is inconsistent with the facts pleaded by the Sinclairs and admitted by Amex Canada: Carey International was “contractually bound” to assure safe travel for the Sinclairs by “recruit[ing], train[ing] and provid[ing] suitably qualified and skilled individuals to perform transportation services” (statement of defence and crossclaim, at para. 21). All these allegations must be assumed to be true.

[289] My colleague further claims that “[t]here is not even evidence that Mr. Sinclair used his Centurion credit card to pay for the water taxi, thus further attenuating the connection between the Centurion Cardmember Agreement and the dispute” (para. 135). But Ontario law does not require the Sinclairs to tender evidence at this stage and allows them to rely on their pleading unless contradicted by evidence in the record. In any event, Amex Canada *admits* that “Carey [International] charged Mr. Sinclair for [the water taxi] service, using Mr. Sinclair’s Centurion Card” (statement of defence and crossclaim, at para. 14). Mr. Sinclair is entitled to rely on this admission in Amex Canada’s pleading without tendering further proof, unless and until Amex Canada moves to withdraw it. My colleague points to the fact that Mr. Sinclair, on cross-examination, could not confirm the nature of the charges from Carey International on his charge card statement (para. 121). But this alone cannot be sufficient to undercut Amex Canada’s express admission.

(e) *The Italian Defendants' Expectations Are Not Determinative*

[290] My colleague writes that the Italian defendants had “no way of knowing if and when they could be hauled before an Ontario court simply because, unbeknownst to them, one of their clients had arranged for their services using an Ontario credit card” (para. 136).

[291] Once again, with respect, this objection is disconnected from the pleaded claims of integrally related torts of negligently engaging incompetent persons to provide transportation services and negligently providing those services. The Italian defendants must show that the connections between the pleaded contracts and the dispute are so weak or attenuated as to make Ontario’s assumption of jurisdiction unreasonable. The expectations of the Italian defendants are not determinative, especially since they were not even parties to the two contracts at issue connecting the dispute with Ontario. While the Italian defendants’ expectations may be relevant to the *forum non conveniens* analysis, they are not conclusive as to whether an Ontario court should assume jurisdiction under the low threshold for jurisdiction *simpliciter*.

[292] In any event, the pleaded expectations of the parties to the contracts — the Sinclairs and Amex Canada — were that these contracts *would* apply to all the transportation services arranged by Amex Canada, even though Amex Canada invokes the contracts to deny liability. These are issues to be determined at trial.

(f) *This Case Does Not Involve Jurisdictional Overreach*

[293] Lastly, both the majority of the Court of Appeal and my colleague assert that finding that the Ontario court has jurisdiction over the Italian defendants in this case would raise the spectre of “jurisdictional overreach” over foreign service providers whenever Canadians use their credit cards for any travel reservations abroad (C.A. reasons, at para. 44; Côté J.’s reasons, at para. 136).

[294] I respectfully disagree. This case does not allege that the Sinclairs simply used their charge card to book a water taxi at a dock in Venice. It alleges that the Sinclairs engaged a specialized Ontario travel service provider and relied on its representations and expertise to organize a safe, seamless travel experience by engaging competent travel service providers in Italy, who would perform their duties with reasonable care and diligence. It does not involve jurisdictional overreach to hold that the Sinclairs’ allegations of negligence against the Italian defendants flowing out of their contracts made in Ontario should be adjudicated in Ontario, alongside their claims against Amex Canada, Carey International, and Mr. Dordit. Each jurisdictional dispute must be decided on its unique facts.

(3) Conclusion

[295] Based on the facts pleaded in the statement of claim and admitted by Amex Canada, the motion judge did not err in ruling that the Sinclairs meet the low threshold to establish that the Ontario Superior Court has jurisdiction *simpliciter* over their claims against the Italian defendants. The dispute pleaded involves negligently engaging incompetent persons to provide transportation services and negligently providing those

services, flowing from the Sinclairs' contract with Amex Canada and Amex Canada's contract with Carey International.

[296] Nor did the Italian defendants meet their burden to rebut the presumption of jurisdiction arising from this connecting factor. They made effectively no argument on this point before the motion judge. In any event, the connections between these contracts and the dispute are not so weak as to deny the Ontario court jurisdiction over what are pleaded to be integrally related torts giving rise to joint and several liability and inseparable damages.

VI. Disposition

[297] I would allow the appeal with costs throughout, set aside the order of the Court of Appeal, and restore the order of the motion judge.

Appeal dismissed with costs throughout, KARAKATSANIS, MARTIN, KASIRER and JAMAL JJ. dissenting.

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