SCC File No. 41451

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN

NHK SPRING CO., LTD., NHK INTERNATIONAL CORPORATION, NHK SPRING (THAILAND) CO., LTD., NAT PERIPHERAL (HONG KONG) CO., LTD., TDK CORPORATION, SAE MAGNETICS (HK) LTD., HEADWAY TECHNOLOGIES, INC., MAGNECOMP PRECISION TECHNOLOGY CO., LTD., MAGNECOMP CORPORATION, AND HUTCHINSON TECHNOLOGY INC.

APPELLANTS
(Appellants)

- and -

TONY CHEUNG, SYLVIE DE BELLEFEUILLE, AND GRAEME HONEYMAN

RESPONDENTS
(Respondents)

- and -

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, PUBLIC INTEREST LITIGATION INSTITUTE, CONSUMERS COUNCIL OF CANADA, META PLATFORMS INC., SAMUELSON-GLUSHKO INTERNET POLICY AND PUBLIC INTEREST CLINIC, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), and PASS HERALD LTD.

INTERVENERS

FACTUM OF THE INTERVENER, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Pursuant to Rule 42 of the Rules of the Supreme Court of Canada

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PART I – OVERVIEW

1. Legal structures that make enforcement impossible render rights illusory.[1] A jurisdictional rule has that effect when it ties the forum to a place the tortfeasor can conceal. How tortfeasors commit civil wrongs has changed. Digital technology now disperses their conduct across jurisdictions, and tortfeasors increasingly hide it. The place of acting no longer marks where the tort occurs.

2. A conduct-only rule would fix the *situs* of a tort at the place of acting, such as the point of upload, and would disregard where the tort is committed. Because that place so often eludes identification for technology-facilitated torts, such a rule would deny claimants a workable forum. A rule that leaves an entire class of claimants without a forum denies them access to justice. It would fall hardest on victims of technology-facilitated gender-based violence (TFGBV), where the tortfeasor routinely obscures the place of acting and the harm lands locally. Those victims would hold rights they cannot enforce.

3. Although this appeal arises from an alleged price-fixing conspiracy, the *situs* rule this Court adopts will govern all torts, technology-facilitated torts among them. The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) asks this Court to decline a conduct-only rule. These torts already fall within the connecting factor this Court recognized in *Club Resorts Ltd. v. Van Breda* (*Van Breda*) for a "tort […] committed in the province."[2] This Court has applied that factor to defamation, locating the tort where third parties read the impugned content.[3]

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[1] *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at para 97 [*Uber*].
[2] 2012 SCC 17 at para 53 [*Van Breda*].
[3] *Haaretz.com v Goldhar*, 2018 SCC 28 at para 36 [*Haaretz*].

4. This Court need not adopt a conduct-only rule. The existing framework already guards against the overreach the rule purports to prevent. The rebuttal stage and *forum non conveniens* screen out weakly connected disputes without a categorical bar. Such a rule would leave technology-facilitated torts without the forum the framework otherwise preserves.

PART II – POSITION ON APPELLANTS' QUESTIONS

5. CIPPIC takes no position on the ultimate disposition of this appeal.

PART III – STATEMENT OF FACTS

6. CIPPIC adopts the statement of facts as set out in the Factum of the Respondent.

PART IV – STATEMENT OF ARGUMENT

A. Digital architecture defeats the place-of-acting anchor

7. The internet has transformed how tortfeasors commit civil wrongs, and the architecture that once fixed the place of acting no longer does. Earlier scholarship described this terrain as "cyber torts."[4] That label reflected the elements of the architecture of an earlier internet, when servers, hosts, and gateways sat in identifiable locations. On that model, a server, an internet service provider, or a single point of upload could anchor jurisdiction.[5] Digital technology no longer works that way. Content now moves through cloud platforms, content delivery networks, and edge services that distribute storage and transmission across jurisdictions. Tortfeasors route activity through anonymizing tools to obscure their physical location.[6] Generative AI tools produce harmful content without a single human-authored point of origin.

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[4] Michael Rustad & Thomas Koenig, "Cybertorts and Legal Lag: An Empirical Analysis" (2005) 13 S Cal Interdisciplinary LJ 77.
[5] Michael Geist, "Is There a There There? Toward Greater Certainty for Internet Jurisdiction" (2001) 16:3 Berkeley Tech LJ 1345.
[6] For example, VPNs (route a user's traffic through an intermediary server so it appears to originate there), the Tor network (relays traffic through multiple nodes to sever the link between user and destination), or proxy servers (forward a user's requests under their own address).

8. This factum uses the term "technology-facilitated torts" to describe the class of civil wrongs that tortfeasors commit using digital technology as the means or medium. That class includes online defamation, intrusion upon seclusion, the statutory tort of non-consensual distribution of intimate images, online harassment, online fraud, and digital IP misappropriation. The term captures what these wrongs share—their commission through digital means—rather than any single technology, platform, or fixed category. It accommodates emerging technologies and the harms they produce, including content that generative AI creates at scale.

9. Generative AI tools have already begun to produce harms that existing legal categories do not address, and Canadian Courts are now confronting them.[7] Sexual deepfakes are only the most visible example. The same tools that fabricate such images can equally serve to defame, defraud, impersonate, or misappropriate identity and intellectual property. A *situs* rule fit for these wrongs must rest on a principle general enough to reach harms the law has not yet encountered, not on the forms Courts happen to have seen.

10. A place-of-acting anchor presupposes that the elements of a tort share a single location. Ordinary physical torts satisfy that premise. A collision, an assault, or a trespass occurs in a singular place that the tortfeasor occupies and can identify. There, the act, the harm, and a forum the tortfeasor can foresee all sit together. The forum of that place has jurisdiction. Digital architecture breaks that coincidence.

[7] See *R v MSK*, 2026 NSPC 12 (accused used generative AI to fabricate nude images of real women from their social-media photographs and distributed them; the Court recognized the affront to dignity and sexual integrity but acquitted because the intimate-image offence, as drafted, does not reach synthetic images); see also *R v RK1*, 2025 ONCJ 542 (acknowledged the harm of a fabricated intimate image while finding it outside the same provision).

11. Online, even the tortfeasor's act has no single ascertainable location. A tortfeasor's act may pass through servers in one country and anonymizing tools in another, while the audience that receives the content sits in a third.[8] This dispersal extends beyond deliberate wrongdoing. Even routine Canadian-to-Canadian internet traffic regularly transits United States infrastructure before reaching its destination, so ordinary users unwittingly fall under foreign jurisdiction.[9]

12. This Court has already answered the *situs* question for one part of this category of torts. For torts that consist of conveying content to a third party, the Court has located the wrong in the forum where the audience receives the material.[10] The same reasoning extends across the broader class of technology-facilitated torts.

B. A tort committed by disseminating content occurs where the audience receives it

13. This Court's jurisprudence has long settled that a tort committed by conveying content to a third party occurs where that content reaches its audience. In *Moran v. Pyle National (Canada) Ltd.*, this Court declined to fix the *situs* by a single rigid element and asked instead where it was inherently reasonable for a Court to hear the action.[11] That inquiry evolved into the real and substantial connection test in *Morguard Investments Ltd. v. De Savoye*, followed by the presumptive connecting factors in *Van Breda*; the governing principle has not changed.[12]

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[8] Andrew Clement & Jonathan Obar, "Canadian Internet 'Boomerang' Traffic and Mass NSA Surveillance: Responding to Privacy and Network Sovereignty Challenges" in Michael Geist, ed, *Law, Privacy and Surveillance in Canada in the Post-Snowden Era* (Ottawa: University of Ottawa Press, 2015) 13.
[9] Jane Bailey *et al*, "Reframing Technology-Facilitated Gender-Based Violence at the Intersections of Law & Society" (2021) 19:2 CJLT 209.
[10] *Haaretz*, *supra* note 3.
[11] 1973 CanLII 192 (SCC) at p 398.
[12] 1990 CanLII 29 (SCC) at p 1108; *Van Breda*, *supra* note 2 at para 90.

14. This Court has applied that principle to defamation directly. In *Breeden v. Black*, this Court located a defamation claim in Ontario because readers there downloaded and read the statements, wherever the author wrote them.[13] In *Haaretz*, this Court located the tort where third parties downloaded and read the impugned material.[14] In each case, the tort reached its audience in the forum, not where the tortfeasor acted. Locating the tort there does not revive place of damage: the audience completes the wrong by receiving the content, which differs from where the plaintiff later feels its consequences.

15. That principle does not depend on a tort falling within a closed or historical category. As new forms of harm have emerged, Courts have recognized new causes of action, including intrusion upon seclusion, public disclosure of private facts, the non-consensual distribution of intimate images, and the tort of intimate partner violence.[15] A tortfeasor commits these wrongs through dissemination, and the harm lands in the community that receives, views, and recirculates the material. That principle already accommodates them.

C. A conduct-only rule denies victims any workable forum

i. A concealed place of acting supplies no real forum

16. A rule that pins jurisdiction exclusively to the tortfeasor's location often sends victims to a forum they cannot identify, reach, or afford to pursue. TFGBV shows how such a rule would fail in practice. This Court has recognized intimate partner violence as "a pernicious social ill deserving of the full attention of the law," and digital tools increasingly mediate that violence

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[13] 2012 SCC 19 at para 20.
[14] *Haaretz*, *supra* note 3 at para 36.
[15] *Jones v Tsige*, 2012 ONCA 32; *Jane Doe 72511 v NM*, 2018 ONSC 6607 [*Jane Doe 72511*]; *Ahluwalia v Ahluwalia*, 2026 SCC 16 [*Ahluwalia*].

through coercive surveillance, image-based abuse, and online harassment.[16] Canadian Courts already recognize the severe, localized damage inflicted by digital sexualized abuse, ranging from psychological trauma to physical endangerment.[17] If the only relevant location is the tortfeasor's place of acting, neither the victim's residence nor the community that consumes and weaponizes the material supplies jurisdiction, even though those places bear the brunt of the wrong.

17. In *Jane Doe 464533 v. N.D.*, the Court emphasized the devastating local consequences of non-consensual image distribution.[18] These included severe psychological harm, peer humiliation, and threats to the plaintiff's future relationships and career prospects. In *Jane Doe 72511 v. N.M.*, the Court recognized that the injury renews with each access, because each new viewing enables peers to redeploy the material against the victim.[19]

18. Parliament and provincial legislatures have responded to these harms. Parliament has criminalized the non-consensual distribution of intimate images through the *Protecting Canadians from Online Crime Act*.[20] Provincial legislatures have created dedicated civil causes of action, such as Nova Scotia's *Intimate Images and Cyber-protection Act*.[21] Those schemes assume victims can actually bring proceedings; a rule that requires pinpointing an unknown or offshore tortfeasor often makes those remedies unworkable in practice and turns enforceability on the tortfeasor's ability to conceal their location.

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[16] *Ahluwalia*, *supra* note 15, at para 3.
[17] *Jane Doe 464533 v ND* 2016 ONSC 541 [*Jane Doe 464533*]*; Jane Doe 72511*, *supra* note 15.
[18] *Jane Doe 464533*, *supra* note 17, at paras 11-16.
[19] *Jane Doe 72511*, *supra* note 15 at paras 124-126, 131-132.
[20] *Protecting Canadians from Online Crime Act*, SC 2014, c 31.
[21] *Intimate Images and Cyber-protection Act*, SNS 2017, c 7.

ii. Foreclosing entire classes of litigants offends the rule of law

19. This Court has treated barriers that effectively keep litigants out of courts as an access-to-justice failure rather than a mere inconvenience. In *Hryniak v. Mauldin*, this Court warned that "[e]nsuring access to justice is the greatest challenge to the rule of law in Canada today."[22] In *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, this Court tied that concern to the courts' core function, holding that "[m]easures that prevent people from coming to the courts to have [their] issues resolved" strike at the heart of what courts do and therefore engage section 96 of the *Constitution Act, 1867*.[23] A conduct-only rule works as exactly such a measure, keeping an entire class of victims out of court before their claims can be heard.

20. Jurisdictional rules distribute the practical advantages of litigation between the parties. Where one kind of litigant has much less capacity to pursue a cross-border claim than the opponents it faces, procedural justice may require an additional forum for the weaker side. Von Mehren developed this principle for consumers who deal with out-of-state firms serving regional and global markets and rarely match those firms' capacity to litigate in a distant court. A forum at the consumer's home preserves "litigational equality" between parties.[24] Victims of technology-facilitated torts face that disadvantage in sharper form. A conduct-only rule would allow the tortfeasor to fix the forum by choosing where to act. The *situs* rule this Court has already adopted denies the tortfeasor that advantage and corrects the imbalance von Mehren describes.

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[22] 2014 SCC 7 at para 1.
[23] 2014 SCC 59 at para 32; *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.
[24] Arthur von Mehren, *Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- and Civil-Law Systems* (The Hague: Martinus Nijhoff, 2003) at 166, 171.

21. This Court has refused to give effect to contractual mechanisms that foreclose a Canadian forum where bargaining power is grossly unequal and the alternative process is out of reach. In *Uber*, Abella and Rowe JJ. for the majority held an arbitration clause unconscionable because arbitration was "out of reach" for the claimant, leaving his contractual rights "illusory".[25] In *Douez v. Facebook, Inc*, this Court declined to enforce a forum selection clause in an online consumer contract of adhesion, holding that public policy concerns can justify keeping adjudication in the domestic court.[26] The same principle applies to tort. A jurisdictional rule that forecloses the Canadian forum produces the same illusory rights, whether the foreclosure arises from a contractual term or from a categorical *situs* rule.

22. The rule of law concerns intensify where the dynamics of online abuse predictably deter victims from pursuing legal remedies at all. In *A.B. v. Bragg Communications Inc.*, this Court recognized the "psychological toxicity" of cyberbullying and accepted that victims may decline to seek protection where the process exposes them to further harm.[27] Courts should not adopt a rule that compounds that deterrent by denying victims a workable forum at the threshold.

23. Finally, this Court has recognized that effective relief must match the borderless nature of internet harm. In *Google Inc. v. Equustek Solutions Inc.*, this Court upheld a worldwide injunction, recognizing that online wrongdoing operates globally, and a territorially confined remedy can prove ineffective.[28] Courts should not adopt a threshold jurisdiction rule that imposes a territorial straitjacket and prevents them from addressing technology-facilitated torts that predictably take effect in the victim's community.

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[25] *Uber*, *supra* note 1 at para 97.
[26] 2017 SCC 33 at para 4.
[27] 2012 SCC 46 at para 20.
[28] 2017 SCC 34 at para 41.

D. The *Van Breda* framework already addresses overreach without a categorical rule

24. Rejecting a conduct-only rule does not open the door to overreach. As this Court recently affirmed in *Sinclair v. Venezia Turismo*, the *Van Breda* framework carries its own safeguards.[29] Whatever presumptive connecting factor a plaintiff invokes, the framework tests that connection on the facts of the case instead of shutting out whole categories of claim at the threshold. The plaintiff identifies a presumptive connecting factor and cannot rest on a hypothetical or trivial link. The defendant then bears the onus at the rebuttal stage of establishing that the connection is weak or absent. Even where the plaintiff establishes the presumption, *forum non conveniens* permits the Court to decline jurisdiction in favour of a clearly more appropriate forum. This staged design allows the framework to accommodate new forms of dispute as they emerge, which matters for technology-facilitated torts because a single wrong may engage several forums at once.

25. Certainty and predictability do not require a categorical conduct-only rule. At the *jurisdiction simpliciter* stage, this Court secured those values through defined, objective connecting factors applied to the facts of the case.[30] A categorical rule that removes an entire class of claims from a recognized factor works against that goal. This Court has confirmed the *situs* of the tort as a valid connecting factor once the Court identifies it, and it has warned that "[a]ny exception adds an element of uncertainty."[31] A conduct-only rule would carve out precisely such an exception for technology-facilitated torts. The existing framework already supplies whatever certainty and predictability such a rule would provide. Predictability of this kind forms part of

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[29] 2025 SCC 27 at para 46.
[30] *Haaretz*, *supra* note 3 at para 28.
[31] *Van Breda*, *supra* note 2 at para 88; *Haaretz*, *supra* note 3 at para 37, citing *Tolofson v. Jensen*, 1994 CanLII 44 (SCC) at p 1061.

access to justice, which depends on parties being able to anticipate where a Court may hear a claim.[32]

26. This Court's practice shows the safeguards working in the very setting that most tempts an overreach objection. In *Haaretz*, the presumptive factor established jurisdiction; the *forum non conveniens* analysis then directed the matter to a more appropriate forum. A categorical conduct-only rule would have excluded the claim in advance and by category, rather than weighing it. The ubiquity objection presses most forcefully where audiences everywhere can access the content, so if the framework guards against overreach there, it guards against overreach across the broader class of technology-facilitated torts.

27. Because the framework already requires a defendant to contest a tenuous connection and permits a court to decline an inconvenient forum, this Court need not adopt a categorical conduct-only rule. Such a rule would foreclose the forum for victims of technology-facilitated torts at the threshold, to guard against dangers the framework already controls.

PART V – SUBMISSIONS CONCERNING COSTS

28. CIPPIC does not seek costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th of June 2026.

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[32] *Sinclair*, *supra* note 29 at para 45.

PART VI – TABLE OF AUTHORITIES

Secondary Sources		
1.	Jane Bailey et al, "Reframing Technology-Facilitated Gender-Based Violence at the Intersections of Law & Society" (2021) 19:2 CJLT 209	9
2.	Andrew Clement & Jonathan Obar, "Canadian Internet 'Boomerang' Traffic and Mass NSA Surveillance: Responding to Privacy and Network Sovereignty Challenges" in Michael Geist, ed, *Law, Privacy and Surveillance in Canada in the Post-Snowden Era* (Ottawa: University of Ottawa Press, 2015) 13	9
3.	Michael Geist, "Is There a There There? Toward Greater Certainty for Internet Jurisdiction" (2001) 16:3 Berkeley Tech LJ 1345	8
4.	Michael Rustad & Thomas Koenig, "Cybertorts and Legal Lag: An Empirical Analysis" (2005) 13 S Cal Interdisciplinary LJ 77	8
5.	Arthur von Mehren, *Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- and Civil-Law Systems* (The Hague: Martinus Nijhoff, 2003)	20