

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
GEORGINA BARNETT	)	Stephen J. Moreau and Emma Bolf, for the
	)	Responding Party/Plaintiff
	)	
Plaintiff	)	
<b>– and –</b>	)	
	)	
	)	
CANADIAN NUCLEAR	)	Kevin MacNeill and John Wilkinson, for the
LABORATORIES LTD. AND	)	Moving Party/Defendant, Canadian Nuclear
CANADIAN NATIONAL ENERGY	)	Laboratories Ltd.
ALLIANCE LTD.	)	
	)	
	)	Sarah Whitmore, for the Defendant,
	)	Canadian National Energy Alliance Ltd.
Defendants	)	
	)	
	)	
	)	<b>HEARD:</b> October 14 , 2025

**HOLOWKA J.**

**REASONS FOR DECISION**

**MOTION FOR DISMISSAL OR PERMANENT STAY**

**I. Overview**

[1] Georgina Barnett, the plaintiff, has commenced an action in Ontario against Canadian Nuclear Laboratories Ltd. (“CNL”) and Canadian National Energy Alliance Ltd. (“CNEA”), asserting that both entities acted as her joint employers. The core allegation concerns a breach of contract due to her dismissal without notice, as well as the conduct exhibited by the employer leading up to such dismissal. Additionally, she argues that this conduct constitutes the tort of intentional infliction of mental suffering and further alleges discriminatory treatment by her employer, for which she is seeking damages.

[2] Ms. Barnett resides in Manitoba, the contract between her and CNL was established in Manitoba, and the conduct in question occurred at the Whiteshell Laboratories (“WL”) in Manitoba, where she was employed at the relevant time. CNL is headquartered in Ontario and conducts business within this jurisdiction. The defendant, CNL, requests an order

dismissing or permanently staying this action on the grounds that the court lacks jurisdiction or, alternatively, on the basis of *forum non conveniens*.

- [3] The plaintiff opposes this relief, relying, in part, upon an earlier contract with Atomic Energy Canada Limited (“AECL”), that preceded the incorporation of CNL and CNEA. This contract contained a forum selection clause stating that the courts of Ontario have exclusive jurisdiction to determine any dispute between Ms. Barnett and AECL.
- [4] While there is an outstanding issue regarding whether Ms. Barnett was employed by CNEA, the parties agree that this matter can be addressed at a later date. An examination of the common employer doctrine within the context of this case shall be deferred.
- [5] CNEA supports CNL’s position regarding this motion and agrees that the court’s decision in this matter shall be binding on CNEA. The parties further agree that no costs shall be awarded in connection with CNEA on this motion.
- [6] For the reasons set forth below, I conclude that the forum selection clause is valid and enforceable, and Ontario has jurisdiction in this case. The motion is dismissed.

## II. Facts

### A. The nature of the claim

- [7] Given the jurisdictional issues to be decided in this motion, an examination of the plaintiff’s claim is necessary.
- [8] The claim outlines a series of causes of action arising from a breach of contract. It requests a declaration that Ms. Barnett’s employment was terminated without notice, thereby constituting a breach of contract, and seeks monetary damages. Furthermore, it asserts that the conduct described throughout amounts to a breach of the defendants’ contractual duty of good faith. The same conduct alleged as bad faith is described as constituting the tort of intentional infliction of mental suffering. Additionally, the claim alleges discriminatory conduct that warrants a remedy in the form of damages.
- [9] The claim pleads the following:
- a. CNL and CNEA were Ms. Barnett’s joint employers, with key CNL personnel holding two roles when seconded by the CNEA to operate CNL under the “GoCo” governance model established among AECL, CNL, and the CNEA. Ms. Barnett was required to report to CNL staff and to the CNEA’s Board.
  - b. In 2014, Ms. Barnett was headhunted, signed her contract, and moved from Winnipeg to St. George to be closer to WL. She started strong and was promoted to a director role in 2019.

- c. In 2019, she was one of just two female managers at WL and was underpaid compared to similar male colleagues, but she chose to remain silent instead of risking her chances for advancement.
- d. The situation changed in 2019 when a new leadership team took over, initially led by John Gilbert and later by Kerry Rod. WL has been described as a “toxic” workplace and was subject to an investigation by an external investigator.
- e. Ms. Barnett’s interactions with Mr. Gilbert led her to request a new manager, resulting in Mr. Rod’s appointment.
- f. When matters did not improve, Ms. Barnett requested a secondment to Chalk River Laboratories (“CRL”) from a CRL employee based in Chalk River, Ontario, but her request was denied. This led Mr. Rod to become unsupportive, dismissive, and even “cruel” towards her, including laughing at her in his office after she found out he planned to have her terminated.
- g. After Ms. Barnett raised her concerns with CRL staff and spoke to the toxic workplace investigator, the situation did not improve.
- h. Ms. Barnett also alleges a pattern of discrimination: a demanding workload and the ongoing gender-based pay gap previously mentioned. This behaviour caused Ms. Barnett to experience various physical and mental health issues, including a complete mental health breakdown and a PTSD diagnosis, which led her to take two approved short-term leaves of absence.
- i. Ms. Barnett indicated her ability to resume work progressively. CNL arranged a meeting on her initial day of return, January 8, 2024, and unexpectedly terminated her employment immediately and without prior notice. CNL promptly limited her benefits, particularly disability coverage, and explicitly referenced this action in the termination letter.

## **B. CNL’s relationship with AECL**

- [10] AECL is a Crown Corporation responsible for managing Canada’s radioactive waste and decommissioning needs. It provides nuclear expertise to support federal obligations and offers services to its nuclear laboratory clients on a commercial basis.
- [11] AECL fulfills its mandate through the GoCo model: AECL owns the sites, facilities, and assets, and is responsible for environmental remediation and radioactive waste management. CNL, a private corporation, manages daily operations under agreements with AECL.
- [12] In 2014, AECL and CNL applied to the Canadian Nuclear Safety Commission (“CNSC”) for approval to transfer AECL’s nuclear operating licences to CNL. The CNSC approved this request effective November 3, 2014. As of that date, CNL became the employer of nearly all AECL employees.

- [13] In January 2015, the federal government issued a Request for Proposal seeking a private contractor to assume ownership of CNL and manage it for a specified period. CNEA was selected as the successful bidder.
- [14] In September 2015, AECL, CNL, and CNEA entered into a tripartite agreement. Under this arrangement, CNEA bought all the shares of CNL from AECL for a nominal amount. However, this ownership is strictly limited by the contract, which requires CNEA to relinquish CNL's shares at the end.
- [15] The term of the contract was from 2015 to 2025. CNEA's role was to provide management oversight and direction to CNL to ensure that CNL met its obligations under its various agreements with AECL. Essentially, under the GoCo model, AECL acquires the expertise of key personnel who are seconded to CNL from the owners of CNEA. These key personnel apply their expertise to ensure that CNL fulfills its obligations according to high scientific and technical standards in a cost-efficient manner.
- [16] Currently, CNEA is winding down its involvement under the contract. CNEA will surrender its shares in CNL, which will be acquired by a newly formed, differently structured special purpose entity.
- [17] Although AECL, CNL, and CNEA collaborate under the GoCo model, they remain separate entities. They are designed to avoid forming a partnership, joint venture, or agency. Each has its own management, governance, and employees, and they are not led by a common leadership. They are responsible for their own staff, with no accountability for each other's employees. AECL and CNEA do not oversee CNL's employees on a daily basis. Additionally, their operations are not integrated; they do not share policies, programs, or services such as HR or accounting. CNEA personnel seconded to CNL are fully dedicated to CNL during the secondment, with no duties for CNEA or its owners.

### **C. The decommissioning of Whiteshell Laboratories**

- [18] WL is located in Pinawa, Manitoba. It is the second largest site operated by AECL through CNL. The WL facility includes a nuclear reactor, shielded areas, radioactive waste management facilities, various research laboratories, and support buildings.
- [19] WL was established in 1963 as a research laboratory and operated until it was shut down in 1985. After that, it was maintained in a storage state. In 1998, the federal government announced the closure of WL, and decommissioning activities have been ongoing since then.
- [20] WL has no long-term future within CNL. Recognizing that WL is gradually moving toward eventual closure, CNL has developed a transition program to support employee retention during ongoing work and to assist employees in transitioning to new employment elsewhere as work at WL is completed.

### **D. The Plaintiff's initial employment at AECL**

- [21] Ms. Barnett was recruited by a headhunter in Ontario to work for AECL. She was hired on July 14, 2014, and started work on September 8, 2014. She held the position of Manager, WL Procurement, reporting to Chad Charbonneau, the Director of NL Supply Chain, Finances & Business Section at the AECL Head Office in Chalk River, Ontario. Her work location was at WL. Her annual salary was \$105,000, set according to AECL's payroll procedures. Ms. Barnett accepted and signed the contract in Manitoba.
- [22] Ms. Barnett became a contributor to the Public Service Pension Plan ("PSPP") at that time. The Hire Letter stated that AECL was undergoing restructuring, so it was expected that, by fall 2015, a private-sector contractor would manage her employment through a GoCo agreement, and she would no longer be eligible to participate in the PSPP.
- [23] The Hire Letter, or contract, included a choice of law/choice of forum clause (14(h)):

This Agreement shall be governed by the federal laws of Canada and, to the extent applicable, the laws of the of the Province of Ontario (or such other jurisdiction where you are employed at the relevant time). The Courts of Ontario have exclusive jurisdiction to determine any dispute between you regarding or in any way relating to this Agreement, your employment with AECL or the termination thereof, except that AECL may seek an injunction in any jurisdiction where a breach of your obligations is alleged to have occurred.

- [24] The Hire Letter also included the following clause (14(e)), upon which the Plaintiff places considerable reliance in the motion before me. It reads:

Any amendments to this Agreement must be in writing signed by AECL and by you, other than changes herein permitted. Except as expressly agreed in writing to the contrary, this Agreement will continue to govern your employment, notwithstanding your length of service or any change in your position, place of employment, salary, benefits or other terms of employment.

#### **E. Ms. Barnett's Employment at CNL**

- [25] According to the affidavit of Mr. Rod, General Manager-WL and the affiant presented by the moving party, Ms. Barnett became an employee of CNL in November 2014.
- [26] Ms. Barnett believes that she became an employee of CNL in September 2015 but states in her affidavit that she cannot verify when she transitioned from an employee of AECL to an employee of CNL. She states that she believed CNL to be a subsidiary of AECL.
- [27] Ms. Barnett was not aware of any agreements, arrangements, or understandings that existed between AECL, CNL, and CNEA.
- [28] Over the course of Ms. Barnett's employment with CNL, her responsibilities were as follows:

- a. In 2016, Ms. Barnett ceased reporting to Mr. Charbonneau and commenced reporting to James Denham, Director of Business Operations at WL. At that time, Ms. Barnett held the position of Manager, Procurement at WL and was consequently responsible for site-wide purchasing and supply chain matters.
- b. By the fall of 2018, Ms. Barnett was overseeing a team of seven employees, including two who reported directly to her.
- c. In January 2019, Ms. Barnett was appointed as the Acting Director of Business Operations. The appointment was formally confirmed through a letter from Dan Coyne, representing the WL Closure Project. Ms. Barnett assumed responsibility for WL Business Operations.
- d. In May 2019, Ms. Barnett was appointed to a new, permanent role as Director of Business Operations for the WL Closure Project. She continued reporting to Mr. Coyne. She signed the offer letter on May 21, 2019, with the words that read, “I have read, understand and hereby voluntarily accept the terms of employment described above as a binding employment agreement between me and Canadian Nuclear Laboratories Ltd.”
- e. In mid-2019, Ms. Barnett reported to Mr. Gilbert, who had succeeded Mr. Coyne as the General Manager of WL. Subsequently, in October 2019, Ms. Barnett reported to Mr. Rod, who was then serving as the Deputy General Manager. Ms. Barnett held supervisory responsibilities over ten employees, with two individuals reporting directly to her.
- f. In October 2020, Ms. Barnett took on the Stores Group as part of her responsibilities, which included overseeing employees with indirect reporting lines.
- g. From October 2021 to March 2022, Ms. Barnett was in charge of training at WL.
- h. In August 2022, Ms. Barnett assumed overall responsibility for Performance Assurance and Quality. She supervised thirty-one employees, with four reporting directly to her.
- i. In February 2023, Ms. Barnett had approximately thirty-two employees, with three reporting directly to her. This arrangement remained consistent until the conclusion of her employment with CNL on January 8, 2024.

[29] Commensurate with her experience and responsibilities, Ms. Barnett’s annual salary increased as follows:

- a. March 31, 2016: \$107,700
- b. July 1, 2016: \$111,700
- c. July 1, 2017: \$116,800

- d. July 1, 2018: \$121,800
- e. April 1, 2019: \$158,000
- f. July 1, 2019: \$163,500
- g. March 29, 2020: \$174,400
- h. July 1, 2020: \$182,800
- i. July 1, 2021: \$191,900
- j. February 7, 2022: \$203,400
- k. July 1, 2022: \$207,900
- l. July 1, 2023: \$220,400.

[30] Ms. Barnett's work at CNL also evolved. In February 2020, her schedule shifted from a five-day, 37.5-hour week to a four-day week with ten hours each day. During COVID, Ms. Barnett worked remotely to some degree. She was working entirely remotely by March 2022. She was permitted to work remotely from Texas from December 17, 2022, to March 12, 2023.

[31] Most of Ms. Barnett's work focused on the WL site, although she also interacted with personnel involved in the CRL supply chain. Some of her tasks included preparing briefing notes for CNL's board and various committees outside WL. These involved sending quality performance reports, contract deliverables, and a risk management plan every six months. However, these activities represented only a portion of her overall efforts. While she had some communication outside WL, all reporting was specifically related to WL activities for CNL's headquarters in Ontario.

#### **F. Ms. Barnett's termination of employment**

[32] Ms. Barnett's employment was terminated on January 8, 2024, during a virtual meeting attended by Tamara Lee and Danielle LeClair. Ms. Lee was a Human Resources Business Partner based at WL. Ms. LeClair was Director of Human Resources with CNL, working at CRL in Ontario.

[33] On February 29, 2024, Ms. Barnett submitted a claim to the Manitoba Workers' Compensation Board ("WCB") for psychological difficulties. The claim was denied on October 18, 2024, due to the lack of a connection between the development of the difficulties and an accident arising out of and in the course of her employment. She is seeking a reconsideration of that decision.

### **III. The Issues**

- [34] Although the parties address the issues in a different order, they largely agree on the issues that must be considered in determining this motion.
- [35] The issues to be decided are:
- a. Does the forum selection clause apply?
  - b. Does the court have *jurisdiction simpliciter*?
  - c. If the forum selection clause applies, or if the court determines that it has *jurisdiction simpliciter*, should the court nevertheless decline jurisdiction based on the defendant having shown strong cause why the court should not enforce the forum selection clause, or the doctrine of *forum non conveniens*, respectively?
- [36] The parties agree that the claim primarily rests on contractual grounds and an alleged breach. I agree with counsels' analysis and their positions on this matter, so I will not conduct a separate analysis of this question.

#### IV. Analysis

##### A. The forum selection clause

###### 1. *Position of the Parties*

- [37] The moving party, supported by CNEA, argues that the forum selection clause does not apply. CNL contends that Ms. Barnett has not met her burden to prove that the 2014 AECL contract is valid, applicable, and enforceable against CNL. In support of this, CNL states that it is not a party to the agreement between Ms. Barnett and AECL. When the 2014 contract was signed, it was explicitly understood that Ms. Barnett would transition from an employee of AECL to an employee of CNL, moving from a public sector employee to a private sector employee.
- [38] CNL asserts that the contract was not assigned from AECL to CNL; rather, Ms. Barnett's employment with CNL was in accordance with a novation. Consequently, the forum selection clause did not apply to her new position at CNL. Additionally, CNL references her employment terms from May 2019, when she was appointed Director of Business Operations with CNL.
- [39] Finally, CNL also submits that the changed substratum doctrine should be expanded to apply to the present circumstances, thereby supporting its position that the forum-selection clause in the AECL contract no longer applies.
- [40] Ms. Barnett asserts that the evidentiary record contradicts CNL's position. She maintains that AECL explicitly entered into the agreement with her with the understanding that it would remain in effect when CNL assumed responsibility at a later date. Ms. Barnett emphasizes that AECL was aware that she would transfer to CNL almost immediately as

a result of the restructuring. She further highlights the language of section 14(e) of the AECL contract.

## 2. Discussion

### a) Is the forum selection clause valid and enforceable?

[41] In my view, the forum selection clause is valid. The agreement is enforceable against CNL.

[42] A two-part test to determine the enforceability of a forum selection clause was articulated in *Douez v. Facebook, Inc.*, 2017 SCC 33, [2017] 1 S.C.R. 751, at paragraphs 28-30:

Instead, where no legislation overrides the clause, courts apply a two-step approach to determine whether to enforce a forum selection clause and stay an action brought contrary to it (*Pompey*, at para. 39). At the first step, the party seeking a stay based on the forum selection clause must establish that the clause is “valid, clear and enforceable and that it applies to the cause of action before the court” (*Preymann v. Ayus Technology Corp.*, 2012 BCCA 30, 32 B.C.L.R. (5th) 391, at para. 43; see also *Hudye Farms*, at para. 12, and *Pompey*, at para. 39). At this step of the analysis, the court applies the principles of contract law to determine the validity of the forum selection clause. As with any contract claim, the plaintiff may resist the enforceability of the contract by raising defences such as, for example, unconscionability, undue influence, and fraud.

Once the party seeking the stay establishes the validity of the forum selection clause, the onus shifts to the plaintiff. At this second step of the test, the plaintiff must show strong reasons why the court should not enforce the forum selection clause and stay the action. In *Pompey*, this Court adopted the “strong cause” test from the English court’s decision in *The “Eleftheria”*, [1969] 1 Lloyd’s Rep. 237 (Adm. Div.). In exercising its discretion at this step of the analysis, a court must consider “all the circumstances”, including the “convenience of the parties, fairness between the parties and the interests of justice” (*Pompey*, at paras. 19 and 30-31). Public policy may also be a relevant factor at this step.

The strong cause factors were meant to provide some flexibility. Importantly, *Pompey* did not set out a closed list of factors governing the court’s discretion to decline to enforce a forum selection clause. Both *Pompey* and *The “Eleftheria”* acknowledged that courts should consider “all the circumstances” of the particular case (*Pompey*, at para. 30; *The Eleftheria*, at p. 242). And the leading authority in England continues to recognize that the court in *The “Eleftheria”* did not intend its list of factors to be comprehensive. [Citations omitted.]

[43] The circumstances surrounding the formation of the AECL contract significantly influence my conclusion that the contract applies to the present jurisdictional issue. Ms. Barnett

entered into an agreement with AECL less than four months before CNL assumed employment. It is noteworthy that she continued her work seamlessly without entering into any new contractual arrangement. When AECL drafted and the parties executed the contract, it was understood that Ms. Barnett would be transferring to CNL shortly. The contract explicitly references this situation by stating, “You understand and acknowledge that this Agreement may be assigned by AECL to a wholly-owned subsidiary of AECL as part of an internal re-organization of all or a portion of AECL’s business.” In my view, the contract was drafted with the flexibility to anticipate this change.

[44] The reality of the upcoming restructuring is also mentioned earlier in the contract:

It’s important to note that AECL is currently undergoing restructuring to strengthen the capabilities of the Nuclear Laboratories in order to achieve its mandate as established by the Federal Government and its vision of becoming a global partner in nuclear innovation. As a result of this restructuring, it is expected that by the fall of 2015, the Nuclear Laboratories and its employees will be managed by a private sector contractor through a Government-owned, Contractor-operated (GoCo) agreement.

[45] CNL is a wholly owned subsidiary of AECL, created to assume a significant portion of AECL’s nuclear operations, including its employees and employee contracts.

[46] Ms. Barnett’s transfer was seamless. It is noteworthy, in my view, that no new contracts were signed. She simply began receiving her pay from CNL. The change of pension plans was explicitly addressed in the July 14, 2014 contract with AECL.

[47] The language of the contract, considering the upcoming restructuring, further supports my conclusion that it remains relevant. Section 14(e) states that the parties may amend the contract in writing and presumes the contract’s continuity despite changes in position, salary, benefits, or other employment terms. The 2019 letter, which appoints Ms. Barnett to a new permanent role as Director of Business Operations for the WL Closure Project, was a foreseeable circumstance anticipated in the AECL contract and does not affect its applicability.

[48] I am satisfied that when CNL, a wholly owned subsidiary of AECL, assumed Ms. Barnett’s employment, the AECL contract was either deemed assigned or replaced through a novation. In any event, CNL became subject to the terms of the AECL contract. See: *Paul v Etiquettes C.W.L. Ltee (cob C.W.L. Labels Ltd)*, [1986] OJ No 1862 (Ont. Dist. Ct.), at paras. 6-8; *Orr v. Magna Entertainment Corp.*, 2008 CanLII 723 (Ont. S.C.), at paras. 32, 37-41, 48; *Bodnarus v. Buchok*, 2000 MBCA 53, at para. 14; *Atlas Farm Services of Canada Ltd. v. Mikitish, Hesketh, Batte, Andrews & Associates Inc.*, 1997 CanLII 12339 (Ont. S.C.), at paras. 123-124; *Valley First Financial Services Ltd. v. Trach*, 2003 BCSC 223, at paras. 61-64, rev’d on other grounds, 2004 BCCA 312; and *Sinclair v. Dover Engr. Services Ltd.* (1987), 11 B.C.L.R. (2d) 176 (SC), at p. 6, aff’d, 1988 CanLII 3358 (BCCA).

- [49] Finally, the moving party also relies on the changed substratum doctrine and argues that there is no authority restricting it to situations to relieve an employee of the provisions of a clause signed at the time of hire that restricts their entitlements upon termination. However, the moving party references no jurisprudence to show that the doctrine is applicable in the present circumstances. I have considered CNL's argument but conclude that the factual circumstances reflect that the AECL contract was still in effect. The contract explicitly stated that it would remain in effect despite changes to position, salary and benefits.
- [50] I conclude that the forum selection clause is valid, clear and enforceable, subject to strong cause being shown why it should be disregarded.
- b) *CNL has not shown strong cause*
- [51] In my opinion, the moving party has not established strong cause or exceptional reasons to disregard the Ontario exclusive forum selection clause in this case.
- [52] There is no indication that CNL or CNEA cannot receive a fair trial in Ontario. As noted in *Expedition Helicopters Inc. v. Honeywell Inc.*, 2010 ONCA 351, 100 O.R. (3d) 241, at paras. 23 and 24, although in a commercial context, departure from the presumption established by the forum selection clause should only occur in exceptional circumstances.

In this case, there is no reason to depart from the presumption that Expedition should be held to the bargain that it made. A departure is only justified in "exceptional circumstances", as Bastarache J. stressed in *Pompey* [at para. 21]. There is nothing exceptional about this case. As discussed above, the analysis of whether there is "strong cause" to decline to enforce a forum selection clause is not an analysis of the *forum conveniens* in the conventional sense. In this case, Expedition may have established that it will experience some inconvenience in the conventional sense in having to assert its claim in Arizona. That inconvenience does not justify permitting it to resile from its agreement in this commercial contract to tolerate that inconvenience.

A forum selection clause in a commercial contract should be given effect. The factors that may justify departure from that general principle are few. The few factors that might be considered include the plaintiff was induced to agree to the clause by fraud or improper inducement or the contract is otherwise unenforceable, the court in the selected forum does not accept jurisdiction or otherwise is unable to deal with the claim, the claim or the circumstances that have arisen are outside of what was reasonably contemplated by the parties when they agreed to the clause, the plaintiff can no longer expect a fair trial in the selected forum due to subsequent events that could not have been reasonably anticipated, or enforcing the clause in the particular case would frustrate some clear public policy. Apart from

circumstances such as these, a forum selection clause in a commercial contract should be enforced.

- [53] In my view, the previous analysis applies to the current situation, even though the contract in question is not a commercial contract. Unlike some cases in a consumer setting, where there is a notable power imbalance between a consumer plaintiff seeking to bring an action in a jurisdiction different from what is specified in a forum selection clause imposed by the corporate defendant, this case involves a plaintiff seeking enforcement of the forum selection clause initially sought by the defendant corporation. In my opinion, the analysis from *Expedition Helicopters* is relevant here.
- [54] The Supreme Court in *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450, at para. 19, lists other factors that may create an exceptional situation justifying the non-enforcement of a forum selection clause: the location of evidence and witnesses, whether there is a real difference in the applicable law, connections between the parties and the fora involved, and prejudice of having the case tried in one place or another.
- [55] Both parties submitted arguments regarding the location of evidence and witnesses. I do not find this factor to be particularly significant in this case. The majority of the witnesses involved in the circumstances no longer reside in Manitoba, even if they were in Manitoba when the relevant events occurred. While the moving party can cite a few specific witnesses who *may* testify at trial and are located in Manitoba, I do not find this factor especially persuasive in the overall assessment of strong cause, especially given the availability of technology that allows for remote testimony.
- [56] While Ms. Barnett worked at WL with her focus on that location, I do not find her work was limited to that site alone. Part of her duties linked her to operations at CRL and CNL's head office in Ontario. She regularly reported to CNL staff and the CNEA Board in Ontario. This connection ties the action to Ontario.
- [57] Regarding the availability of evidence, the head office of CNL is located in Renfrew County, Ontario, where the present action was commenced.
- [58] Regarding a real difference in the law between Manitoba and Ontario, Ms. Barnett highlights the loss of the right to a jury trial if the case proceeds in Manitoba. Although losing the opportunity to a jury trial would be significant, I am not convinced it would be the case here. While I do believe the loss of the opportunity remains a strong possibility, the law journal reference cited by Ms. Barnett is dated and does not allow me to draw any firm conclusions from it.
- [59] Section 64(2) of *The Court of King's Bench Act*, C.C.S.M. c.C280 states: Subject to subsection (1), an action shall be tried and damages shall be determined by a judge without a jury, unless otherwise ordered by a judge. Therefore, Ms. Barnett could seek leave of the court to have a jury trial. CNL has indicated they would consent or at least not oppose such a motion. There is no evidence before me regarding the likelihood of a jury trial in

Manitoba proceedings. Ultimately, I do not place much weight on this submission given the uncertainty about the availability of a jury trial.

- [60] Both parties also refer to the claim for mental distress benefits that Ms. Barnett filed with WCB in support of their respective positions on the issue of legal differences between Manitoba and Ontario.
- [61] The moving party argues that Ms. Barnett's WCB claim was dismissed; however, she has requested a reconsideration of that decision. CNL asserts that, in Manitoba, pursuant to *The Workers Compensation Act*, C.C.S.M. c. W200 ("*MWCA*"), Ms. Barnett is barred from pursuing any legal action, whether statutory or otherwise, against her employer for personal injuries sustained in the course of her employment. Consequently, no legal proceedings may be initiated concerning such injuries. This legal restriction substantially limits Ms. Barnett's capacity to claim damages, particularly those arising from tort claims and extracontractual damages. CNL maintains that Ms. Barnett is engaging in forum shopping and that exercising jurisdiction in Ontario would undermine the fair and efficient functioning of the Canadian legal system by requiring an Ontario court to interpret Manitoba legislation. Furthermore, CNL expresses concern regarding the potential loss of its judicial advantage should the case proceed in Ontario.
- [62] Ms. Barnett submits that her outstanding WCB claim should not significantly influence the decision on whether to enforce the forum selection clause. The claim has been denied thus far, and notably, the *MWCA* does not exclude contract-based claims. She also argues that there is a juridical benefit to proceeding in Ontario, where the law clearly allows filing a claim when a pattern of alleged discriminatory conduct is part of the wrongful dismissal case.
- [63] As previously indicated in these reasons, I am of the view that Ms. Barnett's claim is predominantly based on breach of contract. The fact that she has lodged a WCB claim in Manitoba, considering that it is the jurisdiction where her physical workplace is situated, does not necessitate the conclusion that any contractual proceedings must be commenced within that province or that such an occurrence constitutes an exceptional reason to rebut the presumption of the enforceability of the forum selection clause. I disagree that an Ontario action, even with the existence of an outstanding WCB claim, would undermine the fair working of the Canadian legal system.
- [64] I do not agree with CNL's submission that Ms. Barnett is engaging in inappropriate forum shopping. Given that the forum selection clause designates Ontario, I do not interpret Ms. Barnett's actions as forum shopping; instead, she is seeking to uphold a forum selection clause that was drafted and proposed by AECL, the parent company of CNL.
- [65] In summary, I conclude that the forum selection clause in the contract of July 23, 2014, is valid and enforceable. I am not satisfied that CNL has shown a strong cause for the clause not to be enforced when the factors discussed above are considered.
- [66] I would dismiss CNL's motion on this basis.

**B. The court has jurisdiction according to the doctrine of *jurisdiction simpliciter*.**

[67] Although I hold the view that assessing the validity and enforceability of the forum selection clause is sufficient to resolve this motion, should I be mistaken in this regard, it is prudent to examine the jurisdictional issue in accordance with the doctrine of *jurisdiction simpliciter*. In my view, this approach likewise results in the same conclusion.

1. *Position of the parties*

[68] The moving party, CNL, takes the position that there is no real and substantial connection between the circumstances giving rise to the claim and Ontario. CNL argues that Ms. Barnett has not established any presumptive connecting factor, and if she has done so, CNL has rebutted the presumption of jurisdiction.

[69] CNL argues that:

- a. The claim is primarily contractual, and the contract was formed in Manitoba;
- b. To the extent that the claim sounds in tort, the alleged tortious acts occurred in Manitoba; and
- c. Although CNL headquarters is in Ontario and does business in Ontario, CNL has rebutted the presumption by referencing the acts complained of emanated from Manitoba, where most of Ms. Barnett's work was focused.

[70] Ms. Barnett argues that the jurisdictional issues should be decided on the basis of the validity and applicability of the forum selection clause, rather than the two-part *jurisdiction simpliciter* and *forum non conveniens* test.

[71] Regarding the *jurisdiction simpliciter* test, Ms. Barnett contends that there exists a real and substantial connection between the claim and Ontario. Concerning the presumptive connecting factors, she asserts that one or more contracts between the parties were executed in Ontario, that CNL is incorporated in Ontario, and that it conducts business within Ontario.

[72] Ms. Barnett argues that CNL cannot satisfy the *forum non conveniens* test for the same reasons it cannot demonstrate exceptional reasons or strong cause to stay the proceedings in Ontario. She highlights the importance of the ability to have a trial by a judge and jury, which is assured in Ontario.

2. *Discussion*

[73] The test for determining *jurisdiction simpliciter* was set out in *Sinclair v. Venezia Turismo*, 2025 SCC 27, at paras. 43-51:

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. 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.

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.”

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.

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.

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 . . .”

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.

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*. [Citations omitted.]

- [74] It is straightforward, and I have no difficulty concluding that there is a real and substantial connection between the claim and Ontario. More than one presumptive connecting factor is present. CNL is incorporated in Ontario, its head office is in Ontario, and it carries out business in Ontario.
- [75] Given the existence of one or more presumptive connecting factors, the burden shifts to CNL to rebut those factors.
- [76] Two of the other presumptive connecting factors are not present. First, the majority of the alleged tortious conduct occurred in Manitoba, although it may be argued that some higher-level decisions were made in Ontario. Second, the contract at issue was formed in Manitoba, where Ms. Barnett accepted CNL's offer. I do not accept the plaintiff's argument that the acceptance by Ms. Barnett was provided to CNL's agent in Manitoba, who then conveyed it to the principal in Ontario.
- [77] The alleged tortious conduct in Manitoba and the formation of the contract there are relevant factors in rebutting the presumption or showing that the connecting circumstances are weak. Furthermore, although Ms. Barnett's duties involved regular interaction with CNL personnel and the CNEA Board in Ontario, I remain convinced that most of her work was based in and focused on WL. There is merit to CNL's argument that the link to Ontario is not particularly strong.
- [78] That said, Ontario has jurisdiction, and Manitoba is not clearly the more convenient forum. Firstly, a valid forum selection clause designates Ontario as the proper jurisdiction. Secondly, appellate jurisprudence in Ontario clearly acknowledges that Ms. Barnett may assert discrimination as part of a wrongful dismissal claim, a consideration not equally recognized in Manitoba appellate jurisprudence, thereby granting Ms. Barnett a juridical advantage that would be forfeited should the case proceed in Manitoba. Thirdly, none of the significant witnesses, aside from Ms. Barnett, who are likely to be called at trial, currently reside in Manitoba. Fourthly, CNL's headquarters are situated in Renfrew County, Ontario, where the majority of relevant documentary evidence is likely

maintained. Fifthly, the core of Ms. Barnett's claim is contractual. While I have concluded that the contract was formed in Manitoba, the contracts were drafted by defendants based in Ontario and executed by them within Ontario.

- [79] I conclude, on the balance of probabilities, that there is a real and substantial connection between Ontario and the claim. Ontario has *jurisdiction simpliciter*. The application of the doctrine of *forum non conveniens* does not lead me to conclude, on the balance of probabilities, that the action in Ontario should be stayed.

**V. Conclusion and costs**

- [80] Based on the foregoing reasons, I conclude that there is no basis to stay the action in favour of the Court of King's Bench in Manitoba. The motion is dismissed.

- [81] The parties, CNL and Ms. Barnett, informed the court at the commencement of the motion hearing that they had reached a consensus concerning the issue of costs: the prevailing party shall be entitled to recover costs on a partial indemnity basis amounting to \$20,000, inclusive of disbursements and HST, payable by the unsuccessful party within 30 days. An order shall be issued to formalize this agreement. No costs shall be awarded in relation to the defendant, CNEA.

---

Mr. Justice Brian Holowka

**Released: November 17, 2025**

**CITATION:** *Barnett v. Canadian Nuclear Laboratories Ltd.*, 2025 ONSC 6400  
**COURT FILE NO.:** CV-25-21  
**DATE:** 20251117

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

GEORGINA BARNETT

Plaintiff

**-and -**

CANADIAN NUCLEAR LABORATORIES LTD. AND  
CANADIAN NATIONAL ENERGY ALLIANCE LTD.

Defendants

---

**REASONS FOR DECISION**  
**MOTION FOR DISMISSAL OR PERMANENT STAY**

---

Mr. Justice Brian Holowka

**Released: November 17, 2025**