

SUPERIOR COURT OF JUSTICE

B E T W E E N:

DEIRDRE MOORE

Plaintiff

- and -

PAULE KEMGNI and JONATHAN KISKA

Defendant

P R O C E E D I N G S A T M O T I O N

REMOTELY BEFORE THE HONOURABLE JUSTICE H. WILLIAMS
on January 18, 2022, for an OTTAWA, Ontario proceeding

APPEARANCES:

Deirdre Moore

In Person

A. Tardif/F. Guay-Racine

Counsel for the Paule Kemgni
(Defendant)

C. Watson

Counsel for Jonathan Kiska
(Defendant)

(i)
Table of Contents

SUPERIOR COURT OF JUSTICE
T A B L E O F C O N T E N T S

W I T N E S S E S

<u>WITNESSES</u>	Examination <u>in-Chief</u>	Cross- <u>Examination</u>	Re- <u>Examination</u>
		-	-

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE:</u>
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LEGEND

[*sic*] Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) Indicates preceding word has been spelled phonetically.

Transcript Ordered:	April 18, 2022
Transcript Completed:	April 27, 2022
Ordering Party Notified:	April 27, 2022

TUESDAY, JANUARY 18, 2022

5 THE COURT: So that brings us then to the matter involving Ms. Moore and Mr. Tardif and Mr. Guay-Racine. I see that we do have a French interpreter, my understanding is, the interpreter will not be required, or am I misunderstanding the email correspondence I received. Ms. Tardif, perhaps I can hear from you.

10 MS. TARDIF: Thank you, Your Honour. We unbooked the interpreter some time ago. We apparently were required to specify the form of interpretation. What I've learned, and I was unaware of this is that unless you specify simultaneous interpretation, even though you advised it's for submissions on a motion, the service books one as opposed to two interpreters and not necessarily one trained in Zoom simultaneous interpretation, because of costs and personnel and I don't view that as being constitutional obligations of the Province, but that's not a matter for discussion today. If we have to proceed with consecutive translation, as I'm told is the only option today. So that would me speaking half a sentence and then having it translated and then continuing with the second half of my sentence, as we do on examinations for discovery or when evidence is heard, I'm afraid I don't see how we would meet the estimate required. And on that basis, it is a courtesy to the self-represented plaintiff, who I understand wishes to proceed today, and to the court, we're prepared to proceed in English, but without

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waiving any further of Dr. Kemgni's rights to defend in French, is of course her absolute right under the *Courts of Justice Act*, and, and under the *Courts of Justice Act*. There you have it.

5 THE COURT: Thank you. Ms. Moore, I'll hear from you. Ms. Moore, are you – I'm prepared to hear the, the motion in either language. Am I correct in my understanding, that you would prefer to make your submissions in English, Ms. Moore and you would prefer to have translation as well, is that right, if there is any French spoken today?

10 DEIRDRE MOORE: Yes, I'm English speaking, my French is not sufficient to self-represent in court. So if they intend to move forward in French, then I would absolutely need translation.

15 THE COURT: Okay. And how do you feel – I'll tell you where I'm coming from. I, I'm content to hear it, I'm also very reluctant though, to have a party had clearly intended to proceed in French, be required effectively to, to make submissions in English because of this issue. I won't define the issue, but because of the interpretation issue, shall I say. That said, if the matter – the matter has been scheduled for 20 two hours, it will clearly take, maybe not four hours, but probably – well, maybe, maybe close to four hours in my experience, with the consecutive translation. My preference would be to adjourn 25 it to a time when it can be heard with the moving party speaking in French, with either consecutive or simultaneous translation, but with enough time 30

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to hear it. But I, I need to hear from you, Ms. Moore, about – well, let me ask you, I guess, first of all, Ms. Tardif and Mr. Guay-Racine, it's your motion. Do you – are you seeking an adjournment or are you saying that you'll go with the flow?

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MS. TARDIF: I guess we're saying we'll go with the flow, Your Honour. This motion was – the date was requested if I am correct, in June. We did not receive the date until, I think it was August or September, so this has been booked for, for months. I appreciate the court's reluctance and, and as long as there's an understanding that this is not a broader waiver of Dr. Kemgni's
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rights. Her evidence has been submitted to the court in French. We understand that the court will read her evidence in French. I, I don't think there is all that [indiscernible] evidence to refer to today, so I'm content to do so in
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English. So we are prepared, both as a courtesy to the court, but also as a courtesy to the self-represented plaintiff who waited a ball park of about six months for this motion. If there is a date imminently available, then – and I'll take it from that that there probably isn't and that, that was my suspicion, Your Honour, that we'd be waiting several months, and, and that is a
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concern. So while there may be issues to be raised on [indiscernible] basis for the purposes of this proceedings, understanding that it's only for the purposes of this motion we aren't, we aren't prepared to proceed in French, but we do
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appreciate the court's concern and reluctance and are grateful for it.

5 THE COURT: Thank you, Ms. Tardif. And Ms. Moore, I'm going to assume, but I want to hear from you that you would like the motion to be heard today, is that your preference?

10 DEIRDRE MOORE: Yes, Your Honour. This is not the only legal battle I have with the co-defendant, and the co-defendant has managed to kick the can down the road and so many other issues for literally years. And that's why I'm reluctant to have this deferred any longer. I think the issue is fairly simple. I think the *Courts of Justice [indiscernible]* procedure provided to me, what's the word, well, I'm just going to use the word protection for lack of a better word. So it shouldn't really be an arduous motion to hear in my view. I can, I can also reduce the amount of time that I spend with my arguments because I have already submitted to the court evidence, commissioned, commissioned affidavit with evidence that supports my allegations and my reasoning on why the motion should be dismissed. So I would, I would much prefer, given how long it's taken to have this, this motion be heard, that it be heard today of possible, Your Honour.

25 THE COURT: Thank you, Ms. Moore. Now, Ms. Watson, are you here from the co-defendant or are you from the, the Bell Baker Firm, is that right?

30 MS. WATSON: I am, yes, Your Honour. I'm here for Jonathan Kiska today, he is not taking a

position on this motion and in observation for today and to answer any questions that Your Honour may have with respect to Mr. Kiska.

5 THE COURT: Okay. Thank you very much, Ms. Watson. Everyone, I will hear the motion today. I did want to say on the record that I, I'm a little reluctant to, just because it, it's just, in a way it doesn't seem right to require the, the Francophone party to make submissions in English. But I, I'm very concerned. I hear Ms. Moore wanting it to, to proceed. I hear the moving parties willingness to, to hear it, or to, to make their submissions in English, and I'm not confident [indiscernible] particularly to give [indiscernible] to everyone that we're, we're going to be able to get a long motion date any time soon. So let's just do it, and let's, let's get it done today. Ms. Moore, I don't want you to feel that you need to — you mentioned that you could sort of shorten your submissions. I don't want you to feel that you need to do that, we'll proceed in English and we will have — I'll ask you to come back at 2:15 this afternoon. That will give us a full 2 hours and 15 minutes, which is actually 15 minutes more than, than estimated. That should give the moving party an hour, the responding party and hour and then the moving party 15 minutes for reply. And I believe, unless someone tells me I'm incorrect, I believe that we can excuse the interpreter today or is it anticipated that there will be references to some evidence in French that may require

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interpretation? What are your, your thoughts, moving parties?

5 MS. TARDIF: We included in a hearing compendium, which we were going to ask the court's permission to provide to you and obviously to Ms. Moore, Your Honour, an extract from the affidavit and the report of the defendant's position which are at issue. They are in French, however, my total submissions will be in English. So everything that I say will be in English. We've also, as a courtesy to Ms. Moore, previously provided her with sort of an unofficial courtesy translation of those materials. On that basis, if the court if comfortable, I believe we can excuse the interpreter.

15 THE COURT: Okay. Ms. Moore, any thoughts? Would you like the, the interpreter to, to come back this afternoon as well, or how do you feel based on what Ms. Tardif has said?

20 DEIRDRE MOORE: No, I'm comfortable without the interpreter. The, the reports in which Ms. Tardif referred to, so called psychiatric assessments, there's two important sentences in it, and so that's - I'm, I'm familiar with what they mean in English. Those are the only two sentences in that report that we need to worry about. So I'm comfortable with excusing them, thank you, Your Honour.

25 THE COURT: Okay. Thank you then, both Ms. Tardif and Ms. Moore. So Mr. Renaud(ph), thank you very much for coming today. It's been a short day for you, but I think you heard the

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discussions, so you know what the, the issue is today and we're going to be proceeding in English without the, the assistance of an interpreter. So I will excuse you, thank you.

5 INTERPRETER: Yes, thank you, Your Honour. And onto other things as we say.

10 THE COURT: Very good. Okay. So, Ms. Tardif, Ms. Watson, Mr. Guay-Racine and Ms. Moore, I will see you all at 2:15 and we'll have a full two hours and 15 minutes of court time if you require it. So you're all excused until then, and I will see you later on this afternoon. Thank you.

...UNRELATED MATTERS WERE SPOKEN TO

15 THE COURT: Mr. Registrar and Madam Reporter, are we ready to proceed?

CLERK REGISTRAR: We are ready to proceed, Your Honour.

20 THE COURT: Very good. Ms. Tardif, I wonder if you could please start, just by confirming which materials I should have before me. I think I have what you filed. I can also advise that I received a compendium over the lunch hour, I'll just confirm the number of pages, a 46-page compendium. But perhaps you can just go through the list and then when it's Ms. Moore's
25 opportunity, I'll ask her to do the same with respect to her materials, because I do want to make sure that everything that you think I have in front of me, I do in fact have in front of me.

30 MS. TARDIF: Yes, Your Honour. So we filed a motion record, a single motion record. We filed a factum and the factum should have

5 [indiscernible] two of the cases that were not
available online, and you should have received
over the lunch hour as you've confirmed, a 46-
page compendium, which for the record, consists
only an excerpts of documents that are contained
either in our motion record or in Ms. Moore's
motion record, and excerpts of cases that are
listed in Appendix A of our factum. So that is
all that the defendant has filed with the court
10 regarding this motion.

THE COURT: Thank you. Ms. Tardif, has Ms. Moore
been provided with a copy of the compendium?

15 MS. TARDIF: We copied her on the appeal and I
was just going to confirm that in fact, she had
received an email.

MS. MOORE: I just noticed an email arrived at
1:30.

20 MS. TARDIF: That would be the compendium, yes.
So there are no new documents as I've confirmed.
It's just for ease of reference and if it assists
the court and Ms. Moore, if you go to the index,
which is on page 2, there is the title of every
document, and underneath in bold and italicized
text, the reference. So it's just the same
25 documents, but assembled for ease of reference.
There, there's nothing new.

THE COURT: Do you have any concerns about that,
Ms. Moore?

30 DEIRDRE MOORE: No, I should probably not even
look at it, I'll just — I want to hear what the
arguments are. If it's already materials that
have been filed, I've already reviewed those, I

intend to refute that. So I'd rather just listen to what words are said so that I can refute that if, if required.

5 THE COURT: That's fine. I did take a look at I and I actually think it may be quite helpful for me and perhaps also for you, Ms. Moore in, in terms of following the, the arguments that are made. But if you do have any objections about any of the documents in the compendium, I'm aware that you've only just received it and I'll 10 certainly hear from you if you have any concerns. So, Ms. Tardif, I'm ready to hear from you. We have two hours and 15 minutes and you have up to 60 minutes to – for your opening submissions and I pressed start on my, my iPhone's countdown 15 clock.

MS. TARDIF: Okay, thank you. And would the court be content with me sharing my screen as I take you through the compendium today, or would 20 you prefer that I simply provide a page reference and not share my screen, Your Honour?

THE COURT: I, I always find the screen sharing to be very useful and it's also a little bit more efficient than me taking notes and trying to find 25 the place in my own documents. So if you wouldn't mind screen sharing, I would actually prefer that, thank you.

MS. TARDIF: Thank you. So first of all, obviously, I'm counsel for Dr. Kemgni, together 30 with my colleague, Mr. Guay-Racine. We are here because the plaintiff has sued Dr. Kemgni. The material facts giving rise to the claim as

10.
Submissions

against Dr. Kemgni are the following:

5 She performed an independent psychiatric evaluation in a Quebec hospital. She is of course, a psychiatrist resident in Quebec and regulated by the Quebec College, subject to the Quebec standard of care.

10 The psychiatric evaluation was ordered by a Quebec court in the context of a criminal prosecution in Quebec further to an arrest in Quebec of Ms. Moore for failing to comply with the order of a peace officer. So that's what brings us here today.

15 Our position, quite simply is first, that the Ontario courts do not have jurisdiction simpliciter, because there is no real and substantial connection between the subject matter of the claim against Dr., against Dr. Kemgni and Ontario.

20 Second, if there is jurisdiction, then Quebec clearly has a closer connection to the subject matter of the claim and the court should decline to exercise its jurisdiction on the basis of foreign [*indiscernible*], and we seek an order pursuant to Rule of 17.06, staying the action as against Dr. Kemgni on that basis.

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30 And I'll just pause here to note that there's no suggesting that Dr. Kemgni has attorn to the jurisdiction, she has not filed the defence, the same materials filed are the motion

11.
Submissions

[indiscernible] Rule 17.06 and the
[indiscernible].

5
Now, we have also sought an order setting aside
service if necessary. And I'll just pause here
to explain that, because I don't intend to spend
any time on it this afternoon. Dr. Kemgni was
served with this claim in Quebec. She was not
personally served as required by the rules, but
10 she is obviously aware of the claim, as she has
retained us and we are here today.

15
However, the claim does not claim any of the
facts or circumstances set out in Rule 17.02.
And Rule 17.02 lists a number of circumstances in
which service of a claim can be made outside of
Ontario without leave. Because this doesn't fall
within the parameters of Rule 17.02, Ms. Moore
was required to seek leave of the court, pursuant
20 to Rule 17.03, to serve Dr. Kemgni in Quebec, and
she did not do so. It's our position that even
if she had attempted to, leave ought not to have
been granted because of course, in our
submission, the Ontario courts do not have
25 jurisdiction.

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So if necessary, we seek an order setting aside
leave, the arguments in support of that order are
fundamentally the same as the [indiscernible]
seeking to have the action as against Dr. Kemgni
[indiscernible] jurisdiction.

12.
Submissions

5 So I will be addressing the jurisdiction argument and my colleague, Mr. Guay-Racine at the end, will briefly address the non-convenience argument. And by way of a brief roadmap for my submission, I will have four points.

10 Firstly, I will very briefly to through the statement of claim in this matter and what we say is the key evidence. Secondly, I will address the test for jurisdiction as set out by the Supreme Court in *Van Breda*. Third, I will explain why in our submission, Mr. Kiska's involvement as a co-defendant, is not a presumptive factor that entitles this court to assume jurisdiction over Dr. Kemgni. And finally, I will argue why, even if this court were inclined to recognize a new presumptive factor, the presumption of jurisdiction should be divided in this case. So starting with me....

20 THE COURT: Ms. Tardif, before you...

MS. TARDIF: Yes.

25 THE COURT: ...preview, thank you for that. I will just say that as I've reviewed the material, your third point is probably the one that is troubling me the most, and the one that I would ask you to speak the most slowly when you're, you're going through it, if I may. In other words, to emphasize the, the most, because that's my, my sort of big question mark as I, I look through this.

30 MS. TARDIF: Absolutely. So I, I will go through the, the facts and then I'll, I get there fairly

13.
Submissions

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quickly and I assume the court has some familiarity with *Van Breda*. So I, I don't intend, although I've given you the key paragraphs to, to give it to you in pieces.

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So I will be sharing my screen and I – it seems to be doing something a little bit strange, but hopefully this will work. Can you see my PDF document with the word claim at the top, Your Honour?

THE COURT: Yes, I can.

MS. TARDIF: You can't see that? Okay. You can? My apologies.

THE COURT: I, I can...

15
MS. TARDIF: Okay.

THE COURT: ...it's statement of claim, it's...

MS. TARDIF: Perfect.

THE COURT: ...statement of claim and then there's a highlighted paragraph...

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MS. TARDIF: Perfect.

THE COURT: ...one....

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MS. TARDIF: And I'm not sure where these horizontal lines have come from, they don't appear, they didn't appear two minutes ago, but the document otherwise seems to be holding, so I will continue on.

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So this is an excerpt from the statement of claim in this matter. I'm actually going to scroll down first, to Paragraph 14. And it's at this paragraph where we start to get the material facts that are the crux of this claim against Dr.

14.
Submissions

Kemgni.

5 So starting at Paragraph 14, Ms. Moore pleads that on March 14th, 2019, she was apprehended by Quebec Provincial Police, was falsely accused of flight from a peace officer. Paragraph 15, she pleads that during her bail review, duty....

...TECHNICAL ISSUES, RECORDING STOPS

...RECORDING BEGINS

10 THE COURT: Welcome back, everyone. Mr. Registrar, are you able to hear me?

CLERK REGISTRAR: Yes. I don't know what happened, Your Honour, the Zoom meeting had decided to not respond and just crash.

15 THE COURT: It's been one of those days for Courtroom 204, hasn't it, Mr. Registrar.

CLERK REGISTRAR: Yeah.

THE COURT: Madam Reporter, are you all set to go?

20 COURT REPORTER: We are.

CLERK REGISTRAR: We are ready, to go, yeah.

THE COURT: Very good. Madam Reporter, I wonder if I could you on the hot seat to begin with.

25 Are you able to tell the court, and in particular, Ms. Tardif, what the last words or the last area of her submissions were that you were able to hear and record?

30 COURT REPORTER: Okay. So the last thing I was able to hear was, she talked about Ms. Moore being apprehended by Quebec Police, arrested for flight from police and during bail review and then after that, I lost all sound.

15.
Submissions

5 THE COURT: Okay. That's a reference, I believe, Ms. Tardif, to the paragraphs in the statement of claim. So I wonder, are you able to, to roll your back your personal tape and resume, perhaps at the paragraph where you've been referred to, to a bail hearing. And I'll let you know that I've just, I'll restart the clock and at 54 minutes. So I won't hold everyone to the clock to the second, but it just gives me an idea of, of how I can keep track of the time. So whenever you're ready, Ms. Tardif, thank you.

10 MS. TARDIF: Thank you, Your Honour. So it was just at the outset of this document, which is the statement of claim in this case, and it should be on the screen now.

15 THE COURT: It is.

20 MS. TARDIF: Perfect. And I was at Paragraph 14. So Ms. Moore alleges that on March 14th, 2009 [sic], she was apprehended by the Quebec Police and falsely accused of flight from a police, a peace officer, pardon me.

25 Paragraph 15, during her bail review, duty counsel requested that a psychiatric assessment for fitness to stand trial take place.

30 Paragraph 16, Ms. Moore pleads that on or about March 19, 2019, she was admitted to L'hospital de Savoie, which is of course, in Quebec, for an independent psychiatric assessment.

And at Paragraph 17, she identifies the

16.
Submissions

defendant, Dr. Kemgni, the psychiatrist as the individual who was selected to complete that assessment.

5 I'm going to now scan ahead to Paragraph 26. She says on this day, that being April 8th, 2019, Dr. Kemgni signed her recommendation, and I'll just open up a [indiscernible] here, is dated – this is a reference to the report that Dr. Kemgni prepared at the end of her independent psychiatric evaluation of the plaintiff.

10 So Dr. Kemgni signed her recommendation that Ms. Moore be treated for delusional disorder with [indiscernible] behaviour and that the court should find her not criminally responsible for flight from peace officer due to her mental illness.

15 In terms of the link to Ontario, and in particular, to the co-defendant, Mr. Kiska, we see here at Paragraph 29, Ms. Moore pleads that Kemgni's independent" psychiatric assessment was primarily based on hearsay of Kiska and his now diseased companion sister who is not a party to the action. So I'll pause here, although I imagine the court is aware, to identify Mr. Kiska as Ms. Moore, the plaintiff's, I'm going to say. former spouse. They remain legally married, but they are separated, and they are currently involved in ongoing Family Law proceedings.

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17.
Submissions

At Paragraph, sort of a sub-paragraph 29.
Actually before going there, I'll just go to
Paragraph, sub-paragraph 29(a), Ms. Moore pleads
that Kiska's statements to Kemgni, Dr. Kemgni,
were extremely like flagrant and or outrageous,
and provides that – two sentences above is – two
lines above, the information was entirely false.

So in other words here, the allegation is that
Dr. Kemgni based her assessment primarily on the
hearsay information obtained from Mr. Kiska and
that that information is false.

At 29(c), Ms. Moore alleges that Kemgni's report
has been used by Kiska and others, the others are
not defendants in this action, all to her demise.
And that use, which she goes on to detail here,
is all in Ontario and although this is my
characterization, it is, I would suggest, the
allegation broadly framed as in furtherance of
his strategy, alleged strategy of parental
alienation. There's some detail provided in the
claim that that's roughly what it amounts to. So
all in Ontario.

And then at Paragraph 30, again, Ms. Moore,
sorry, not 30, 38, again, and this is really the
crux of the [indiscernible], as noted, repeated
at Paragraph 29(c) above, Kemgni's report has
been used by Kiska and others, all to Moore's
demise. That use has been Ontario in furtherance
to Kiska's [indiscernible] strategy of parental
alienation.

18.
Submissions

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And again, Paragraph 40, by ignoring Moore for most of her hospitalization and basing her report on the hearsay of Kiska, the Quebec Police and others, Kemgni has clearly harmed Moore.

10
So in my submission, that gives us the crux of the allegations in this claim, that it gives us a good idea of the subject matter of the litigation. And what we see are two separate torts claimed against two separate defendants.

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The crux of the claim against Dr. Kemgni is in my submission, in medical negligence, that she is a physician, a psychiatrist, inappropriately conducted the independent psychiatric assessment, that she failed to abide by the standard of care expected of her within that context.

20
With respect to Mr. Kiska, the allegation is that he provided false information to Dr. Kemgni and then that he used the report after it had been filed with the Quebec Court in furtherance of his strategy of continuing parental alienation.

25
And I'll pause here to note too that the allegation against Kiska – I've gone back to Paragraph 29 of the claim, sub b, is alleged to be intentional. I see here the word is – intentional is bolded out in mine
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[indiscernible].

So that we have two separate torts against two

19.
Submissions

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separate defendants. And that is actually made quite clear, I would suggest, on page 1 of the claims, so going backwards to where I started, in which you have here on the first two bullets is a claim for \$500,000 in damages from Dr. Kemgni, based on several torts, the first of which of course is negligence and that's not surprising. That is how the claim is primarily characterized. And then a separate claim in the following two paragraphs, for \$500,000 in damages from Mr. Kiska. And you'll see here, the, the first cause of action claim is breach of fiduciary duty. A different, separate tort, obviously not alleging that Mr. Kiska could have been medical negligent, but also unintentional tort. So two separate torts against two separate defendants.

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There's not allegation here that they were joint tortfeasors or that their alleged harms gave rise to single individual, indivisible injuries, quite to the contrary. There are separate *[indiscernible]* of relief as against each defendant.

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Now, in my submission, the court can be confident in making that inference because, and I'm now turning to Paragraph – pardon me, to Tab 2 of the compendium, because on the very same day that she commenced this action, Ms. Moore filed a fresh as amended statement of claim in a separate matter against Kiska and four other defendants. And in this claim, she alleges that the defendants are

responsible for her eviction from rental, rented premises and a seizure of her personal property, which she values at approximately \$500,000.

5 And you'll see that - again, these documents were filed on the same day. Unlike in the claim against Kiska and Dr. Kemgni, in this document, which is hopefully on my screen, Ms. Moore claims against the - what she calls the core defendants, and I'll, I'll take you to Paragraph 3 first. Moore claims against Allah, El-Rayes, Stoll and Kiska. I don't think I need to provide the details, but very briefly, Allan, El-Rayes, Stoll are alleged to be the landlord, real estate agent and paralegal whom she dealt with, and her former her husband, Mr. Kiska, the four defendants for \$100,000 in damages here and in Paragraph 1 of over \$500,000, again, against all four of them on a jointly and several basis.

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20 And in Paragraph 2, she has a separate claim against the OPS, which she has identified herself as being separate from the claim against the [indiscernible] individual defendants, one of whom is Mr. Kiska. And that is supported by other paragraphs in the pleading and I'll take you to Paragraph 9, where Ms. Moore states that, the three other individual defendants, El-Rayes, Stoll, Allah, the landlord, real estate agent and paralegal, that they deliberately assisted Kiska so that he would succeed in Family Court and completely alienate Moore from her beloved

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21.
Submissions

children.

5 And so in that claim, you have a clear allegation
that the four defendants worked in concert,
deliberately, and also that they are alleged to
be joint tortfeasors and the damages claimed is
on a joint and several basis. And again, I'm,
I'm contrasting that from our case here.

10 So I'm going to pause here just to note that I
expect Ms. Moore in her submissions, she has some
in some of the materials, will perhaps refer to a
conspiracy or to Dr. Kemgni as a co-perpetrator
15 or to *[indiscernible]* or a criminal syndicate,
and, and I just emphasize really that I've taken
you through the pleading. It sounds primarily in
medical negligence as recognized by Justice
Gomery in her brief endorsement on the
20 *[indiscernible]* request for summary dismissal by
Mr. Kiska. She recognized that the cause of
actions against Dr. Kemgni was really medical
negligence.

25 There's no allegation of conspiracy or deliberate
assistance by Dr. Kemgni, those are simply not a
facts as plead, and of course, *[indiscernible]*
intentional tort of that nature, they would have
to, by virtue as Rule 25.06(8). So I just
30 caution the court in that respect.

Now, I won't, I won't put it – and I'll just stop

22.
Submissions

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sharing for a moment, Your Honour. At Paragraph 3, or pardon me, at Tab 3, please bear with me, I'm getting over quite a bad cold and, and I realize I'm conflating some words, but I'll – if I, if I confuse the court, please do let me know, but I will try to get tab and paragraph right.

10
At Tab 3, I've included, I've included excerpts of the affidavit of Dr. Kemgni. It is in French, I've included it simply for the benefit of the court. I don't think I need to put it up on the screen. I can just identify for the court what we say are the key facts.

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The first is obviously, that Dr. Kemgni is a resident and lives in Quebec. The second is that she practises, that is, exclusively in Quebec. The third is that she is licensed by – in Quebec College of Physicians and not by the Ontario College of Physicians and Surgeons.

20
Dr. Kemgni states in her affidavit that she did complete an independent psychiatric assessment of Ms. Moore in April and March of 2019 on the issue of criminal responsibility. She prepared a report, which she gave to the secretary at the clinic responsible for submitting such reports to the courts.

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The assessment and the report were ordered by a Quebec court in the context of a criminal prosecution for failing to comply with the order

23.
Submissions

of a, of a peace officer.

5 The assessment was conducted by Dr. Kemgni in a Quebec hospital. In conducting the assessment, she reviewed the police records of the arrest, which are obviously located in Quebec. She also reviewed the records of a prior assessment, for fitness to stand trial, which was conducted in Quebec.

10 She did not access Ms. Moore's prior Ontario health records, she did not do so. She of course, met with Ms. Moore, but she did so at the hospital in Quebec, and she had one telephone call with Mr. Kiska during which he provided her with some information. She has no knowledge of the use to which her report was put after it was submitted by the court, or submitted to the court, pardon me.

20 At Tab 4 of our *[indiscernible]* compendium, we've given you an excerpt of Dr. Kemgni's report, which I will not put up, which simply summarized the sources of information that she reviewed and used in the preparation of her report and in her own words, as we thought it might be of benefit to the court.

30 So we say those are the key, you know, facts as plead and facts in evidence, and where does that leave us? Really, there are three connections to Ontario because that's what we're looking at now,

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Submissions

obviously, this is not about who's right and who's wrong and the merits of the case. It is about the connections to Ontario.

5 So here are the three that we have identified. The first is that the plaintiff, Ms. Moore is a resident in Ontario. The second is that her former spouse, Mr. Kiska, who is also a resident in Ontario, provided information to Dr. Kemgni in 10 the course of the assessment that I've already referred to. I note though, as I've already taken you through the pleading, that the allegations as against Dr. Kemgni and Mr. Kiska or separate, these are separate torts alleged 15 against separate tortfeasors. They are not alleged to be joint and there are no damages claimed on a joint and several basis.

20 The final connection of course is that, Mr. Kiska is alleged to have made use of Dr. Kemgni's report in Ontario after it was submitted to the Quebec courts and after Dr. Kemgni's involvement in this matter came to an end. So those are our three connections.

25 And that brings me to the second point of my submissions, the, the test. The test of course, is set out in the Supreme Court of Canada's decision in *Van Breda*, which we've put in some 30 excerpts at Tab 5. I will put it up on the screen, but I don't - certainly don't intend to read all the paragraphs, Your Honour, just in the

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Submissions

interest of time. But just so that everyone can follow, I'll have it up on the screen.

5 So there's a bit of jumping around here, but just bear with me. So at Paragraph 100, the court – and I won't read them, I'm just – I'll leave it up here at the same time. "The Supreme Court cautions that it is the party arguing that the court should assume jurisdiction", starts there on the second line, "That has the burden of identifying a presumptive, connected factor that linked the subject matter of the litigation to the forum." In this case, Ontario.

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15 So Ms. Moore must identify one presumptive factor that links the subject matter of the claim to Ontario, it's her burden. There are of course, four recognized presumptive factors and they are listed at Paragraph 90.

20
25 The defendant is domicile the resident in the province, the defendant here is on business in the province, a tort was committed in the province and a contract connected with the dispute was made in that province.

30 None of these apply with respect to the claim against Dr. Kemgni. She is domicile the resident of Quebec, to the extent she carries on business, she does so in Quebec. And the alleged tort was committed in Quebec and of course, there's no contract here that's alleged to be relevant to

the dispute respecting Dr. Kemgni.

5 The other thing the court emphasizes is, and it is disbursed(ph) at Paragraph 86 is that, "The presence of the plaintiff in the jurisdiction is not, on its own, a sufficient connecting factor."

10 And then at Paragraph 89, I'll just put it up, but I won't read it. The court goes on to explain that the fact that damages were suffered in the jurisdiction, is likewise, not a presumptive factor.

15 Now, the court – the list of presumptive connecting factors is not closed. Ms. Moore can propose a new one and this court can obviously recognize anyone should it see fit to do so. And at Paragraph's 91 and 92, the court gives us a sense of the considerations that ought to inform the recognition of any presumptive factor. I won't read them, but I will draw the court's attention to Paragraph 92, the highlighted sentence in the middle of the page, which I'm hoping the court can see.

25 All presumptive connecting factors generally point to a relationship between the subject matter of the litigation and the forum such that it would be reasonable to expect that the defendant would be called to answer legal proceedings in that forum.

30 And consistent with that, "The assumption of

jurisdiction", at the bottom of the paragraph,
"Would thus appear to be consistent with the
principles of comity, order and fairness."

5 If a presumptive factor applies, then we as the
defence, bear the burden of rebutting it, and the
authority for that, I won't turn to it, is
Paragraph 95.

10 We must show that the presumptive factor that is
proposed or that – sorry, not that is proposed,
but that is been identified does not point to a
real connection in Ontario or points to a new
15 one. And in this context, some presumptive
factors are obviously stronger than others, and
I'll come back to this, but I do want to echo a
different *[indiscernible]* here.

20 At Paragraph 96, one of the strongest connecting
factors, so tells us the court is location of the
tort. So the court says:

25 Where the presumptive connecting
factor is the commission of a tort in
the province, rebutting the
presumption of jurisdiction would
appear to be difficult, although it
may be possible to do so in a case
involving a multi-jurisdictional tort
where only a relatively minor element
30 of the tort has occurred in the
province.

5 I'm going to come back to that, so I did want to underline that [*indiscernible*] decision. If a real and substantial connection exists between what I'm calling the subject matter of a litigation, the court in *Van Breda* also refers to it as the legal and factual situation. So if a real substantial connection exists between that and a forum, in this case, Ontario, then the court must obviously assume jurisdiction over all aspects of the case. And that is set out in Paragraph 99 of *Van Breda*.

15 If jurisdiction is established, then the defence can argue, as we intend to do, on an alternative basis, that the courts should decline jurisdiction because there is a more appropriate forum. And we will need to show in that instance that there is a jurisdiction that clearly has a closer connection to the subject matter of the litigation.

25 And the last paragraph I want to identify here is Paragraph 101, and I think this is important because the court emphasizes that there is a clear distinction between the existence of jurisdiction and the exercise of jurisdiction.

30 So "*Forum non conveniens* only comes into play when jurisdiction is established. It has not relevance to the jurisdictional analysis itself." So that the types of factors that are relevant at that stage cannot be relied upon to establish

jurisdiction simpliciter.

5 I did admit one point just in looking at my notes, Your Honour. I mentioned that either the residents of the plaintiff, nor the location where damages were suffered are presumptive connecting factors. The other thing the court tells us, and this again, is Paragraph 93, is that the combined effect of non-presumptive connecting factors is also insufficient to ground jurisdiction.

10 So, you know, residence isn't enough and location of damages isn't enough, and likewise, the combined effect of the two is not enough. We, we can't sort of tack up non-presumptive factors in a whole – of achieving a meeting [*indiscernible*] one presumptive factor.

15 So that brings me to my third point, which is I think the crux of the case, as Your Honour – and certainly what Your Honour suggest that I spend most of my time on. And that is that Mr. Kiska's involvement in our submission, as a co-defendant is not a presumptive factor that entitles this court to assume jurisdiction.

20 So I want to just pause here and go backwards in time. As I said, the, the test for establishing jurisdiction was set out in *Van Breda* by the Supreme Court. In *Van Breda*, the court emphasized the importance of a clear orderly and

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predictable test for jurisdiction, in order to respect obligations with respect to comity and the general requirements regarding private international law.

10
Prior to *Van Breda*, in Ontario, courts applied the *Muscutt* factors. This was a much longer list of factors, many of which were discretionary in nature, whereas, after *Van Breda*, for the time being, we only have four recognized.

15
So in other words, it is harder to establish jurisdiction simpliciter under *Van Breda* than it was under *Muscutt*. And that was very much the intent of the Supreme Court in *Van Breda*.

20
So I'm going to bring you to a case called *Deakin*, and why did I say all that? Because *Deakin* is decided in 2005, so under the *Muskutt* trademark, it predates *Van Breda*. But the result would be the same because in this court, in this case, the court declined, or the court was of the view it did not have jurisdiction and so it stayed the action. And of course, the result would follow under *Van Breda*, which is a stricter task.

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So *Deakin* is a hockey player. He injured himself at a hockey game in Quebec and he sued a couple of people. He sued the athletic therapist who was resident in Quebec who treated his injury, and he sued some other people, including, and

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Submissions

5 this is what's at Paragraph 6, the third line,
the defendant, Canadian Hockey Enterprises, not
separately represented in the motion, that had
its head office in Ontario. So we do have an
Ontario defendant in this case, the Canadian
Hockey Enterprises.

10 And at Paragraph 10, the plaintiff identifies a
number of grounds that they say warrant or weigh
in favour of Ontario being the proper and most
convenient forum. So they argued jurisdiction
simpliciter and [indiscernible] together. And
one of those factors of course was that the co-
defendants were in Ontario.

15 And I note that we didn't give you the concluding
paragraph, I apologize for that, but I'll give
you the reference. It is Paragraph 41, Paragraph
41. And at Paragraph 41, the court finds that
20 there is no real substantial connection in
Ontario. Notwithstanding the implication of an
Ontario defendant and resident that carried on –
co-defendant that carried on business in Ontario.

25 So this was the case even pre-*Van Breda*. Now,
there is one decision that came along and muddied
the waters, and I'm now at Tab 7 of
[indiscernible] compendium. So a 2012 decision
of the Superior Court called *Cesario*. It was
30 decided very shortly after *Van Breda*.

And the facts of *Cesario* are frankly,

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Submissions

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unfortunate. They're summarized in the first three paragraphs here. The plaintiffs were involved in two car accidents, four weeks apart. First in New York, the second in Ontario. They sued the drivers of the other car in New York, the drivers of the other car in Ontario, they also sued their own insurer under the uninsured and underinsured provisions of their policy. And the wife, because the plaintiffs were a couple, also sued her husband, who was the driver of the vehicle they were in, in New York and in Ontario. So those are the facts of *Cesario*.

I'm going to scroll ahead here to Paragraph 12. The plaintiffs in *Cesario* alleged that the damages that they had sustained from both collisions were indivisible, that they could not be separately assessed. That was a key part of their argument.

And the court framed the issue at Paragraph 23 as follows. I'm just going to start here at the word "this" in the second line. "This motion raises for determination whether the Supreme Court of Canada in *Van Breda* was referring to "the defendant" being domiciled or resident in the province", and I'll pause here to say, that's obviously the first presumptive connecting factor [*indiscernible*] in *Van Breda*. "As being the moving defendant or whether any defendant in the action domiciled or resident in the province was sufficient for a connecting factor."

33.
Submissions

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And the court goes on to say, this is Paragraph 99 of *Van Breda*, which I alluded to earlier, and I'll just start here, one, two, three, four, five, six, seven lines down. The Supreme Court said:

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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.

20
That's the example they give, "That would be incompatible with any notion of fairness and efficiency."

25
And at Paragraph 28, which I've included here, but I don't think I'm to take you to. The court says no, there is a real and substantial connection in this case because there are multiple defendants, at least one of whom is resident in the Province of Ontario.

30
So again, in *Cesario*, we had potentially two Ontario defendants. We had the plaintiffs un-insurer, who is sued under the uninsured and underinsured provisions of the policy, who

34.
Submissions

carried on business in Ontario, and we had the husband who was sued in his capacity of driver in both the New York and the Ontario accident.

5 So the question of what to do with *Cesario* was addressed by a number of courts. I think – in my submissions, because I know he's been underlined(ph) by subsequent jurisprudence to a significant extent.

10 I'm going to start with the 2016 decision of the New Brunswick Court of Appeal, I'm at Tab 8 of our compendium, a case called *Patricia Best and Sixta Palacios*. Ms. Best was involved in a – she suffered an injury at the Boston Airport and then she was in a car accident in New Brunswick, and she sued both the Boston defendants and New Brunswick defendants in New Brunswick.

15 And the Boston defendants brought a motion seeking an order, dismissing the action for want of jurisdiction as against them. Her argument, and this is – although I haven't put it up, the argument before the motions judge is summarized at Paragraph 16 of this decision, just so that the court has it in your notes.

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30 The plaintiffs argued that they – the, the damages were indivisible, and that in effect, was maybe one indivisible injury and that is why the lawsuit had to proceed in a civil lawsuit in New Brunswick.

35.
Submissions

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And the motions judge dismissed that argument, he dismissed the action, and on appeal, the New Brunswick Court of Appeal upheld that decision. In other words, the New Brunswick Court of Appeal agreed that there was no jurisdiction *[indiscernible]*.

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And the key part of the decision starts at Paragraph 26, which should be on the screen. The court says, "Moreover, unlike the situation in *Cesario*, this is not a case where both a New Brunswick resident and a foreign resident are named as defendants in the same action arising out of the same tort." And that's a reference as I mentioned, to the husband and the New York defendants, both being involved in a motor vehicle accident in New York.

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"The case against the New Brunswick defendant relates to an accident that has no links to the Boston incident, except in so far as some of the injuries may prove to be similar, identical or interrelated." And that's the issue of the alleged indivisibility of damage that the courts *[indiscernible]*.

30
At Paragraph 27, the court continues, "It is now clear that the place where one suffers the pain and inconvenience of an injury is an insufficient basis for which a court could assume jurisdiction over a tort that was committed elsewhere." Court

cites from *Van Breda*, and I've already alluded to this paragraph of *Van Breda*, so I won't go over it again.

5 The court at Paragraph 28 says, the Boston submits that the new – the Boston defendants, pardon me, "submit "that the *new* presumptive connecting factor proposed by [Ms. Best]", and that was the so called indivisibility of harm, is not a true new factor, but is in fact a potential presumptive connecting factor that was rejected by the Supreme Court in *Van Breda*."

10 Again, I agree. I read *Van Breda* as did Strathy J.A. in *Tamminga*.
15 And I'll come to *Tamminga*, and I'll come to *Tamminga* in a second, it's a decision of the Ontario Court of Appeal.

20 LeBel J. also identified certain factors that are *not* presumptively connecting. The presence of the plaintiff in the jurisdiction is *not* a presumptive connecting factor. Nor is the fact that damages were sustained in the jurisdiction. Nor is the combined effect of a number of non-connecting factors.

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30 And so the Court of Appeal reasons, look, just because she's resident in New Brunswick and some

5 of the damages are suffered in New Brunswick is not enough for us to presume jurisdiction over Boston defendants. Even if you say that this is indivisibility of harm, it just amounts to the combined effect of a number of non-connecting factors.

Paragraph 29, we have the court's conclusion.

10 This is a single action alleging wholly different tortious conduct against wholly different defendants on different dates and in different jurisdictions. None of the presumptive connecting factors is present and....

15 They declined to identify any presumptive factor.

20 So that's *Best*. I said I would go to the Ontario Appellate case law now and that's what I intend to do. At Tab 9 of our *[indiscernible]* compendium is the court's decision in *Tamminga v. Tamminga*, a 2014 Court of Appeal decision. *Tamminga* is yet, another car accident case in Alberta this time. The plaintiff fell off a truck in Alberta. She sued in Ontario, and one of the defendants carries on business in Ontario, it's her insurer who she sued again in case the defendant in Alberta was uninsured or underinsured. So under the uninsured and underinsured provisions of her own insurance policy.

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And the court at Paragraph 27, just here, says, "
"The inclusion of a claim against the plaintiff's
automobile insurer did not serve to "bootstrap"
jurisdiction over the non-resident defendants.

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And [*indiscernible*] earlier decisions, obviously
we're not dealing with a claim against an
insurer, but the point I want to make here is the
mere fact that an Ontario co-defendant was named,
was insufficient to presume jurisdiction.
Further inquiry was necessary.

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THE COURT: Can I stop you, Ms. Tardif, just
to...

MS. TARDIF: Of course.

20
THE COURT: ...make sure. I had a chance to look
at *Tamminga* and then the – there's a subsequent
Court of Appeal...

MS. TARDIF: *Forsythe*, yeah.

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THE COURT: ...case. And I just want to make
sure that I'm following what I think you're,
where I think you're going before you, you go
there. Are you saying then that, to – in respect
of the fact that Mr. Kiska is a co-defendant and
if I am looking at connections with Ontario, the
fact that he is a co-defendant, I understand is
not one of the four presumptive connecting
factors. Then I look at whether there is an
Ontario defendant and *Tamminga* – a co-defendant,
and *Tamminga* says, sorry, in Ontario – yeah, the
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Ontario co-defendant and *Tamminga* says, no, that
isn't enough. And then you – do you want me to
look, really at the, the essence of the New

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Brunswick Court of Appeal decision, which says that, but I then have to look at whether the damages sought against the two defendants are joint or interrelated. And if they're not, then that's not enough of a connection, is that sort of what the argument is?

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MS. TARDIF: Almost – you may have said it more succinctly than I would, Your Honour, almost. And here's the one thing I would say, I – there's no presumptive connecting factor that applies, none of the four. The mere fact that a co-defendant is resident in Ontario is not a, a presumptive connecting factor and I rely on *Tamminga* for that.

15
And then the question becomes, well, is the court going to recognize a new presumptive factor? Because of course, the court has the, the jurisdiction to do so, should it wish to do so.

20
In Paragraph 91 in *Van Breda*, and I, I apologize, I should have [*indiscernible*] to. One of the things the Supreme Court says is, where before recognizing a new connecting factor, take a look at how it's been treated in the case law, number one. And number two, make sure you're defining it in such a way that it can be applied in an orderly and predictable fashion with due regard to the obligations of comity.

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And so the point I'm trying to make with respect to any new potential connecting factor is the

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Submissions

5 following. Read at its highest, *Cesario* as interpreted in *Best, Tamminga*, and *I'll, I'll* just quickly come to *Forsythe* last, is the last case I intend to take the court to in my submissions. The courts have left open the possibility, potentially, and by being left open, I mean, they had to [*indiscernible*] to the possibility of a connecting factor, presumptive connecting factor where there is an allegation that two co-defendants, one in the jurisdiction, one outside of jurisdiction, have engaged in the same tort and are joint tortfeasors.

15 You know, I, I don't see a case saying, that's not good enough. I conversely, do not see a case saying, that is good enough. It would up to this court to recognize such a new connective factor and it would be, in my submission, the first time anyone's done so other than *Cesario* in 2012.

20 What the courts have said is, the mere fact that it's a co-defendant in Ontario is not good enough. The mere fact that you're alleging indivisibility of harm is not good enough. And as a general rule, if you're advancing or alleging separate torts against separate tortfeasors, in particular with separate prayers for relief, well, that's not good enough either, right? Because what it's not doing is giving you a sense of the relationship between the subject matter of the action as a whole, you know, the factual legal scenario that it pled and, and a forum, right?

41.
Submissions

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Some of the language in *Van Breda* is kind of helpful here. When you think about any presumptive factor, the court should ask itself, is this the type of factor that would – let me put it – start again. Is this the type of connection that the defendant should say, hey, it's reasonable for me to be answered – to be called to answer to this in Ontario?

10
Because of this connection, you know, I should consider it reasonable, it is reasonable that we would say to this [*indiscernible*] defendant, come answer for this in Ontario. And under these circumstances, we say, no, I mean, at its heart, 15
this is about a psychiatric assessment conducted in a Quebec hospital, by a Quebec health care professional, subject to Quebec law, Quebec standard of care, ordered by a Quebec court in the context of a Quebec criminal prosecution for 20
criminal charges laid in Quebec, right?

25
There, there's nothing here that Ms. Moore has identified that pulls you back to Ontario, other than this possible connection of *Kiska*, and, and, you know, I'm really into argument and that's where the sort of where I intended to end today. Just while I have this up, Your Honour, I'm just going to highlight Paragraph 29 of *Tamminga*, because I said, you know, no one is recognized as 30
being presumptive factor. Well, if you've got two defendants, you were joint tortfeasors in the same tort, maybe that's enough, other than

Cesario.

So *Tamminga*, the Court of Appeal, pardon me, in *Tamminga* at Paragraph 29 says,

5 *Cesario* relied upon by the appellant,
but distinguished by the motion judge
on the basis that the plaintiffs had
been in two accidents, there were
joint tortfeasors allegedly
10 responsible for the plaintiffs'
damages and those damages were
considered inseparable. She noted that
the presence of the plaintiffs'
insurer in Ontario was not a factor
15 that entered into the determination.

So the, the Court of Appeal says, look, the
motion judge distinguished *Cesario* on the basis
that we had joint tortfeasors, allegedly
20 responsible for the plaintiff's damage. But they
don't affirm *Cesario*, they just, just, you know,
the motion judge distinguishes it, *Tamminga* sees
no problem with that, that's done.

25 But then when we go to *Forsythe* in 2015, which
again, is a similar car accident case, it's
actually a motorcycle accident case in Alberta.
But in any event, the court tells us here what
they said in *Tamminga*. That's why I've included
30 it. So at 31, they say of course, "The law is
clear that the appellant has a direct claim
against her own insurer and is entitled to pursue

that claim, if she wishes, independently of her claim against Westfall."

5 And then, third line from the bottom of Paragraph 31:

10 In *Tamminga*, Strathy C.J.O expressly noted, at para. 6, that the motion judge's decision, which this court upheld on appeal, was based in part on the fact that the plaintiff had a direct right of action against her insurer without having to join the extra-provincial defendants.

15 Again, getting at the fact that these are not joint tortfeasors. There's a separate right of action against each, and one does not depend on the other.

20 And then in, in *Forsythe*, this is what I really wanted to highlight, Your Honour. They tell us what *Tamminga* stands for.

25 *Tamminga* stands for the proposition that a contract between a plaintiff and her insurer is not a presumptive connecting factor that would give an Ontario court jurisdiction over a claim against an extra-provincial defendant. Strathy C.J.O., at para. 30 27, noted that this conclusion was consistent with Sharpe J.A.'s conclusion in...

5 A separate case, "That "[j]urisdiction over
claims against extra-provincial defendants should
not be bootstrapped by such a secondary and
contingent claim against a provincial defendant."
That's what *Tamminga* stands for.

10 And the reason I highlight this is, other than
Cesario, no one has said, hey, if you're joint
tortfeasors, you know, if you're – if these are –
the defendants are alleged to have committed
jointly the same tort, causing the same
individual harm, that's a presumptive connecting
factor.

15 The court may have alluded to that in *Cesario*,
but the Court of Appeal did not affirm that. No
one has to my knowledge since *Cesario*. And
that's the last part. So you're right, none of
the four presumptive factors, the mere presence
20 of a co-defendant in Ontario is not a presumptive
factor, the court has told us this much. And
then the court has really yet to decide, in my
submission, thanks to *Cesario*, whether or not
where two co-defendants, one in jurisdiction, one
25 out, are alleged to be joint tortfeasors engaged
in the same tort, causing the same individual
harm is not sufficient?

30 Well, perhaps an open question, but, and this is
my, what I'm getting at, not one that needs to be
decided today. Why do I say that? I'll go back
to where I started. We had three connections.

45.
Submissions

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Ms. Moore is a resident in Ontario, that was the first. Well, *Van Breda* and frankly, *Tamminga*, tells us, that's not enough. It's not a presumptive connecting factor and you can't use it together with other non-presumptive connecting factors to establish jurisdiction. It's just not relevant at the stage of jurisdiction simpliciter.

10
The second one, and actually, was that Mr. Kiska provided false information, I'm going to deal with that last. I'm going to turn to the third connecting factor which was that Mr. Kiska allegedly used this report after Dr. Kemgni's involvement had ceased, for the purpose of furthering his strategy of parental alienation in Ontario.

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20
In my submission, at its highest, that is about damages, it is about the damages suffered in Ontario and that is again, a non-presumptive connecting factor. And as with residence of the plaintiff, you can't combine a couple of these, you can't stack them up to meet your burden. It is simply irrelevant at the stage of jurisdiction simpliciter.

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30
The reason I say at its highest is, in our submission, Dr. Kemgni has no involvement at that point. She's handed over the report, that's the evidence before the court, to the criminal court in Quebec and the fact that Mr. Kiska independently does something with it after the

fact, is an intervening act for which Dr. Kemgni couldn't be held responsible in any event. That's our actual position.

5 But even at its highest, let's say, well, these are damages, it doesn't matter at this stage because it's simply not a presumptive connecting factor and it's therefore irrelevant at this stage.

10 The second connection, where I'm going to end, Mr. Kiska providing false information to Dr. Kemgni, that's the allegation. The allegation is, he did so intentionally and that she relied on it.

15 In our submission, this is a tenuous connection, and it does not change the fact that the alleged tort against Dr. Kemgni, medical negligence, occurred entirely within the Province of Quebec. And I come back to what I said earlier, these are distinct torts, breach of fiduciary duty or some other kind of intentional conduct on the part of Mr. Kiska, medical negligence as against Dr. 20 Kemgni, committed by distinct defendants that resulted in distinct prayers for relief.

25 It's just simply that there's no, there's no basis here to identify a cogent, clear, orderly, predictable, presumptive factor that would apply in that manner going forward because it wasn't - 30 wouldn't just be for this case, it's not a

contextual analysis, it must be sufficiently predictable and orderly that can be applied in future cases.

5 She – Ms. Moore can proceed separately against Mr. Kiska, indeed, she has a number of outstanding proceedings against Mr. Kiska, I took you to one statement of claim with respect to an eviction scam that she alleged occurred in the 10 spring of 2019. And of course, there is the ongoing Family Law proceeding.

15 I remind the court that the onus is on Ms. Moore to identify a possible presumptive factor. It must be sufficiently and clear and precise to permit it to be applied in an orderly and predictable fashion going forward. And we say that she has not done so.

20 The last paragraph I want to take the court to and I'm still in *Forsythe*, which is Tab 10 of our hearing compendium, Paragraph 48. This is the Court of Appeal and they're explaining that:

25 The intervener and appellant argue that if the appellant cannot meet any of the four presumptive connecting factors set out in *Van Breda*, this court should recognize a new presumptive connecting factor. They 30 say this factor should be based on the appellant's insurance contract, the regulatory requirement, the fact that

5 she resides in Ontario, that she
sustained damages in Ontario, and that
she is required to bring suit in two
jurisdictions, which may give rise to
inconsistent verdicts. They submit
that recognizing a new presumptive
connecting factor in the circumstances
would be consistent with the values of
10 order, fairness, efficiency, and
comity.

15 And this is the important point, "In my view,
these are not factors that go to jurisdiction
simpliciter. They may well be appropriate in a
forum non conveniens argument but they do not
establish jurisdiction."

20 And again, citing from *Van Breda*, Paragraphs 82
and 89, I won't go through it all, but Justice
Lebel does say that "Jurisdiction must be
established primarily on the basis of objective
factors that connect the legal situation or the
subject matter of the litigation with the forum."
25 And then, "Abstract concerns for order,
efficiency or fairness in the system are no
substitute" for these kind of connections.

30 And so in this case, any concern about the fact
that Ms. Moore would be forced to proceed in two
jurisdictions, that there may be inconsistent
burdens, so in our submission that concern simple
does not arise on this case. Back again, that

49.
Submissions

5 she resides in Ontario, that there's damages occurring here in her submission. All that is simply irrelevant of the jurisdiction simpliciter stage.

10 My fourth point, which is, it's really just a, a sentence, Your Honour and then I'll, I'll pass the microphone over to my colleague. If this court were to identify a new presumptive connecting factor, which obviously, our submission is that the court should not.

15 But if you were, we say that it should be rebutted, largely for the reasons I've already stated. Which is that, you know, there is only really a weak connection with Ontario, made out largely by the fact that Mr. Kiska is alleged to have provided false information to Dr. Kemgni.

20 He has but one of the sources of information she had, I took you through the others, and the allegation against her is independent. Not that she knew what you're saying is false, not that she was complicit, not that she deliberately
25 assisted Mr. Kiska, but just that she failed to do her job in a purporting [*indiscernible*] reasonably expected standard of care.

30 And I just want to echo back, I'm not going to put it up, but I'll, I'll give you the paragraph reference, Your Honour. Paragraph 96 of *Van Breda*. This is a bit of a, a flip logic. So

5 hopefully, if it makes sense to me, it'll make sense to the court. But in *Van Breda*, the court said, listen, if you presume jurisdiction on the basis of location of the tort, it's going to be really hard to rebut that, because the location of the tort is a pretty big one.

10 It's really indicative of a real and substantial connection, unless you're dealing with a multi-jurisdictional tort and only a small amount of it happened within the province, right? And we're dealing with the flip side here. The — this tort occurred in Quebec, that's the strongest connecting factor.

15 In our submission, it is not. The medical negligence tort is not a multi-jurisdictional tort. But, you know, at its highest, what we have is a tiny fact, you know, just, Mr. Kiska's involvement in terms of the information he provided. And for the same reasons that you can't — and this is the flip, for the same reasons that you can't rebut easily in any event, the presumption of jurisdiction when the location of the tort is in the forum.

25 Well, in our submission, the opposite is true here. With everything occurring in Quebec, it becomes very difficult, since they're not joint tortfeasors and they're not alleged to have engaged in the same tort, to find that the involvement of Mr. Kiska points to a real and

30

substantial connection in Ontario. The connection is weak, because frankly, the obvious jurisdiction is Quebec.

5 And, and unless there are any further questions, Your Honour, I'm going to hand the microphone over and mute myself, to my colleague, who's going to speak briefly with respect to *forum non conveniens*.

10 THE COURT: Thank you very much, Ms. Tardif, and Mr. Guay-Racine, I'll hear from you now. Thank you.

15 MR. GUAY-RACINE: Thank you very much, Your Honour. I'm mindful of the time, so I just wanted to confirm how long, and I don't expect to be long, but in terms of your timing, how long do I have left, just to know a maximum.

20 THE COURT: Sure. I have seven minutes, but I think we can go a little bit longer if you need to and I'll allow Ms. Moore to do the same.

25 MR. GUAY-RACINE: Okay. Thank you very much, I really appreciate that. I don't think that I'd be much longer than that, I'll try to take just *[indiscernible]* minutes, so thank you, Your Honour.

30 As my colleague mentioned, I'll now briefly discuss Dr. Kemgni's alternative argument. So if the court concludes that Ontario has jurisdiction over the claim as against Dr. Kemgni, it is respectfully submitted that the court should nonetheless decline to exercise its jurisdiction,

because Quebec is the more appropriate forum to hear this matter.

5 Pursuant to the doctrine of *forum non conveniens*, courts can decline to exercise their jurisdiction when there is a more appropriate forum, to consider the action and the case law has recognized some factors that can actually help the courts in their analysis in terms of the *forum non conveniens*.

10 In our factum, we have referred to the case of *Stapper v. Taylor*, which lists some of the factors, so I'll just briefly share my screen if Your Honour doesn't mind. Can you see my, my screen share, Your Honour?

15 THE COURT: I can, yes. Thank you, Mr. Guay-Racine, I see *Stapper v. Taylor* and I see a number 42 in the upper right hand corner.

20 MR. GUAY-RACINE: Wonderful, thank you. I appreciate that, I'm – the 42 is page 42 of Dr. Kemgni's hearing compendium.

25 So here, we have two excerpts from two decisions, the first one being *Stapper v. Taylor* a 2021 Superior Court Justice decision and then [indiscernible] decision, both decisions are cited and referred to in Dr. Kemgni's factum.

30 Both decisions refer to different factors that have been established by the case law to help the courts in their analysis of *forum non conveniens*.

to determine with forum is appropriate.
Now, we see that although there's a quite a few
years apart between these two decisions and we
see that many of the factors are very similar.

And what we can see as well in the *Stapper*
decision is that, these factors [*indiscernible*]
Van Breda. And it is respectfully submitted that
Quebec is the clearly more appropriate forum to
consider the action as against Dr. Kemgni.

First of all, as my colleague mentioned, Dr.
Kemgni lives in Quebec, she practises solely in
Quebec and she's regulated in Quebec by the
Collège des médecins du Québec.

Second, all of Dr. Kemgni's involvement with Ms.
Moore took place in Quebec, and the allegations
as against Dr. Kemgni exclusively relate to the
assessment which she performed in Quebec,
pursuant to an order from the Quebec courts.

In terms of relevant documentation and witnesses,
I understand from Ms. Moore's responding motion
materials that she's of the view that there's no
other witnesses or no other documents that are
relevant to this case.

We respectfully disagree. It's plain by my
colleague, Mr. Kiska was only one of several
sources of information that Dr. Kemgni relied
upon to conduct her assessment. But I think

54.
Submissions

5 something else that is important to note is the fact that in her statement of claim, Ms. Moore actually denies many facts, there are several facts in dispute.

10 So for instance, she disputes the information that Dr. Kemgni had with respect to her arrest by Quebec Police, which Dr. Kemgni obtained from the police record. She also disputes the fact that there was an initial assessment performed by a different psychiatrist in March of 2019 who [indiscernible] fitness to stand trial and there's a dispute as well in terms of what transpired during her hospitalization at the Savoie Hospital.

15 As a result, in our respectful submission, the records with respect to her fitness to stand trial report, the police record, the records related to her hospitalization, these will all be very important and relevant documents when considering the claim as against Dr. Kemgni, and these documents are found in Quebec.

20 In the same vein, potential witnesses including the professionals involved during Ms. Moore's hospitalization, as well as the police officers that were involved in her arrest, are in Quebec.

25 To summarize, the relevant [indiscernible] of evidence is in Quebec. The allegations related to events that have taken place in Quebec, and

55.
Submissions

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Dr. Kemgni practises medicine and is regulated in Quebec. In our respectful submission, these elements all point to Quebec being the more appropriate forum.

10
[Indiscernible] one of the factors that is listed as being relevant is the applicable law, and in this case, in our case, there's no question that applicable law is Quebec law with respect to Dr. Kemgni's assessment.

15
If I just switch to page 43 of our hearing compendium, here you can see an excerpt of the recent decision of the Ontario Superior Court of Justice, *Lapierre v. Lecuyer*. This decision is also cited in Dr. Kemgni's factum at Paragraph 30, footnote 33. And it discusses the law that applies to tort cases.

20
I don't know if it is big enough if Your Honour can see, but if we look at Paragraph 13(a), the court writes, "In domestic litigation in Canada, the substantive law to be applied in tort cases is the law of the place where the activity occurred: *lex loci delicti*."
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30
A bit further down, Paragraph (d), what is highlighted states here, the court writes, "In Canada, if you are involved in a tort in a given province, it is the law of that province that applies and it does not matter that you or the other person involved in that tort comes from

another province."

5 So here, this decision is essentially confirming that as the assessment [*indiscernible*] in Quebec and the allegations relate to the assessment performed in Quebec, it is Quebec law that applies. So Dr. Kemgni's assessment would be therefore, subjected to the Quebec standard of care.

10 Now, what does this mean for our case here? Well, it means that if the claim as against Dr. Kemgni proceeds before the Ontario Courts, Quebec law will need to be established and proven through expert evidence from a Quebec lawyer.

15 You may recall my colleague earlier, briefly discussed the *Deakin* case, which was the, the case pre-*Van Breda*, where the court said, although there's a co-defendant, we're not going to assume jurisdiction.

20 So in *Deakin*, Paragraph 21, 22, 23, we believe are especially relevant to our situation because in here, the court concludes that it is more fair for a Quebec practitioner to have Quebec law apply by the Quebec courts.

25 If you see at Paragraph 23, the court writes:

30 There is no evidence before me that the law relating to the two standards of care is "similar" in both Ontario

5 and Quebec. Although foreign law may be proven by expert testimony in Ontario courts, on balance it will be fairer to the defendants to have the relevant Quebec law applied by the Quebec courts.

10 And in this case, this was one of the factors that pointed towards Quebec being the more appropriate forum. And we believe that this is likewise the case here. Just a side note about *Deakin*, I'm mindful of the time, so I don't want to be too long about this. I just want to mention that *Deakin* is one of three cases cited in Dr. Kemgni's factum that specifically deals with Ontario actions initiated against Quebec childcare professionals.

20 And in these three cases, the Ontario courts granted a motion to stay the Ontario proceeding on the basis of want of jurisdiction, and in each of these three cases, the court also concluded that Quebec was the more appropriate forum to deal with this.

25
30 And for the three cases, I would refer Your Honour to footnote 27 of Dr. Kemgni's factum, so I do not intend on going through of of these cases. I just wanted to mention that in our view, these cases are very relevant to the present situation, given the fact that it also involved Quebec healthcare professionals.

5
Another relevant consideration in the analysis, based on the factors identified by the case law is the issue of whether the plaintiff will lose a juridical advantage if the action is stayed. Dr. Kemgni submits that the action is stayed when the motion is granted, Ms. Moore will not sustain any juridical advantage.

10
As Her Honour may have noticed, in support of today's motion, Dr. Kemgni has obtained and served an expert report and affidavit from Mr. Pierre Leduc, an experienced lawyer who's been in practise since 1975 and will [indiscernible] just across the river in Gatineau. He's prepared an expert report and an affidavit on two very specific points and two very specific questions.

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And in his report and in his affidavit, Mr. Leduc confirmed that Ms. Moore's action as against Dr. Kemgni would not be [indiscernible] according to Quebec law. And second, that if Ms. Moore needs to proceed before the Quebec courts, she would be entitled, pursuant to the legislation in [indiscernible] Quebec, to proceed [indiscernible] if she wanted to.

25
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So essentially, Mr. Leduc's opinion is confirming that there's no juridical advantage of being lost by Ms. Moore should she need to proceed in Quebec.

THE COURT: [Indiscernible] the limitation period expires in April of this year, is that right?

5
MR. GUAY-RACINE: That's correct, yes, so in Quebec, as explained in, in Mr. Leduc's report, the limited period would be [indiscernible], so [indiscernible] report that if assuming that the damages would have slowed the date [indiscernible] report and [indiscernible] which brings us to April of 2020, that is correct.

10
Very briefly, before I conclude, I simply want to address a few comments made by Ms. Moore in her responding motion materials. I notice that Ms. Moore noted that granting a stay would waste the court's resources and result in multiple proceedings.

15
I think it's important to reiterate, as my colleague has mentioned today, that Ms. Moore is advancing separate proceedings as against Mr. Kiska and Dr. Kemgni. There is no requirement for these claims to have – to, to proceed together or to be heard together. And on this point, it's quite notable that Mr. Kiska has not filed any cross-claim as against Dr. Kemgni in the context of this action.

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The other point I want to mention is that, Ms. Moore does have separate ongoing actions against Mr. Kiska, including another civil action, the one referred to as the eviction scam, which was issued on the same day as the statement of claim in the present case.

5 So Ms. Moore could seek to have her claims
against Mr. Kiska [indiscernible] for her
together and on that point, I also want to point
out that in her separate statement of claim, so
the statement of claim related to the eviction
scam and other actions, Ms. Moore actually
discusses the involvement of Mr. Kiska with
respect to Dr. Kemgni's report.

10 So it's already mentioned in there, so there's
[indiscernible] nobody can provide the claims
against Mr. Kiska [indiscernible] proceed
together with her other action, and on that
point, ultimately, regardless of today's outcome
15 with this motion, there will be a separate
proceeding that will continue against Mr. Kiska.

20 Lastly, I've noticed as well that Ms. Moore has
mentioned that the opportunity to proceed
virtually and file the documents electronically
here, should the action proceed in Ontario, and
that we're living in quite exceptional
circumstances.

25 There's no way to know if virtual proceedings
will again be the norm in the future. So in my
respectful submission, the court should not based
its decision on this, but in any event, I would
simply note that this goes both ways. So should
30 the action proceed in Quebec, perhaps Ms. Moore
could also testify virtually and file her
documents electronically.

61.
Submissions

5 So in summary, in our respectful submission,
Quebec is clearly the best forum to consider the
action as against Dr. Kemgni as [indiscernible]
closest connection to the subject matter of the
action as such. Even if the court is of the view
that Ontario does have jurisdiction over the
claim as against Dr. Kemgni, we respectfully
submit that it is appropriate to stay the action
on the basis of forum not inconvenience. And for
10 these reasons, Dr. Kemgni respectfully requests
that the action as against her be stayed. Unless
Your Honour has any questions for me, this
concludes our submissions on behalf of Dr.
Kemgni. Thank you.

15 THE COURT: Very good. Thank you very much, Mr.
Guay-Racine. Ms. Moore, before I hear from you,
I just want to check with the, the court reporter
and the registrar. Are you both able to stay
beyond 4:30 today, does five o'clock work for
20 you, Mr. Registrar? I know some people have
childcare responsibilities or other issues,
particularly in these pandemic times.

CLERK REGISTRAR: For me, I'm good, I have no
problem, I could ask Madam Reporter.

25 COURT REPORTER: No later than five though, I
have to leave at five.

CLERK REGISTRAR: She says no later than five,
she has to leave at five.

30 THE COURT: Okay. That's, that's fine. Next
question is, I hate to put anyone on the spot, in
fact, I'm not going to put anyone on the spot,
I'm just going to say, we're going to take a

62.
Submissions

5 five-minute break in case someone needs a five-minute break, rather than making one of you put up your hands. And Ms. Moore, we'll hear from you then in five minutes and you'll have your hour. Thank you.

R E C E S S

U P O N R E S U M I N G:

10 THE COURT: It's that time again.

DEIRDRE MOORE: Your Honour, I'd like to attempt to follow the plan that I had prepared before listening to the arguments of Dr. Kemgni's assistants.

15 First, I'll - first, I guess I will refute Dr. Kemgni's affidavit. Then I will work - actually, I'll do that second. First of all, I'll refute the arguments that were orally presented today, and then I will - it's only about a page and a half from her affidavit that I already refuted in my affidavit.

20 Then I'd like to walk through the table of contents that I provided in the motion record, because that is the one where I organized documents by date and it provides context to this whole matter, I think pretty, pretty easily. Then I'll visit my factum arguments and address jurisdiction, *forum non conveniens* and any service deficiencies.

25
30 And then my closing remarks will be, you know,

5 if, if Dr. Kemgni had written an honest report, then my life for the past two years would have been quite different. So the damages are, you know, I sealed them off on April 6th when I issued my statement of claim [indiscernible] statute of limitations of two years for the combined, I call them co-perpetrators or co-defendants, which is Kiska and Kemgni.

10 And if she had written an honest report, my, my children may have not have lost their mother for the next two and three quarter years. Maybe my house wouldn't have been emptied. So the damages, even though I, you know, I basically capped them as of April 6th, they're ongoing.

15 So I'll just start with the most recent argument. Well, first of all, the, the word I heard a lot today was medical negligence. So this is not my, this is not my turn, I'm not suing anyone for medical negligence. A lot, a lot of [indiscernible] would say how there was separate claims and no one actually really reminded the court what my claim, my claim is, my claims are.

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30 So I'm going to do that right now [indiscernible] remotely reflect what was argued this afternoon so far. So I'm claiming – and maybe, you know, this is not properly pled because I'm self-representing [indiscernible] to self-represent after years of financial abuse.

5
10
But I'm seeking pecuniary damages in the amount of 250 against Kemgni for negligence, defamation, intentional infliction of emotional suffering and or malice, and then pecuniary damages in the same amount, less whatever might be awarded for the intentional infliction, and then I just substituted negligent infliction of emotional suffering. Nowhere am I claiming medical negligence, and there's a reason for this.

15
And then I go on to my next paragraph by adding Kiska for added breach of fiduciary duty because we are technically still married. But defamation, intentional infliction of emotional suffering and or malice.

20
And then again, the same thing, the same amount less whatever might be awarded for intentional infliction of emotional suffering and negligence. So I'm just covering myself in case I don't, in case I can't prove the intent, and that's it.

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So they're identical, other than the adding fiduciary duty, and I didn't even put fiduciary duty in Dr. Kemgni's because I'm not arguing that - well, she just didn't perform any services for a physician. I was - there was no psychiatric assessment done, zero. I mean, I've written tests before. My psychologist had administered two tests to determine a diagnosis.

I've been interviewed, I've been, I've been

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around the block on this, I know, I know what psychiatrists are supposed to do and all she did was, was take down, you know, my number and ask for me to sign [indiscernible] forms and I never saw her again for another 20 days. So, you know, my, my assertion is, she's a career criminal, operating through a hospital basically.

10
Anyways, if action is stayed, I'm not disadvantaged. Well, well, I will be, I mean, I could say there's no witnesses. There's no witnesses in Quebec, the - Dr. Kemgni, she said in her report that she relied on the, the - she didn't call it hearsay, but she relied on what do they call it, collateral information of self-serving Jon Kiska and his companion sister who's now deceased.

15
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And, and then it was argued that I didn't name his sister as a defendant. Well, she passed, so I'm not going to name her as a defendant. So the police aren't witnesses and the staff aren't witnesses.

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I included - and I don't know how you'd like me to refer to this, this material, Your Honour, because I'm not in a capacity to, you know, to PDF link documents. So, you know, I have my [indiscernible] form and I can refer to, you know, my tabs in my factum or I can refer to how I filed the information, and you have PDF's there, I'm not - how would you like me to refer

to exhibits, because I....

5 THE COURT: I, I think I can help you. If you
are aware of the names of the documents that you
filed, I went through all of your documents and
numbered them and identified roughly what is in
each of them, because they were difficult for me.
A lot of them just said motion record, so it was
hard for me to tell on the PDF form. But if you,
if you tell me what it is that you are referring
10 to, I can probably find it, you may just have to
give me a few seconds.

15 DEIRDRE MOORE: Sure, no problem. So I included
in a couple of place this – my medical files,
which I've already obtained from the
[indiscernible] hospital. And one of them was
included as in the motion record, Tab 5, other
documents, my factum, and....

20 MS. TARDIF: If it assists the court at all, I, I
do have the document as well and I, I did manage
to bookmark it and I'm, I'm – and if it assists
the court and Ms. Moore I should say, and I do
apologize for interrupting. But I just want to
show the court if the court wants me to screen
share, I can access the documents quickly if Ms.
25 Moore wishes me to, I am here.

DEIRDRE MOORE: Thank, thank you, Ms. Tardif, but
I would rather just maintain the flow and if it
[indiscernible] things, so be it.

30 MS. TARDIF: My apologies to the court, I, I just
wanted to offer assistance.

THE COURT: If I can't find a document, Ms.
Tardif, I may ask you to do that, it may be

67.
Submissions

helpful for me. But if you're referring to your factum right now, Ms. Moore, I have it on my screen.

5 DEIRDRE MOORE: Okay, awesome. So at Tab 2, and, and it's labelled – at the bottom, in, in green, the bottom right side are some page numbers.

THE COURT: Okay, just bear with me, I just, it's not tabbed so I just have to scroll down. So Tab 2.

10 DEIRDRE MOORE: Yeah, and it's page – in green, 81 out of 113 if that helps.

15 THE COURT: Okay. The copy of the factum that I have is only 30 pages PDF, but it may be that you have some of your – oh, here we are, Moore's current release order, is that what I'm looking at?

DEIRDRE MOORE: No, just before that one, should be – maybe it's T-1, page 4 out of 11
[indiscernible].

20 THE COURT: What, what's....

DEIRDRE MOORE: Just scroll, scroll back up a little bit.

THE COURT: What document are you looking at, is it the medical files?

25 DEIRDRE MOORE: Yes.

THE COURT: Okay, I have those. So that's Tab – according to what I have, that's Tab 1 of your factum, Moore's medical files *[indiscernible]* hospital.

30 DEIRDRE MOORE: So if you see, it, it's basically that first form, there's a whole bunch of zeros on that page.

THE COURT: You have a number of squares, is that it?

DEIRDRE MOORE: A number of squares...

THE COURT: Yes, I have it.

DEIRDRE MOORE: ...and no writing in it.

THE COURT: I have that.

DEIRDRE MOORE: And then the next page, it's in French, but, I don't know, there's four sentences. So that is my hospital file from [indiscernible]. That is the extent of it, and the reason that's the extent of it is because there was no assessment done.

And the pages that follow is a copy of the report in French, where she says that her report was based on collateral information of Kiska and his companion sister. Nowhere – it, it alleges that I was – and I'll get into this later, alleges I was not cooperative, I can prove that entirely false.

But I'm [indiscernible] sticking to the timeline here. So I'm just, I'm saying that – I'm going to go back to these allegations that the location of the tort of medical negligence is what's important. Well, I can easily argue that the defamation may have begun in Ontario. I mean, who, who arranged for this conversation behind my back? Did Dr. Kemgni call Jonathan Kiska? I don't think so, I think Jonathan Kiska called Dr. Kemgni. And the reason I say that is because it's not the first time that I brought myself to

a hospital for assistance and care and he's phoned in, lied to the doctors and had me formed.

5 So, you know, they're definitely combined. Perhaps I didn't, perhaps I didn't read properly and maybe I'll request at the end, an order to, to amend my, my statement of claim. Another thing I'll just point out before I get rolling is, they brought up my other statement of claim 10 against Kiska, the one where my house was emptied while I was in Kemgni's care, I might add, or lack thereof.

15 So that is a claim which is mostly compensatory damages because my house was emptied, okay? No one, no one told me I was being evicted. Kiska, Kiska knew where I was, everyone knew where I was and no one told me anything. And it's not as if I didn't have the funds to pay rent, I just - I 20 was being, you know, locked up until the house was emptied. And to combine these two makes, makes zero sense.

25 Now, the reason that's a fresh amended statement of claims, because I finally found a lawyer who would help me draft a statement of claim. She didn't have time to do it, she provided me with some samples, and so that's why it's a stronger claim where I've combined the defendants as being 30 jointly liable for damages. I didn't do that for the Kiska, Kemgni one yet because quite frankly, I'm involved in an appeal against Kiska as well.

5 So, you know, I'm exhausted. My, my one course
in law back in my business administration degree,
I'm, I'm really stretching my knowledge here,
trying to keep up with all this stuff, as
everyone is busy calling me mentally ill, by the
way.

10 I'm just going to back through, now that – some
of these arguments that I heard quickly. Ms.
Tardif started off by talking about a, you know,
Dr. Kemgni prepared an independent psychiatric
evaluation. Well, that's false, there was no
15 psychiatric evaluation done whatsoever, none,
zero. She relied on hearsay, she relied on
whatever is in that police report, I have no
idea. I, I did not have an assessment at any
hospital. I went to the hospital, I don't know,
with – my ribs are broken. So anyone that's
20 claiming that there was an evaluation, well,
that's news to me.

25 They're saying there's no connection between
Kemgni and Ontario. Well, all the damages flowed
from that report, occurred in Ontario. Actually
not a single damage flowed from her report in
Quebec because Justice Joe E. Dubois(ph) threw it
out.

30 She compared a non-criminally responsible
opinion, when I hadn't been found guilty of
anything. So Judge Dubois, Judge Dubois says,
well, you know, if you want to just go off for

71.
Submissions

treatment and you don't have a record, and I said, well, I didn't commit a crime, so no, and I'm not mentally ill, so no and no.

5 And so, he says, okay, fine and booked a, a trial date and I represented myself and I cross-examined the police officer who had quite the story and the judge at the end of it says, well, you didn't commit a crime. I know. She says, well, you're acquitted, off you go.

10 So, so her report, her scandalous report actually created no harm in Quebec and a ton of harm in, in Ontario. Bouncing back down to the closing remarks - there would be no problem if it was held in Quebec regarding where the witnesses are. It says, none of the witnesses in Quebec matter. It's all in her report that she just relied on Kiska and his sister for [indiscernible] and other written reports.

15 So there's no witnesses, there's no - there was no care in the hospital. My medical, medical file proves that. And so if there are any witnesses, it would be the Crown prosecutor's in Ottawa who are using her report to allege that I have some sort of mental illness. So, so if you really want to get down to calling witnesses, then it needs to be in Ottawa, I think.

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30 Let's see. I, I'll, I'll address the services she's - I didn't serve her personally, I had a

process server, they apparently didn't know, they were supposed to serve an originating document, document [indiscernible].

5 Now, when Ms. Tardif went through my claim, I'm not sure why she skipped over, she skipped over Paragraph's 18 to 25. So she's cherry-picked some, some arguments and, you know, that's what lawyers do, I've learned that and that's, that's fine.

10 I mean, she provided you with that information and you'll be able to, Your Honour, go through and see, you know, what she's excluded, which is my arguments about the torts the Dr. Kemgni has committed against me.

15 Presumptive factor does not point to real connection. And again, they ignored the fact that defamation is a huge part of this and I, I can state that the defamation occurred in Ontario and was [indiscernible] translated into French in Quebec and put between a header and a footer, 20 they put it on Hospital [indiscernible] letterhead.

25 So, you know, the, the judge needs to decide who is more, who is more liable for the damages that have flowed from the defamation and the translation of the defamation. Who's more 30 liable, Kiska, Kiska or Kemgni? I mean, I, I

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can't decide that, but there was, there was no malpractice because she didn't actually do anything other than ensure I wasn't able to leave the hospital until April 8th, after all the damage had been done.

10
I'm at risk of running out of time, I'll jump over to refuting Dr. Kemgni's affidavit. If you go to my, my affidavit, Your Honour, page 4 of 6 in the paper document, that would be in Tab 3 I believe it is. Tab 3 affidavits and I filed mine third, I'll see if I can catch up and find out – I'm not sure, do you have it there?

15
THE COURT: I have your affidavit.

DEIRDRE MOORE: Okay. Thank you, Your Honour. So I get to – go to page 4, Paragraph 20.

THE COURT: I'm there.

20
DEIRDRE MOORE: Thank you, Your Honour. So it's just five paragraphs. So Dr. Kemgni's Paragraph 4 is misleading. At the time of Moore's so called assessment, she had been a fully licensed psychiatrist for only eight months. And
25
basically, in her affidavit, she said she's prepared, you know, 30-odd NCR opinions, so she's quite experienced.

30
Well, when I was there, nearly three years ago, she'd only been a licenses psychiatrist for eight months. And she wasn't asked to do an NCR opinion because I hadn't been found guilty of anything. So how this went off the rails, that's only for Kiska and Kemgni to know, which is why I

brought this action of seeking damages. I'm trying to raise awareness on this sort of collusion, part of the [indiscernible] spouse service that I'll get to later.

Kemgni's Paragraph 5 is false. The psychiatrist assessments were prior to my hospitalization, not during it. They make it sound like I was brought in and formed and they requested an assessment. No, that wasn't it at all. Duty counsel that I actually - I didn't want duty counsel and I stated, no, I'm quite happy defending myself. Kind of ignored by duty counsel [indiscernible] oh, we should send her for a psych assessment.

Dr. Kemgni's Paragraph 7 is false. She was asked to assess my fitness to stand trial. As I had not been found guilty of anything, there's no reason to seek an NCR opinion. This is just basic - the way things work in criminal court.

Kemgni's Paragraph 8 is false and misleading in multiple ways. She only met with me twice, the first time was to ask to sign two blank forms so she could bill the Province of Ontario. The second time was to find out - I had [indiscernible] houses at the time, so I gave that information and I was able to explain a little bit to her on the domestic violence with him that I've been enduring since, you know, at least 2013.

She mentions, Paragraph C, she says, "Moore

5 provided a court document." It wasn't just a court document, it was a copy of a precedent setting decision that Justice Darlene Summers issued in November of 2017, permitting me to seek extensive, extensive damages from Kiska in Family Court. Not just for his torts, but his crimes as well. And I'll, I'll demonstrate that when I go through my table of contents with exhibits and all my commissioned, my commissioned exhibits.

10 So there was no psychiatric evaluation done in Laval as far as I'm aware. I was there looking for an x-ray because I was so badly beaten by Quebec Police when they stopped my car. I thought I had broken ribs. Whether it was in the report, I have no idea.

15 And E, there would be no reason for Moore to provide Kemgni with previous medical files as previous psychiatrists also relied upon self-serving Kiska, hearsay from Kiska. That's how I ended up with a misdiagnosis of bipolar in the first place.

20 This is, this is beyond legal warfare or legal bullying(ph) and you know, retaliatory, retaliatory maneuvers from my ex-husband regarding [indiscernible] divorce, this is criminal level behaviour.

25
30 Kemgni's Paragraph 17, I [indiscernible] irrelevant, due to COVID, hearings were done via

5 Zoom in geographic locations [indiscernible]
factor. I mean, you want to argue that while I'm
[indiscernible] backup in, in court face-to-face.
I suppose it's possible, I don't see it
happening.

10 She admitted in her report there was no
assessment. So there's just - she didn't perform
any legitimate professional services, so I argue,
her licensing body or place of practise is
irrelevant.

15 Location of documents is irrelevant as all
matters are filed online. And location of other
health care professionals and law enforcement is
irrelevant as there's no need for witnesses,
other than mine, you know, proving how much
damage is, is being done.

20 Now, if you don't mind, Your Honour, I'd just
like to take you through Tab 1 in the table of
contents. And also, keep the affidavit open. I
wanted to go through, in chronological order to
provide context to, you know, what's happening
before I speak to jurisdiction.

25 THE COURT: Are you referring me to the document
that's titled, "List of exhibits?"

DEIRDRE MOORE: Yes, Your Honour.

30 THE COURT: Okay, from A to N, is that where I
should be?

DEIRDRE MOORE: Oh, sorry, no, I'm in the table
of contents, Tab 1, page 1 of 4.

THE COURT: Oh, I think I know which one that is.

DEIRDRE MOORE: And the reason is, it's because it's a, it's a chronological list, versus the list that - the order it shows up in my affidavit.

THE COURT: Okay. Bear with me. Ms. Tardif, do you know which document Ms. Moore is referring to, I wonder if you can assist.

MS. TARDIF: I do, Your Honour. We've compiled it, I can certainly put it up on the screen. Otherwise, let me see if I can find the name of the document.

THE COURT: I have a document which I've called, "Six listed documents", I don't know if that was other documents.

DEIRDRE MOORE: It should be, well, I labelled it when I filed it...

THE COURT: Yeah.

DEIRDRE MOORE: Motion record, respondent, cover and Tab 1.

MS. TARDIF: That's right. That's what I have it listed as too, Your Honour. Motion record, respondent, Moore, cover and Tab 1.

THE COURT: Okay.

DEIRDRE MOORE: But it, it doesn't matter, I can walk you through it and just direct you to the page number with the affidavit.

THE COURT: No. I've got it, I have it, thank you. There are, I think 41 documents and table of contents by date of documents. Thank you, Ms. Tardif, thank you, Ms. Moore, I, I found it.

DEIRDRE MOORE: Okay. And then each of those,

5
you'll see on the right hand side, that – on the very right hand side, it'll refer you to which file that exhibit is in. So the first one is T3 [indiscernible] for Tab 5. Oh, sorry, it's S3, sorry, dash 5, so that'd be the fifth component of Tab 3. And [indiscernible] pages 26 to 35.

10
So if I start with, with that one, so that's the – the nature of the document was the president setting decision from Justice Darlene Summers. So if you open Tab 3-5 and scroll down to page 26, and that's the page 26, electronically, versus what's on the bottom of the page, it will bring you to Justice...

15
THE COURT: Yeah.

DEIRDRE MOORE: ...[indiscernible] is available on CanLII as well.

THE COURT: I have it.

20
DEIRDRE MOORE: That's Justice Cameron's – sorry, Justice Summers' decision, and if you keep scrolling down to page 32. That's where I was amending my answer to seek orders for damages.

25
And the checkmark includes all the ones that she permitted. The dashes were the ones – she says, I don't need to permit because they're just redundantly [indiscernible] claimed them in your original answer. And ones that are crossed off were not, were deemed not tenable at law.

30
So you can there, and this is done in 2017. So this predates the damages that were caused by

5 Kiska that I'm claiming now. This – so you can,
number five, there's more defamation. Number
six, there's more breach of fiduciary
responsibility. Number seven, there's more
negligence, infliction of mental suffering and
emotional distress.

10 We get into the crimes. Number eight, defamatory
liable sections from the *Criminal Code*, and then
we go to number nine, criminal harassment. Ten,
mischief. So this was the decision, and I was
permitted to seek all of these damages in Family
Court, where the burden of proof is not the
15 crimes anyways, it's not beyond a reasonable
doubt, but more or less, pardon my language, but
[indiscernible] pretty [indiscernible], pretty
likely.

20 So in, you know, maybe I didn't do it quite
properly with my factum versus my affidavit, but
there was a reason for that. I had to issue a
request to admit Form 22 in Family Court as well
to draw out all of this evidence I had from him.
And that's why at the very end, at one point, the
25 judge said, well, her materials are rife with
evidence.

30 And [indiscernible] my factum shouldn't have been
rife with evidence, should have been my
affidavit, but because of the timing, I didn't
have all the evidence until after the affidavit
and the request [indiscernible] be served.

5 So that is - that got things rolling, and then
the Office of the Children's Lawyer did a four-
month investigation and suggested that I be
awarded sole custody. And so with those two
things in hand, that's when Kiska really stepped
up his game.

10 If you go to, if you scroll back up to page 25,
since I've learned more about Mr. Kiska, I
actually started a *[indiscernible]*, but company
to raise awareness on narcissism and
[indiscernible] of abuse.

15 And so one of my violence *[indiscernible]*
counsellors showed me an article of someone who
was also being, you know, stalked by their
spouse. And that's on page, if you scroll back
to 25. And what this is a picture of is my
20 letter to the editor, which is published in
August of 2018, letting people know that I had
won this motion, this big motion in Family Court,
and letting them know that, you know, you could
seek damages. If you have an abusive spouse, you
can seek damages in, in financial court, you
25 don't have to have a civil lawyer, you don't have
to wait for the criminal process to go through
which can take years. You can actually, you
know, do it as you're getting a divorce.

30 This is the type of material I was attempting to
show Dr. Kemgni when I had my laptop delivered,
so that she can, you know, see this evidence.

She refused to look at it, and my evidence of this is, if you go to the file, T3-2, page 9 to 12.

THE COURT: Yes.

5 DEIRDRE MOORE: Thank you. So if you see page 9, it's just showing it's commissioned. I had left, intentionally, a laptop at the Hilton Hotel in Gatineau, I've been spreading around my evidence for years because so much stuff gets stolen, right?

10 So if you scroll down to page 10, you're going to see where I've got this email, they gave me a copy of the fact that they sent a laptop where I, where I highlighted, on March 27th of 2019, and if you scroll to the next page, page 11. It went from – they say it's the casino, but that's just the security team, they used the Hilton Hotel. The reason I, I go there for safety is because of all the security that's been *[indiscernible]*.

15
20 And 150 St. Thomas *[indiscernible]*, that's the address of the hospital. So I attempted to show all of this evidence of the ongoing emotional, financial, psychological, psychiatric abuse *[indiscernible]* Dr. Kemgni refused to look at it.

25
30 If you scroll down to – oh, this is interesting. April 8th, so just a coincidence. If you scroll down to the same *[indiscernible]* page 13, 14, on that day of April 8th on page 14, shows, I asked for an adjournment because I had not received any

5 amended, amended application for Children's Aid Society of Ottawa, had not received any materials. Of course, I couldn't file any materials. My request for an adjournment was denied by Justice [indiscernible] McLeod(ph). And if you scroll to page 15, it's the beginning of his order.

10 They actually claimed on page 16, court finds that - and she claimed I was in default of the proceedings, even though, obviously, based on the endorsement, I attended by phone, requesting an endorsement. And this order makes absolutely no sense for both, for both parents. We have to work cooperatively.

15 I'll just go to Paragraph 6 that highlights the whole thing. "Mother and father shall cooperate with one another to provide for the children as they see fit." Well, then for Ms. Moore only, they got this nice little restraining order in there, where I cannot communicate with the children with the exception of supervision of the father, Kiska. So guess who stops answering the phone and prevents me from speaking to my children the following six months?

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30 Anyway, that was April 8th, so that happened on April 8th. Eviction documents, I didn't load them all up, but if you scroll down to page 20, April 8th, 2019 was the day that I was formally

83.
Submissions

evicted from my rental property without any notice to me whatsoever, as I was stuck in the [indiscernible] hospital.

5 And then if you scroll down to page 24, that is – this whole thing, I mean, I requested my whole medical file, so that's just their response to me on page 24 when I asked for – and so you get to the basically blank medical file on page 27.

10 So those three things – oh, right, and then the assessment, which follows, which is signed and dated, if you scroll all the way down to page 35, April 8th.

15 So the fact that I lost basically custody of my children, I was evicted and everything I owned was stolen and I was deemed NCR for a crime I didn't commit on April 8th, 2019. It seems a little bit more than coincidence to me.

20 Oh, let's see, then what happened? Oh, yeah, then he starts – I finally get out and I – then he starts mocking me about being evicted. So if you go, it's the same file, going down to page 26 to 45. Okay, well, 37 and the rest is showing that I, I knew something was up then end of 2019, I could just sense it, so I made sure that I had predated bank drafts from my landlord so that matter where I was, I'd [indiscernible].

25
30 If you scroll to page 38, let me show you again,

5 this is just context who I'm dealing with, page
38, May 16, 2019. It was indicated, don't
communicate with me anymore, good luck with your
endeavours. Well, that's a complete violation of
court order, which says we must communicate for
the benefit of the children.

10 And if you get down to – and so there's more
examples of that nonsense. And then if you get
right down to page 44, it may be tricky to read.
But if you go to the very bottom left hand corner
of page 44, it's a copy of a text where he says,
you know, "Did you pay last month's rent, did you
buy the washer and dryer, any other appliances or
15 fixtures so I know what would belong to me?" And
that's just one, you know, example.

20 I have lots, well, more evidence and that's in
the other civil action, where he's mocking me for
being evicted, how he's gotten in touch with a
paralegal and how he's going to buy everything
that I own [*indiscernible*].

25 THE COURT: Ms. Moore, I'm fine if you want to
take me through your documents so that – like
this is just fine, but I do want you to, to make
sure that you try to focus on your response to
Ms. Tardif and Mr. Guay-Racine's arguments, and
also on the arguments that you want to make.

30 DEIRDRE MOORE: Sure, okay. Yeah, I'm almost
done here anyways. I'm just showing you that
that's what happened before I was detained in
Quebec. And immediately upon my release, it's

what's happening, of being mocked.

5 It just goes through – there's a couple of more
examples in here, how the defence attorneys
[indiscernible] defence attorney, I'm not really
guilty of anything. More examples how the Crown
prosecutors have, you know, been trying to find
me guilty of anything so that they can find me
NCR.

10 The only one I'd like to highlight before we
leave this section, I've put it in. Oh, yeah,
T35, if you go back to T35. And scroll down to
37 to 39 on the digital count. And this, again,
15 is just to show, it's [indiscernible] same thing
on page 38, he told my 11-year old daughter that
I had moved to Texas because I didn't want to be
a mother anymore. I've never spent a single
night in Texas.

20 And the following page, page 39, this is where
he's telling – this is his police interview, just
before – in order to get the divorce cancelled,
the divorce trial cancelled in September 2019, he
25 accused me of criminal harassment. So he's
telling the police that I'm schizoaffective
schizophrenic. There's no way that I can keep up
with this legal gymnastics if I was schizophrenic
and any legitimate psychiatrist will tell you
30 that.

Sorry, Your Honour, I just – so, so that just

5 frames where Kiska is in all of this, and then again, to say there's not – nothing in Ontario or at least Quebec based, I think I kind of went through all of that.

10 All the damages are Ontario based. There's no assessment done, this is not a professional negligence challenge, it's a, it's some tort. She basically translated defamatory statements made by Kiska to my demise. And that's all it is. To, to claim it's anything more than that, I think is, is a tad ridiculous.

15 Let me go back to visit my factum arguments, which would be held in Tab 5 – oh, there you go, Tab 5-3 of the documents.

20 THE COURT: I have your factum, so it's titled, "Factum of the responding party", and what page should I look at?

DEIRDRE MOORE: I'm just going to go down to page 4.

THE COURT: I'm there.

25 DEIRDRE MOORE: Because I've provided to you based on the background. So *[indiscernible]*, she says, Ontario having the jurisdiction to hear *[indiscernible]* the defendant's resides in Quebec because Quebec more appropriate, even though the source of the defamatory liable was residence of Ontario at the time there were two of them. It was really translating the French and
30 distributed, and should the matter be stayed simply because Moore was unaware that leave was

required in order to serve Kemgni and my process server failed to serve the document upon Kemgni properly.

5 So [indiscernible] of the test from jurisdiction and so the defendant is domiciled in Quebec, correct. Carries on business, I say it's irrelevant, she didn't carry out any professional duties whatsoever.

10 The tort was committed in the province. Well, I mean, that, that's arguable. Where the defamation, defamations start. Why didn't she, you know, why didn't she ask me to verify what was said? So it's a two, it's a two part thing. It's very, very connected. I'd argue that it's not connected at all, I, I can't see how that argument can be accepted by the court.

15
20 A contract, well there was no, there's no contract in dispute. In all the case law that deal, deal with insurance and contracts, there was no contract. There was a court order for fitness to stand trial assessment that wasn't done. Well, I guess, I guess Quebec can [indiscernible] for violating the order, but there's no contract that occurred.

25
30 They claim that the court can, the court can revisit other factors. She said, okay, well let's bring up the factors that, that did exist in [indiscernible] then.

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Location of key witness. Again, the witnesses for the damages that are still ongoing till today, they all, they all live in, in Ottawa. Avoidance of multiplicity of proceedings. So now they would like me to split the Kiska half from the Kemgni half. Well, how is the court going to decide, you know, what was the source of defamation? Who, who started that ball rolling?

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Did Dr. Kemgni go behind my back and call the person I've been attempting to divorce since 2013, to seek collateral information on my mental health? That would seem like it's a ridiculous thing to do. Obviously he's going to say whatever works to his advantage to keep the kids, or more likely, did Kiska call the hospital?

25
30
Only, only by going through discovery process, well, we're going to find that out. So I, I say, it does nothing to separate these, these proceedings. It just wastes court time and it's - it hides the truth.

THE COURT: Let me ask you a little bit more about that, Ms. Moore. So can you please elaborate, why do you say that it would not be feasible to divide up the two claims? In other words, to have you continue your claim against the doctor in Quebec and continue your claim against Mr. Kiska in Ontario? What is your, your argument about why that should not take

place or why that, that couldn't take place?

DEIRDRE MOORE: Well, again, it would, again, it would be just – waste court resources having two separate hearings. That is unnecessary because the defamation is all contained in the same e-page(ph) document. So and it states right in the document where it came from, where the source of the information from, Jonathan Kiska and his companion sister, Mary(ph).

So to separate the two, now, how do you find out? Because, Kemgni's going to on the one hand say, it's like, hey, all I did, all I did was follow procedure, got collateral information and [indiscernible], I didn't do anything wrong.

Whereas, Kiska's going to say, well, I never said that stuff to her, she twisted my words. So I'm going to be left out again, I'm the one who has this NCR opinion and people accusing me of being, you know, paranoid or, or delusional with, with paranoid ideas or whatever, when I can prove quite the opposite is true.

I've been basically under attack by this crime syndicate since 2013. And so separating them does nothing to reveal a system that's being used, not just against me, but against, you know, other victims of domestic violence who try to, try to get out [indiscernible]. I mean, I can't go into all the details – there goes my computer.

5 I can't go into all the details in this motion,
but, you know, I'll get to this later. But
another reason's really important, that this be
heard in Ontario, Ottawa. There's people in
Gatineau, they're in Gatineau, like two
kilometres away. And rest assured, if it's a
success.

10 If, if a [indiscernible] spouse can arrange to
have his wife, you know, arrested for criminal
harassment when they have a court order to
communicate for the benefit of the kids, have
her denied bail and jailed, ensure she's, you
know, arrested for a crime she didn't commit,
15 undergo an assessment, a bogus NCR assigned.

20 It's, I mean, the involvement, this is a very
complex system that's [indiscernible] and if
they get away with this on me, and I assure you
that psychiatrists in, in Gatineau, we're going
to see a little more of this. And forcing the
loving parent, you know, almost on to the street
with a fraud and a theft and the defamation and
the criminalization.

25 I mean, that brings me to, you know, one of my
exhibits to – I didn't really get to – hang one,
let me just find out where that went. It was in
the affidavit, I think it's Exhibit A in the
affidavit. So that's back to – at least it'll
30 give you an illustration of what's going on
here.

THE COURT: Is that the diagram?

91.
Submissions

DEIRDRE MOORE: Yeah.

THE COURT: Yeah, I've seen that.

DEIRDRE MOORE: So it's nasty, and I can prove all of it. And when you have crooked psychiatrists that are producing NCR reports for victims of domestic violence when they're not guilty of any crime, to try to force them onto some sort of psychotropic medication, and I've tried some of them and the side effects can be devastating. You know, basically, the goal here is, and I'll say it bluntly, is to drive the target to suicide.

Kiska doesn't want - you know, he's still in my million dollar home with my two beautiful kids, paying next to nothing in spousal support because of the fraud he got away with.

So I know how all this system works. Now, on the flip side, if Dr. Kemgni can produce an NCR opinion that wasn't even requested, based on the hearsay of a malicious spouse, then I allege that the psychiatrist can also produce a bogus NCR opinion on a violent criminal. It just goes to the highest bidder at that point.

And so, there's, there's a number of reasons why Ontario is - this should be heard in Ontario.

You know, and other, other victims of this [indiscernible] shouldn't be able to reference the case law that shows collusion between the ex-spouse, well, hopefully soon ex-spouse and the doctor who failed to do any assessment

whatsoever, and merely rely on, on the words of the ex-spouse. I mean, that's, that's my goal. I've been trying to raise awareness on the street for a while.

5 THE COURT: Would the effect not be the same though, if your action – I don't believe that the, the defendants are arguing that your action cannot proceed. Their position is that it cannot proceed in Ontario. And would the effect of your action against the doctor not be the same if you were to proceed in Quebec? In other words, if you were to pursue the doctor, would word not still get out about the issues that you're concerned of, just perhaps in a different province?

10 DEIRDRE MOORE: Perhaps. But I mean, if you're a victim of this – when I'm, when I'm [indiscernible] legal documents and looking at CanlII, I narrowed down – I mean, there's enough on there, it took me enough to, to find everything. So obviously I just go to Ontario to see, you know, what are the decisions made regarding jurisdiction? And so, again, that's not my main argument, it's just an additional argument. I guess I'm not allowed to add them all up.

20 My main argument is, this is not, this is not medical negligence. I never alleged it was medical negligence. I'm alleging defamation, negligence, professional negligence.

25 THE COURT: You're alleging against the doctor, defamation and professional negligence?

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DEIRDRE MOORE: Not even professional, just negligence.

THE COURT: Okay.

DEIRDRE MOORE: Defamation, intentional infliction of a mental – emotional suffering, mental harm and negligent infliction of emotional suffering and mental harm. So four separate ones.

Same thing for Kiska, I just added breach of fiduciary duty on Kiska, not on Dr. Kemgni. She didn't breach any fiduciary duty, she didn't, she didn't – she ignored me. I don't, you know, other than – I don't know how to, I don't know how else to explain it. It's not that she failed in her duties, she colluded with Kiska to keep me there until April 8 so my house could get emptied, my, my children would be lost and I could declare you NCR.

THE COURT: Just bear with me for a moment, Ms. Moore. I just have to turn my camera off for a second to turn on a light and I will be right back.

DEIRDRE MOORE: Okay. Thank you, Your Honour.

THE COURT: Whenever you're ready, Ms. Moore, thank you.

DEIRDRE MOORE: Oh, you're welcome. Well, you know, again, their arguments for jurisdiction, I, I think fail, because it doesn't, it doesn't matter where she lives and, you know, just because Kiska lives in Ontario, doesn't mean it should be heard in Ontario.

5
Okay, well, I live in Ontario too, so that's two out of three, two kids who live in Ontario and I did separate [indiscernible] damages as well. They continue to – my witnesses and my Crown prosecutors that are using her report, they live in Ontario. The defamation, I will argue likely, came from Ontario. It was translated in Quebec.

10
So if you want to look at, what do they call it, but for, you know, but for Kiska's defamation in Ontario, there would not be a defamatory report coming from Quebec.

15
So there's a lot to suggest that this [indiscernible] heard in Ontario. And almost nothing to suggest it should be heard in Quebec, because again, everything's contained in her report. My medical file, let's say that, everything contained in my medical file. The one, a quarter page medical file which is basically, it may as well be blank. And her eight, nine page, whatever it is, damning report, which was designed to send me off to some mental institution for treatment for an illness that I don't have, which was ignored by the Quebec courts.

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So there's, there's nothing, other than her living in Quebec, that, that ties this to Quebec. No matter how hard they want to argue it. But for Kiska's defamation, there wouldn't

have been a defamatory report. I don't even know if we started in Ontario.

5 Let's see. So I was going to zip over this, I was looking at my factum here. Oh, yeah, I didn't print off a lot of case law on this because the other side did that for you and again, I, I think most of it's irrelevant for the reasons that I already explained.

10 I'm going to flip back to my factum, where I – my submissions, so I can find it for you again. Tab 5-3, and page 4 on the digital side, page 4 of 46, on submissions. That's for jurisdiction identified in Kemgni's factum and need not be repeated here. Ontario has jurisdiction, the source of defamatory [indiscernible] with Kiska and his companion sister, who both reside in Ontario, the information is literally translated [indiscernible]. I'll just [indiscernible] myself here.

15 THE COURT: We're on Paragraph 17 of your factum now?

20 DEIRDRE MOORE: Yes, yes, Paragraph 17. No assessment was performed, that's of evidence, that. And C, you know, [indiscernible].

25 Further evidence that no assessment was performed by Dr. Kemgni. Throughout her materials, she states, she's French speaking. Not once does she claim to be bilingual. A French speaking psychiatrist cannot assess an English speaking victim of domestic violence.

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Just [indiscernible] according to my allegation that there was actually no assessment done. No witnesses for the matter required, there [indiscernible] for themselves, we were using Zoom, there's no geographic reason to have it heard in Quebec. And is separating the matter to claim against Kemgni and, well, I guess Kiska would simply wait [indiscernible] resources and a further day delay in my ability to seek justice. And the courts were a team effort.

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Again, Mr. Kiska's been successful in kicking every legal can down the road, not just the divorce, the abduction of my children, the emptying of my house. I don't want to have this one kicked down the road as well, because at some point, I need some compensation of everything he's stolen from me, including my two children that I had at the time.

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Given the malicious nature of Kemgni and Kiska's actions, the fact that Kemgni possesses the power to alter people's lives forever. This is deserving of the court's [indiscernible] judicial powers in order to deter future psychiatrists from such incompetence, negligence and or criminal activity.

30
So that'll be another arguments as why it should be heard in Ontario and why the court has jurisdiction, using broad judicial powers. And I, I tie in again, Ottawa – the Ottawa, Gatineau

connection.

5 In closing, if Dr. Kemgni had written an honest report, then as I keep attempting to divorce Kiska, perhaps I wouldn't – perhaps my kids wouldn't have [indiscernible] during COVID and for the last two and three-quarter years, being told I'm severely mental ill and dangerous.

10 If Dr. Kemgni had written an honest report saying, wow, this woman's mental [indiscernible] amazing based on what she's been going through, of course she didn't stop for the police right away, she was looking for a, a place to stop. She was lost in the country on the way back to Ottawa. Because of her awareness of Kiska and all his little tricks, she does not want to pull over on the side of a deserted road in the middle of nowhere and not know exactly who was following her, other than someone with a siren on the top of their car. You know, she's great, she's fine, she's fine to stand trial. I mean, imagine if Dr. Kemgni had written that report, but she didn't.

25 So it's used in her mental [indiscernible]. I could have used it against the CAS. If she had spoken to me and done an assessment within a week, maybe I would have gotten to have a trial and get acquitted and get back to my house before it was emptied on April 8th. So maybe, you know, I could have given the landlord his

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cheques, because I had no idea I was being evicted, and I wouldn't be out a half a million dollars of property. Oh, yeah, all of my kid's belongings, all of my memorabilia from growing up. My \$200,000 professional wardrobe. Maybe I wouldn't have lost all of that if Dr. Kemgni had written an honest report.

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And as I'm still not divorced from Kiska, and the *Divorce Act* was changed last year, March 21st, 2021, where courts [*indiscernible*] when deciding parenting time and decision making, courts, the courts must consider financial abuse and psychological abuse.

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So financial abuse is in the proof. Psychological abuse is ongoing, he's just – I'm so used to it now, I no longer have nervous breakdowns. It's just become matter of fact.

20
So back to my factum, I guess the orders I would be seeking today, which is back to – oh, no, still on this document. Just scroll down.

25
THE COURT: At Paragraph 26 of your factum?

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DEIRDRE MOORE: Yes, thank you, Your Honour. An order that Kiska, oh, yeah, Kiska's statement of defence, I, I didn't bring it up. I was asking that it be struck from the motion books, I thought it was pretty irrelevant to the arguments being, being argued. So if it's still a factor, I would just dismiss it.

An order that the motion be dismissed for reasons already given, regarding the fact that most of this claim stem from damages [indiscernible] in the Province of Ontario.

You know, I read somewhere that – have they – they may have de facto – sorry, just one second. They may – has Dr. Kemgni de facto waived the service deficiency? And the only reason I come up with this is because in *Kuchocki v. Fasken Martineau Dumoulin* in 2005, CanLII 1285 ONSC [sic]. The defendant has been served, the other defendant has not been personally served, however they waived the service deficiency so that court may address the question of jurisdiction and forum non conveniens.

So the – I'm not sure of the order on this, but this suggests to me that if we're considering the question of jurisdiction, then they've waived the service deficiency. Even if they hadn't, I believe legislation, you know, I'm sort of covered from making that error. I'm, I'm battling Jonathan Kiska in every branch of court, criminal, Family, CAS, Divisional Court, soon to be Supreme and Civil. So it's, it's tricky to keep up, I do my best.

And now I'll go back to my factum, page 6. Just deals with Rule 2.01 saying, failure to comply with these rules [indiscernible] irregularity and does not render a proceeding or [indiscernible] document or order and proceeding a nullity. And

then the court may grant all necessary amendments out of relief to secure a just determination.

5 So, you know, I guess begging the courts for some just determination and that is with respect to failing to seek leave. I just address that in – I mean, I just grabbed it out of the legislation thing, Rule 17.06(3), where on motion, the court concludes service [indiscernible] cases in which it would have been appropriate to grant leave to serve outside of Ontario. The court may make an order validating service.

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15 So in my relief sought, down on page 7 again, other than the motion dismissed, I'm also seeking an order validating the out of province service on Kemgni, as well as the personal service on Kemgni, as clearly, she has received the statement of claim.

20
25 In the alternative, [indiscernible] amend fresh statement of – a fresh amended statement of claim to remove Kemgni as a defendant, revise damages sought and revise the pleading. Not, I think the ideal solution in any way shape or form, but if there's any way, I'd like to add the one where – in any event, an order to amend my claim so that maybe I can more clearly tie together or more clearly describe the collusion, I thought I did a pretty good job, but now that I haven't provided [indiscernible] templates [indiscernible] properly make a civil claim. While I was able to

30

improve the eviction one, I didn't think this one needed improvement, maybe it does. I'm not sure if you have any questions, Your Honour, but that's pretty much the end of my submissions.

5 THE COURT: Thank you very much, Ms. Moore. I do have a question about – and I think we have probably about one minute for me to ask and for you to answer because I do want to give the, the moving parties the last word and we have to close off at five o'clock today. But when you say, in Paragraph E of your order sought and the alternative order that Moore may amend her fresh amended statement of claim to remove Kemgni as the defendant. You're saying to remove the doctor as a defendant and then to continue the action against Kiska, is that what you're saying?

10 DEIRDRE MOORE: Correct, if that's my only avenue, then that's what I would do.

15 THE COURT: Okay.

20 DEIRDRE MOORE: And again, so I – amend, it shouldn't say fresh action, that's, that's an error. Just on the – it's – I don't think I amended this one [indiscernible]. Sorry, this is just – you need to strike out fresh amended statement of claim, I would just need to amend my statement of claim.

25 THE COURT: I know which, I know which claim you mean, it's the one that refers to the doctor. And when you say revise the damages sought, what do you mean when you say that?

30 DEIRDRE MOORE: Well, if I'm removing Dr. Kemgni, then I would remove the amount....

THE COURT: That refer to her.

DEIRDRE MOORE: That's right. Again, and it's mostly pecuniary, you know, clearly. And [indiscernible] because this is an upsetting case and I think this should be upsetting for anyone.

If a, if a victim of domestic violence is declared NCR [indiscernible], that opens up a question is, who else, who else is getting NCR opinions that shouldn't be? That's my concern.

THE COURT: Thank you very much, Ms. Moore. And thank you [indiscernible]. Perfect timing, I was going to say, thank you for making your submissions within the time and my, my 16-minute alarm just went off, so that's perfect timing.

Ms. Tardif or Mr. Guay-Racine, do you have any comments in reply, and I'm afraid I haven't given you very much time.

MS. TARDIF: Thank you, Your Honour. I will be very brief. The first is that I appreciate that Ms. Moore attempted to limit her submissions to argument, and she indicated that she of course, understands the difference between argument and evidence. Based on my hearing, and, and I'm not suggesting this was intentional. She did occasionally veer into evidence, and I would just note that the evidence properly before the court is obviously limited to what is in the sworn affidavits.

Our position, and so I won't respond to a number of the submissions made by Ms. Moore, is that the merits of the claim are simply not relevant at

5 this point. It's simply that the connections to Ontario. I did want to note for the court's benefit that Ms. Moore has produced the report prepared by Dr. Kemgni and just so you know where it is, Your Honour, it's at Exhibit F of, of Ms. Moore's affidavit. She didn't indicate it there, but it, it was further down, and if the court does want to see it, that's where it is.

10 Ms. Moore - and the medical - the word medical negligence was mine, she - the, the word in the beginning of the claim that I took to the court too, says negligence, she's alleged negligence, first and foremost in my submission as against Dr. Kemgni. I appreciate today that she has
15 alleged that she is claiming defamation.

20 There is no negligence flagged, as I read the claim, as against Mr. Kiska, the primary claim against Mr. Kiska is framed in breach of fiduciary duty. So they are separate and I maintain that position.

25 As the court's no doubt aware, there is no requirement to plead any, you know, legal cause of action by name, it's the material facts that matter. That's the requirements under the rules. And *Van Breda* is clear that in assessing
30 jurisdiction, you are to focus on the legal and factual situation or the subject matter of the claim [indiscernible] expression interchange [indiscernible]. The point is that whatever's

5
alleged against Kemgni occurred [*indiscernible*]
in Quebec and is different from what is alleged
as against Kiska. That was the submission that
we wish to, to make.

10
I'll just note, because there was quite a bit of
focus on defamation, that there is no allegation
and there is no indication in the sworn evidence
that Kemgni knew the information provided by
Kiska was false, that she conspired with Kiska or
even if she published the report and of course,
publications are an element of defamation, only
that she filed it with the court in Quebec.

15
And finally, and I, I may have perhaps
misunderstood Ms. Moore on this point, and if I
did, I, I apologize, Your Honour. We rely on
Rule 17.06(4) to say that by filing this
materials, we did not attorn to the jurisdiction
20
of the court. I, I believe Ms. Moore was
actually speaking about service, which is a
separate issue, but I just thought I would put
that out there in case I misunderstood that
submissions, and if I did, then I, I apologize.

25
But those were my – but I don't – I couldn't tell
if there was an allegation we had attorned to the
jurisdiction or only that we had admitted that we
were aware of the claim, and, and of course, we
30
do – there's no debate that Dr. Kemgni's aware of
the claim that brings me here today. I think the
issue is whether service ought to be validated in

5 light of Rule 17.03. But to be clear, that is an
issue [indiscernible] that we had not attorned
because bringing this type of motion is not
attorned, pursuant to Rule 17.06(4). And that's
it in reply, Your Honour.

10 THE COURT: Thank you very much, Ms. Tardif. So
Ms. Tardif, Mr. Guay-Racine and Ms. Moore, thank
you very much for your submissions today. I'm
going to reserve my decision. I am going to try
to get it out as quickly as possible. I don't
15 know [indiscernible] want to review everything.
I don't know what my decision is going to be, but
I will just say that I am mindful of the
potential Quebec, or the limitation period in
Quebec that may be relevant if I do find that
20 Ontario is not the proper jurisdiction for the
claim against the doctor. So I'll need to get my
decision out in just practical terms, as quickly
as possible if that is going to be the way, the
way I go. So I just - I'm just saying that so
that Ms. Moore will be aware that that's
something that I'm mindful of if that's the
25 direction that I, I go in my decision. It may
be, depending on what is in store for me in the
next few weeks, and I, I do know, I'm starting a
trial, I think on Monday. If I'm not able to
provide a fulsome decision, I will provide you
with a brief decision with reasons to follow,
30 just so you know as quickly as possible what the,
the decision is. It will be when I've thought
through carefully, it just may not be a, a long
decision quite yet. But I'll make sure that,

5 that you do get something in as timely a manner
as, as possible. So unless there is anything
else, I think we've come in right at five o'clock
and we know that we have a court reporter that
has to be on her way. So I'll bid everyone a
good evening, thank you.

DEIRDRE MOORE: Thank you, Your Honour.

MS. TARDIF: Thank you, Your Honour.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

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FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

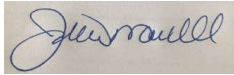
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10 I, Julie Maxwell, certify that this document is a true and accurate transcript of the recording of *R. v. Deirdre Moore v. Paule Kemgni and Jonathan Kiska* in the Superior Court of Justice held at OTTAWA, Ontario, taken from Recording No. 0411_MR58_20220118_095112__10_WilliaH, which has been certified

15 in Form 1.

20 April 27, 2022

Date



Signature of Authorized Person

Name: Julie Maxwell

ACT ID: 1918953031

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NOTICE OF RECORDING ISSUE

PROCEEDING NAME: MOORE v. KEMGNI and KISKA DATE OF PROCEEDING: JANUARY 18, 2022

JUSTICE NAME: JUSTICE H. WILLIAMS MONITOR'S NAME: C. SIMARD

COURT LOCATION & COURTROOM #: 161 ELGIN ST., OTTAWA, COURTROOMR58

NUMBER OF PAGES: 107 NUMBER OF WORDS: 23,827

NUMBER OF INDISCERNIBLES: 140

ACT REPORTING: Julie Maxwell

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