

- [3] Meta ended its payments pursuant to the Agreement on December 19, 2023.
- [4] Meta takes the position that the *Online News Act* had an adverse impact on its activities in Canada. In its application, Torstar challenges Meta's position and claims that Meta did not have grounds to end the Agreement because the *Online News Act* did not impact its business in Canada. Torstar is claiming the amounts owed to it under the Agreement for the remainder of the term (from December 19, 2023 until September 2, 2024), and claims that Meta has continued to host and make available Torstar's digital news content on its social media platforms.
- [5] Meta brings this motion to have Torstar's application dismissed or permanently stayed because Meta alleges that it should have been brought in California pursuant to forum selection clauses in the Agreement. This is the motion on which I must rule.
- [6] The test for a permanent stay or dismissal of an action pursuant to a forum selection clause is well established. The moving party, Meta, has the burden to show that the forum selection clause is valid, clear and enforceable and that it covers the claims asserted in the application. Once the moving party has established the applicability, validity, clarity and enforceability of the forum selection clause, the opposing party, Torstar, can, and the burden is upon it, show that there is a strong cause not to enforce the forum selection clause: *Douez v. Facebook Inc.* 2017 SCC 33, [2017] 1 S.C.R. 751 ("*Douez*"); *Loan Away Inc. v. Facebook Canada Ltd*, 2021 ONCA 432 ("*Loan Away*").
- [7] Meta's position is that the forum selection clauses in the Agreement meet the test. It relies on the Court of Appeal decision in *Loan Away* that, it argues, has already determined the enforceability of the forum selection clause. Torstar disagrees. It argues that the forum selection clauses are not applicable to its application and that they are unclear. Torstar also argues that there is a strong cause not to enforce the forum selection clauses.
- [8] There are three issues before me:
- Is the *Loan Away* decision determinative of the issue?

- If not, has Meta proven that the forum selection clauses are clear and apply to Torstar's application?

- If so, has Torstar demonstrated a strong cause why the forum selection clause ought not be enforced?

[9] For the reasons below, I find that the *Loan Away* case is not determinative of the issue before me, and that Meta has not proven that the forum selection clauses are clear or that they apply to Torstar's application. For the sake of completeness, I also find that Torstar has demonstrated that there is a strong public policy reason not to enforce the forum selection clauses.

Is the *Loan Away* case determinative of the issue?

[10] In *Loan Away*, the Court of Appeal upheld the motion judge's ruling that the forum selection clause in Facebook's Terms of Service was applicable and that the dispute between Loan Away and Facebook should be resolved in California. Facebook had suspended Loan Away's advertising on the Facebook network.

[11] Loan Away was a commercial online lender whose business came from advertising on Facebook.

[12] Before both the motion judge and the Court of Appeal, Loan Away accepted that the forum selection clause in the Terms of Service was valid, clear and enforceable. The debate in *Loan Away* was with respect to the second part of the test, that is, whether Loan Away had demonstrated a strong cause not to enforce the forum selection clause.

[13] In the present case, Torstar debates the clarity and the applicability of the forum selection clause. *Loan Away* did not address this issue at all and, therefore, is not determinative of this issue.

Has Meta proven that the forum selection clauses clearly apply to Torstar's application?

- [14] The determination of the applicability of the forum selection clauses demands an analysis of the contract between the parties and the forum selection clauses.
- [15] The Supreme Court of Canada has observed that the approach to contract interpretation “has evolved towards a practical, common-sense approach not dominated by technical rules of construction”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47. The primary object of contract interpretation is to give effect to the intention of the parties at the time of contract formation: *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 45. The “intent of the parties and the scope of their understanding,” is determined by reading a contract “as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva Capital*, at para. 47.
- [16] In *The Plan Group v. Bell Canada*, 2009 ONCA 548, 96 O.R. (3d) 81, at para. 37, the Court of Appeal held that a commercial contract should be interpreted:
- (i) as a whole, by giving meaning to all the terms of a contract to avoid an interpretation that would render any term ineffective;
 - (ii) by determining the intention of the parties with reference to the words used in the contract;
 - (iii) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to subjective intention; and
 - (iv) to the extent that there is any ambiguity in the contract, in a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity.
- [17] The Agreement is short. It is organized around nine articles. It is entered into between a “Partner” and Facebook. Torstar is the “Partner”.
- [18] The Agreement contains Recitals:

“Whereas, Facebook would like Partner to make the Content Feed available on Facebook Company Products (as defined below), such as information centers, news surfaces and recommendation surfaces;

and Whereas, Partner is willing to make the Content Feed available on Facebook Company Products, as described in this Agreement.”

- [19] Article 1 (Definitions) identifies that the expression “Content” means content owned and published by Torstar, the “Content feed” is the feed provided by Torstar and “Sponsored Content” means content containing sponsorships, enhancements or other commercial elements, such as branded tickers, logos, introductions and titles such as “brought to you by”, “presented by” and “sponsored by”.
- [20] In Article 1, the expression “TOS” is defined as “Terms of Service” available on the Facebook webpage including the “Commercial terms” again available on Facebook webpage, and “any online terms and policies incorporated therein for the applicable Facebook Company Products.” Importantly, “Facebook Company Products” is said to have the meaning provided in the TOS.
- [21] Article 2 (Provision of Content) is the core of the Agreement. It defines Torstar’s obligations as a Partner to grant to Facebook a non-exclusive, royalty-free, worldwide license for Facebook to hold, distribute, display and communicate the Content Feed on all Facebook Company Products during the term of 3 years. Ownership and intellectual property rights remain with Torstar subject to the right granted by the Agreement. Facebook has permission to make the Content Feed available to its employees for purposes of testing. Torstar agrees to provide the Content Feed in accordance with news indexing guidelines of Facebook. Generally, the Content Feed will be provided at the same time and with the same quality as displayed on Torstar’s own websites. Torstar agrees to ensure that the Content Feed remains available for the duration of the Agreement and Torstar agrees that it will conduct a review of the content from editorial, standards and practices, legal and fact-checking, as done in the normal course of its business.

- [22] Article 2.3 further provides that Torstar allows Facebook to monitor, report or disable any use of content that is inconsistent with the Agreement.
- [23] Article 2.4 provides that Torstar maintains editorial control and Facebook retains control of placement, positional and non-editorial aspects of the display, including the right not to display the Content. Facebook retains control of any advertisement appearing on its products but will not place them within the content
- [24] Article 3 defines the fee to be paid monthly or on a *pro rata* basis and discusses tax remittances. Article 4 obliges Torstar to maintain a media liability insurance policy for a certain amount for the term of the agreement.
- [25] Article 5 (Trademarks, Marketing, Publicity and Confidentiality) entitles each party a licence to use each party's name, trademarks and logos solely in connection with the display and distribution of the Content Feed under the Agreement. The parties are also prohibited from making public announcements about the Agreement without the other party's prior written approval. Both parties have the right to announce the partnership contemplated by this Agreement (but not the details of the commercial arrangements) with the other's prior written approval. Each party agrees not to use or disclose any confidential information obtained in the course of the partnership except for what is necessary to perform its obligations under the Agreement.
- [26] Article 6 is the term and termination clause that is at issue in the application. It provides for an initial term of three years renewable for two years. It also provides for the right to terminate for uncorrected breaches of the Article in terms of content availability and the clause relied upon by Meta to terminate the agreement if any "law, ... that in Facebook's reasonable determination, ... may have any adverse impact upon its activities in Canada."
- [27] Article 7 contains representations and warranties, including that Torstar has the rights to the Content, is not acting at the behest of a government official nor is subject to international sanctions in the United States of America., United Kingdom. or European Union.

[28] Article 8's wording is material to the present dispute. It provides:

“Incorporation of Terms. This Agreement consists of the provisions herein, the exhibit(s) attached hereto, and the TOS. This document supplements, forms an addendum to, and hereby incorporates by this reference, all provisions of the TOS, including all online documents incorporated therein. To the extent this document (including the exhibit(s)) directly conflicts with any provision of the TOS, this document supersedes such provision, solely as between the parties to this Agreement.”

[29] Finally, Article 9 (Miscellaneous) recognizes that the parties are independent contractors, that the Agreement represents the entire agreement between the parties and contains rules of interpretation not material here.

[30] As its title indicates, the Agreement is a different type of business arrangement than the ones normally carried out by Meta where consumers have access to Meta's products and services for free and commercial users buy advertisements to be displayed on the networks. The Agreement was innovative and reads like a pilot program, designed on experimental trial basis for a maximum period of five years with an initial three-year term.

[31] The intent of the parties is clear that the main purpose of the arrangement is to allow Facebook to use Torstar content on all its platforms, which are defined in the TOS, and to provide compensation to Torstar for such use. The Agreement was entered at a time when there was concern about the way social media used and distributed news content without paying for it.

[32] Meta relies on a clause in the Commercial Terms to suggest that the litigation should have been brought in California. In the alternative, it relies on the wording of the general TOS.

The Commercial Terms

[33] The Commercial Terms are accessed from the TOS. Section 4-5 of the TOS provides as follows: “if you *access or use* our Products for commercial or business purposes, such as buying ads, selling products, developing apps, managing a group or a page for your

business, or using our measurements services, *you must agree to our Commercial Terms* (hyperlinked).” (Emphasis added)

[34] The Commercial Terms begin as follows:

Meta Commercial Terms ("Commercial Terms")

These Commercial Terms apply to *access or use* of the Meta Products (or "Products"), for a business or commercial purpose (except where we state that separate terms, and not these Commercial Terms, apply to such access or use of a Facebook Product). *Business or commercial purposes include using ads, selling products, developing apps, managing a Page, managing a Group for business purposes, or using our measurement services regardless of the entity type.*

(...)

5. Disputes:

a. Third Party Claims: If anyone brings a claim, cause of action, or dispute against us related to your services, actions, content or information on Facebook or other Meta Products or your use of any Meta Products, you agree to indemnify and hold us harmless from and against any damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to any such claim, cause of action, or dispute.

b. Commercial Claims: Sections 5.c and 5.d below apply to any claim, cause of action, or dispute that *arises out of or relates to any access or use* of the Meta Products for business or commercial purposes ("Commercial Claim") between you and Meta.

(...)

d. Commercial Claims outside the United States: If you reside outside the United States or your business is located outside the United States, you agree that:

i. Any Commercial Claim between you and Meta Platforms, Inc. must be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County, that you submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Commercial Terms and any such claim, without regard to conflict of law provisions.

(Emphasis added)

[35] Meta’s argument is that the News Innovation Agreement is a commercial arrangement. That is clear from the Agreement. Meta also argues that it is a commercial arrangement that relates “to access or use” of the Meta Products. Torstar disputes this. Torstar

characterizes the dispute in its application as a contractual claim about *Meta's* access to Torstar's content, as opposed to a dispute over Torstar's access to Meta's products. I agree with Torstar on this point.

- [36] The Commercial Terms are meant to determine the contractual obligations for the use of access of Meta products and services and relate to the type of business transactions similar to the ones in *Loan Away* or *Gorenstein v. Meta Platforms*, 2025 FC 410 ("*Gorenstein*"), where a business or an individual accesses Meta's network to advertise its wares or services. This is not the case for the Agreement, which does not deal with Torstar's use or access to the network.
- [37] In *Gorenstein*, the Federal Court enforced the forum selection clause in the Commercial Terms. The Court considered that Ms. Gorenstein had "enjoyed a commercial operation with little costs" and there was nothing unconscionable about requiring her to submit to California courts if she had a dispute with Meta over the benefit that she had enjoyed for free.
- [38] Meta argues the contract is also about Torstar's access to Meta's platform. I disagree that this is a feature of the Agreement. Reading the Agreement as a whole and giving meaning to its structure and organization, it is clear that the key features of the agreement are the licence provided by Torstar, the guarantees that Torstar had to make, the calculation and payment of the fee by Meta, and the term and possibility of termination.
- [39] The intention of the parties in the Agreement is for Torstar to allow Meta to distribute news items produced by Torstar on its platforms. It is not that Torstar is seeking to buy ads, or using Meta products to promote its business. The contract is about the ability of Meta to broadly use Torstar materials for a fee. That was the essence of the deal.
- [40] To conclude that the Commercial Terms do not clearly apply to the Agreement, I also rely on the following elements:
- The Commercial Terms and the TOS deal with the rights and responsibilities of users of Meta's products, not their "partners".

- The Commercial Terms are imbedded in the TOS and required that users of Meta products agree to the Commercial Terms. Those agreements are generated when users buy advertisements and click to signify their agreement. The present Agreement, on the other hand, is a traditional paper agreement, although an innovative one. The approval of online terms is less clear.

[41] I conclude that the Commercial Terms are not applicable to the dispute between the parties that relates to the interpretation of the termination clause of their innovative agreement.

[42] Meta makes the alternative argument that the TOS contain a forum selection clause applicable to the dispute.

The TOS

[43] The TOS are structured around the use of Facebook products. Reading the TOS as a whole indicates that the purpose of the TOS is to explain the rules surrounding the services provided by Facebook which are listed as:

“- Provide a personalize experience for you.

- Connect you with people and organizations you care about.

- Empower you to express yourself and communicate about what matters to you.

- Help you discover content, products and services that may interest you \combat harmful conduct and protect and support our community.

- Use and develop advanced technologies to provide safe and functional services for everyone.

- Research ways to make our services better.

- Provide consistent and seamless experience across the Facebook Company Products.

- Enable global access to our services.”

- [44] The Agreement does not deal with any of the above-mentioned services.
- [45] The audience for the TOS is clearly the users of Facebook. The TOS details the obligations of the users, its business model (free access by users who agree to targeted advertisements), and the possibility that Facebook may suspend or terminate an account for violation of its Community Standards. The dispute section (section 4.4) follows the description of the possibility of suspension of use or limits of liability for use of the products.
- [46] Section 4.4 provides as follows:
- 4.4 disputes
- If you are a consumer, or where required by applicable law, the laws of the country in which you reside will apply to any claim, cause of action or dispute you have against us that arises out of or relates to these Terms or the Meta Products, and you may resolve your claim in any competent court in that country that has jurisdiction over the claim. In all other cases, and for any claim, cause of action, or dispute that Meta files against you, you and Meta agree that any such claim, cause of action or dispute must be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo county.
- [47] The parties disagree as to the proper interpretation of the cause. Meta’s interpretation is that when “consumers” have a claim against Meta, they can pursue their claims in their jurisdiction; In all other cases, including both a non-consumer or when Meta is claiming against a consumer, the claim must be prosecuted in California.
- [48] Torstar argues that the “and” is conjunctive, that is, only cases when Meta files against a consumer or a non -consumer does the exclusive jurisdiction of California is prescribed. I disagree with Torstar on this point.
- [49] Reading the TOS as a whole, it is clear that Meta considers that it has two types of users, the ones it describes as “customers”, and the ones who pay for some services, in particular, the purchase of advertising. Meta accepts that it cannot impose on its “customers” a forum selection clause that prevents them from accessing justice in their own country. However, it is clear that Meta wishes that users who are paying for its services or engaging in business over the networks be made to abide by the forum selection clause.

- [50] My reading of the TOS as a whole is that their purpose, scope and audience is related solely to the use of Meta products.
- [51] It is impossible to apply Section 4.4 of the TOS to a fact pattern that does not involve a user of a Facebook product. To interpret it in any other way would do violence to entire context in which the section is to be read.
- [52] I conclude that Section 4.4 of the TOS does not clearly apply to the Agreement between Torstar and Meta, which does not involve the use of Facebook products by Torstar but rather a licence to Meta to display Torstar products.
- [53] In interpreting the contract between the parties, I must give effect to all terms. To conclude that the forum selection clauses do not apply to the dispute does not ignore the relevance of the terms in the Agreement. It is clear that the reference in the definitions section to the TOS serves to ensure that all Facebook products are covered by the licence, including new products or networks that it could have developed during the term of the agreement.
- [54] The dispute is not that Torstar wants to continue to advertise on Meta, it is about the termination of the licence, which contractually obliged Meta to pay for the Torstar Content it distributes.
- [55] Because the Agreement between the parties is different from the typical relationship that Meta has with its users, the Agreement uses different terms and concepts, such as “partner”, leaves intellectual property rights to Torstar and provides for payment. The interaction between the Agreement and the online dispute resolution clauses and forum selection clauses is unclear.
- [56] Torstar makes other arguments that the forum selection clauses are unclear and confusing. It raises three arguments. First, Torstar argues that the word “customer” is not defined and that this creates confusion as to the scope of application of the forum selection clause. Second, Torstar points out that the TOS and Commercial Terms are incorporated by reference, which creates uncertainty because the reader is left with the task of searching multiple and evolving documents without being pointed to the clause Meta says is

applicable. Third, Torstar's position is that the very fact that Meta presents alternative arguments as to the applicability of two different forum selection clauses is indicative of a lack of clarity.

[57] The caselaw requires that a forum selection clause be clear because courts want to give effect to the parties' bargain. Courts also impose the burden of demonstrating such clarity on the party seeking to oust the jurisdiction of the courts where the dispute has arisen. As Justices Karakatsanis, Wagner and Gascon write in *Douez*: "Forum selection clauses purport to oust the jurisdiction of otherwise competent courts in favour of a foreign jurisdiction. To balance contractual freedom with the public good in having local courts adjudicate certain claims, courts have developed a test to determine whether such clauses should be enforced." (At para. 1) This test requires that the party relying on the forum selection clause prove that it is clear: *Douez*, at para. 28.

[58] I find that Meta has not met its burden of proving that the forum selection clauses are clear as they relate to Torstar's application. It is not unreasonable to demand of Meta to clearly spell out in the contract the scope of the forum selection clause. Courts want to enforce the parties' bargain and they must be sure that this is indeed what the parties bargained for.

[59] My conclusion on the first part of the test, that is, that Meta has not demonstrated that the forum selection clause clearly applies to Torstar's application, is sufficient to dispose of the motion. For the sake of completeness, I also analyse the second part of the *Douez* test.

Has Torstar proven that there is a strong cause not to enforce the forum selection clauses?

[60] In *Douez*, the Supreme Court of Canada explained that the burden rests on the party seeking to avoid the application of the forum selection clause. The Court explained that the limitations fall into two broad categories: "those intended to protect a weaker party or those intended to protect 'the social, economic, or political policies of the enacting state in the collective interest' (C. Walsh, "The Uses and Abuses of Party Autonomy in International Contracts" (2010), 60 U.N.B.L.J. 12, at p. 15)." (At para. 52). In *Douez*, where the plaintiff was an individual claiming a breach of her privacy rights, the court considered that both categories were implicated.

- [61] In *Douez*, the Supreme Court recognized that “Canadian courts have a greater interest in adjudicating cases impinging on constitutional and quasi-constitutional rights because these rights play an essential role in a free and democratic society and embody key Canadian values. There is an inherent public good in Canadian courts deciding these types of claims. Through adjudication, courts establish norms and interpret the rights enjoyed by all Canadians.” (At para. 58)
- [62] Torstar argues that its application requires the interpretation of the *Online News Act* and its effect. This is Canadian legislation designed to support the exercise of freedom of the press in Canada and access to information, which have constitutional and democratic implications.
- [63] In her article quoted by the Supreme Court in *Douez*, Catherine Walsh explains that the presumption of respect for forum selection clauses comes from a desire to facilitate international trade, where goods fabricated in one jurisdiction will be used and consumed in another jurisdiction, where a manufacturer sells his wares to a distributor in another country. When parties engaged in on-going commercial dealings define where they want their disputes to be adjudicated, courts will respect party autonomy. Courts will resist the implementation of that bargain only when important local cultural or socio-economic norms are at stake. Walsh gives the example of consumer protection under the *Civil Code of Québec*, S.Q. 1991, c. 64 as well as protection of investors.
- [64] This case is about the *Online News Act* and its impact on Meta’s activities . Torstar is arguing that compensation for news is a Canadian public policy objective that should be adjudicated in Canada.
- [65] There is evidence that access to reliable and credible information is critical to citizens’ understanding of policy choices and therefore their right to express themselves and ultimately to vote with adequate information. As Deab Hiasehutter, Stuart Soroka and Christopher Warren demonstrate: “Public responsiveness to policy is contingent on there being a sufficient amount of clear and accurate information about policy available to citizens (...) We find evidence that when media are weak, so too is public responsiveness

to policy. These results highlight the critical role that accurate, unfettered media can play in modern representative democracy”: “Freedom of the Press and Public Responsiveness” (2021) 19:2 Perspectives on Politics 479.

- [66] Access to governmental information has constitutional implications. It is a derivative right and can be constitutionally protected where, without access, meaningful public discussion and criticism on matters of public interest would be substantially impeded: *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23, [2010] 1 S.C.R. 815. There may be a constitutional argument that the protection and viability of news agencies is similarly related to ensuring meaningful public discussion and criticism on matters of public interest: Rowan Cruft, “Journalism and Press Freedom as Human Rights” (2022) 39:3 J. Applied Philosophy 359.
- [67] The *Canadian Charter of Rights and Freedoms* also recognizes freedom of the press. The protection of freedom of the press predates the advent of the *Charter* and was part of the “implied” Bill of Rights arising from the terms of a constitution similar in principle to that of the U.K. in the *Constitution Act, 1867* as well as the *Canadian Bill of Rights*, S.C. 1960, c. 44. Many constitutional arguments have been made for the protection of freedom of the press independently from freedom of expression. In 1975, Justice Potter Stewart suggested that the institution of the press was a “fourth” institution of government as an additional check on the three other branches: Potter Stewart, “Or of the Press” (1975) 26:3 Hastings L.J. 631. See also the 1996 Supreme Court of Canada decision in *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 480, per La Forest J. commenting that the “the full and fair discussion of public institutions, which is vital to any democracy, is the *raison d’être* of the s. 2(b) guarantees. Debate in the public domain is predicated on an informed public, which is in turn reliant on a free and vigorous press.”
- [68] More recently, Justice Abella in *R. v. Vice Media Canada Inc.*, 2018 SCC 53, at para. 125 noted that “A vigorous, rigorous, and independent press holds people and institutions to account, uncovers the truth, and informs the public. It provides the public with the information it needs to engage in informed debate. In other words, it is the public’s ‘right

to know’ that explains and animates the distinct constitutional protection for freedom of the press.”

- [69] The *Online News Act* requires “compensation for news content distributed online, consistent with the statutory purpose of enhancing fairness in the digital news market and contributing to its sustainability”. The objective is to help protect the news gathering function of the media. The issue raised in this dispute is whether *the Online News Act* has had a detrimental impact on Meta’s activities in Canada.
- [70] Torstar’s application argues that paying compensation for the news cannot be said to create an adverse impact on a business. Torstar is arguing that without being a semi-constitutional statute, the *Online News Act* raises democratic issues for Canadian society. As discussed above, freedom of the press and the freedom of expression are at the core of our democracy. There is, in Torstar’s view, a public interest in having Canadian courts determine the proper interpretation of such a statute. I agree.
- [71] In her article, C. Walsh explains that “The distinction between forum and foreign mandatory law recognizes that while a court generally is obligated to give effect to the fundamental imperatives of the state from which it derives its authority, it has no obligation to enforce the public policies of other states.” In other words, California has no obligation to enforce or recognize Canada’s public policy of ensuring compensation for news.
- [72] I find that constitutional values may be at stake in the dispute. This justifies a finding that a strong cause not to enforce the forum selection clause arises out of “the social, economic, or political policies” enacted in the collective interest.
- [73] In *Douez*, the Supreme Court also relied on an analysis of the factors that govern a judge’s exercise of discretion as set out in *The “Eleftheria”*, [1969] 1 Lloyd’s Rep. 237 (Adm. Div.), at p. 242, and were adopted in *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450, at para. 19, per Bastarache J.:
- (4) In exercising its discretion the Court should take into account all the circumstances of the particular case.

(5) In particular, but without prejudice to (4), the following matters, where they arise, may be properly regarded:

(a) In what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial.

[74] Meta argues that Torstar has not led any evidence of inconvenience or unfairness, which could lead to a conclusion that a strong cause has been established. In particular, Meta argues that the California courts are well-placed to interpret the contract between the parties.

[75] The interests of justice may weigh in favour of recognizing that the claim should be adjudicated in Canada because the question is about the impact of the *Online News Act* on Meta's activities *in Canada*.

[76] Meta points to the principle of comity and the importance of accepting and trusting other jurisdictions recognizing to have the capacity of interpreting other jurisdictions' s laws.

[77] The principle of comity is an important aspect of international private commercial law that avoids duplication of court rulings and ensures respect of international commercial transactions. Even as the commitment to free trade wanes in certain countries, the principle remains crucial to development of large sectors of the economy which rely on international connections and integrated supply chains. This case is not about international trade. The *Online News Act* is a Canadian law to provide support for news agencies in Canada in a context where public debates continue as to the ways in which access to credible information, that underpins democratic engagement will be maintained, and social media's role in supporting this objective.

[78] I conclude that Torstar has established that there is a strong cause not to enforce the alleged forum selection clause.

[79] The motion is dismissed.

Costs

[80] Parties have uploaded their bills of costs. If they cannot agree on the costs, they may approach my assistant Aditi Kara to obtain an appointment to determine the issue of costs.

Des Rosiers J.

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Torstar Corporation

Applicant (Responding party)

- and -

Meta Platforms, Inc.

Respondent (Moving Party)

REASONS FOR JUDGMENT

Des Rosiers J.

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