

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT, R.S.O. 1990, c.  
R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE SUPREME  
COURT OF NOVA SCOTIA ISSUED MARCH 22, 2013**

**B E T W E E N:**

**ESTATE OF MARLA BENNETT, MICHAEL BENNETT, LINDA BENNETT  
and LISA BENNETT**

Plaintiffs

and

**ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF  
INFORMATION AND SECURITY**

Defendants

and

**THE ATTORNEY GENERAL FOR CANADA**

Intervener

**A N D B E T W E E N:**

**EDWARD TRACY, by his Litigation Guardian Charles Murphy, ELIZABETH  
CICCIPIO-PULEO, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO,  
DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD DENNIS CICIPPIO,  
THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO, ALLEN JOHN CICIPPIO,  
estate of ROSE ABELL, ANTHONY CICIPPIO, estate of ALEXANDER  
CICIPPIO, NICHOLAS B. CICIPPIO and estate of JOSEPH J. CICIPPIO JR.**

Applicants

and

**THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
GUARD CORP.**

Respondents

**MOTION RECORD OF THE PLAINTIFFS / APPLICANTS**

May 17, 2018

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Court File No. CV-13-10204-00CL  
Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE RECIPROCAL  
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GUARD CORP.

Respondents

**NOTICE OF MOTION**

The Applicants will make a Motion to a Judge presiding over the Commercial List on May 22, 2018 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

in writing under subrule 37.12.1(1) because it is;

in writing as an opposed motion under subrule 37.12.1(4);

orally.

**THE MOTION IS FOR**

1. An Order substantially in the form annexed hereto as Schedule “A” (the “**Appointment Order**”) appointing Albert Gelman Inc. (“**AGI**”) as equitable receiver and receiver in aid of execution (“**Receiver**”) over the properties municipally known as 2 Robinson Avenue, Ottawa and 290 Sheppard Avenue West, Toronto (the “**Properties**”);
2. If necessary, an Order abridging the time for and/ or validating service of the motion materials;
3. Such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE**

5. Between 2003 and 2007, the Plaintiffs (collectively, the “**Bennetts**”) and the Applicants (collectively, the “**Tracys**”) obtained judgments in the United States against Iran for its support of acts of terrorism by Hamas and Hezbollah (collectively, the “**US Judgments**”).
6. The Bennetts and Tracys both then sought to have their US Judgments recognized and enforced in Canada pursuant to the *Justice for Victims of Terrorism Act*, S.C. 2012, c. 1, s. 2 (the “**JVTA**”).
7. In 2012, the Bennetts obtained a *Mareva* injunction (the “**Mareva Injunction**”) restraining Farhangeiran Inc. (“**Farhangeiran**”) and The Mobin Foundation (“**Mobin**”) from

dissipating two properties they held for the benefit of Iran: 290 Sheppard Avenue West, Toronto, and 2 Robinson Avenue, Ottawa (collectively, the “**Properties**”)

8. On May 22, 2013, the Tracys’ US Judgments were registered as enforceable Orders of this Court (the “**Tracy Recognition Order**”).
9. On March 17, 2014, Brown J., as he then was, made an order (the “**Tracy Enforcement Order**”) permitting enforcement against certain bank accounts held in the name of Iran (the “**Bank Accounts**”) and declaring that the Properties are beneficially owned by Iran, and thus available for execution by the Applicants herein.
10. Despite being on notice, Iran did not defend the Tracy and Bennett matters, in either the United States or Canada. Nor did Iran respond upon receiving notice of the Bennetts’ *Mareva* Injunction or the proceedings that resulted in the Tracy Recognition and Enforcement Orders.
11. Farhangeiran and Mobin, the legal title holders to the Properties, were duly served pursuant to orders for substituted service, and yet did not appear or respond to any of these proceedings.
12. Iran subsequently retained counsel and brought motions to have these Ontario orders set aside on the basis that it is immune from the jurisdiction and enforcement of this Court.
13. On June 9, 2016, Hailey J. (i) dismissed Iran’s various “set aside” motions, and (ii) granted summary judgment in favour of the Bennetts, recognizing and enforcing their US Judgments and ordering that corresponding writs of seizure and sale be issued in respect of the Bank Accounts and the Properties (the “**Bennett Enforcement Order**”). The parties then agreed to a stay of any enforcement steps pending all appeals therefrom.
14. On June 30, 2017, the Court of Appeal for Ontario dismissed Iran’s appeal. The Supreme Court of Canada dismissed Iran’s application for leave to appeal on March 15, 2018.
15. On March 29, 2018, Hailey J. made an order lifting the agreed-upon stay of enforcement proceedings and thus permitting the Applicants to take such steps as are permitted by law to enforce the Tracy Enforcement Order.

16. Both this Court and the Court of Appeal have criticized Iran's litigation strategy as an attempt to "game the process" to obtain a procedural advantage.
17. Iran's abusive litigation strategy has prejudiced the Bennetts' and the Tracys' recovery efforts. They have caused undue delay and undermined the clients' net recovery by causing them to incur substantial legal fees.
18. To date, the Applicants have recovered approximately CAD\$2.1 million from the Bank Accounts. The vast majority of that money has gone towards legal fees in this and related proceedings (the Marthaler, Higgins, and Holland proceeding).
19. A collective total of approximately US\$100,000,000 remains outstanding on the Tracy and Bennett US Judgments.
20. The Tracy and Bennett families now seek further enforcement of their judgments against the Properties.
21. However, there are legal impediments that will render enforcement against the Properties through traditional means impossible or impractical:
  - (a) Iran does not hold legal title to the Properties;
  - (b) There is a "no dealings" registration on title in favour of the Bennetts as a result of the Mareva Injunction;
  - (c) Because a foreign state is involved, the local Sheriff's offices are likely to be reluctant to do anything with these Properties without specific direction from the court at every step of the way; and
  - (d) There is a significant backlog in enforcement requests with the local Sheriffs.
22. Even if technically exigible, the special circumstances of this case will render the normal methods of execution by the Sheriffs ineffective or impractical. It will be at least 12-15 months before the Tracys and Bennetts receive the proceeds from the execution of their writs of seizure and sale against the Properties.

23. Such a delay would cause inordinate and irreparable prejudice to recovery by the Bennetts and Tracys because the delay will create a significant opportunity for other claimants against Iran, whether in terrorism claims or commercial claims, to obtain judgment in Ontario and file writs with the Sheriffs in Toronto and Ottawa, which would thereby permit them to share *pro rata* in the proceeds of sale. Such a result would be unjust where the Bennetts and Tracys have fought for nearly 6 years and incurred hundreds of thousands of dollars in legal and other professional fees in order to identify the Properties, and obtain the legal right to execute against them.
24. Given the time and money the Tracys and Bennetts have invested, it would be a miscarriage of justice to allow other future judgment creditors to benefit from Iran's abusive litigation tactics, the legal complexity of this case, and a backlog at the Sheriffs' offices in Toronto and Ottawa, at the Tracys' and Bennetts' expense.
25. The extraordinary powers of a court-appointed equitable receiver will enable the Bennetts and the Tracys to proceed to sell the Properties in an orderly and expeditious manner notwithstanding the above-mentioned legal and practical impediments to recovery.
26. Absent an Order appointing a receiver it will be practically difficult, if not impossible, for the Bennetts and Tracys to recover anything.
27. None of Iran, Farhangeiran, or Mobin will suffer any prejudice if this Court abridges and validates service, if necessary.
28. It has already been finally determined that the Bennetts and Tracys are entitled to recover their US Judgments against the Properties. This motion for the appointment of an equitable receiver impacts only the manner of that enforcement.
29. Accordingly, Iran, Farhangeiran, and Mobin's rights and interests are not meaningfully engaged by the relief sought.
30. For these reasons, it is just and convenient that a receiver be appointed in this case, and in the interests of justice to abridge and validate service, if necessary.
31. AGI consents to the appointment Order.

32. Section 101 of the *Courts of Justice Act* R.S.O 1990, c. C, .43.
33. Rules 1.04, 16.04, 41, and 60.01(2)(d) of the *Rules of Civil Procedure*.
34. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

35. Affidavit of John Adair sworn May 17, 2018;
36. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 17, 2018

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Albert Gelman Inc.

# SCHEDULE "A"

Court File No. CV-13-10204-00CL

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) , THE  
JUSTICE ) DAY OF , 2018

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
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and

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THE ISLAMIC REPUBLIC OF IRAN and  
THE IRANIAN REVOLUTIONARY GUARD CORP.

Respondents

**ORDER**

**WHEREAS** in 2003 and 2005 the Applicants obtained judgments against the Respondents, The Iranian Ministry of Information and Security (“**MIS**”), the Islamic Republic of Iran (“**Iran**”) and The Iranian Revolutionary Guard Corp. (the “**Revolutionary Guards**”), in the United States District Court for the District of Columbia (the “**US Judgments**”);

**AND WHEREAS** by order made March 22, 2013, Roberston J. of the Nova Scotia Supreme Court recognized the US Judgments and made them an order of the Supreme Court of Nova Scotia;

**AND WHEREAS** by Order made May 22, 2013, Chapnik J. of the Ontario Superior Court of Justice ordered that the Nova Scotia Order be registered as an order of the Ontario Superior Court of Justice (the “**Ontario Recognition Order**”) pursuant to the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5;

**AND WHEREAS** recognition proceedings were also started in the Ontario Superior Court of Justice Court in 2012 by the Estate of Marla Bennett (CV-12-463434) which resulted in the granting of a *Mareva* injunction to restrain Iran/MIS from dissipating 290 Sheppard Avenue West, Toronto and 2 Robinson Avenue, Ottawa (hereinafter collectively referred to as the “**Properties**”) which injunction was expanded to include the registered owners of the Sheppard Avenue and Robinson properties, Farhangeiran Inc. and The Mobin Foundation respectively;

**AND WHEREAS** by Order dated March 17, 2014 Justice D.M. Brown, as he then was, ordered and declared that the Properties are beneficially owned by Iran and that the Sheriffs of the City of Toronto and City of Ottawa are to enforce the Applicants’ Writs of Seizure and Sale as against the Properties;

**THIS MOTION** made by the Plaintiffs/Applicants for an Order pursuant section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), and Rules 37, 41 and 60 of the *Rules of Civil Procedure*, appointing Albert Gelman Inc. as equitable receiver and receiver in aid of execution (the “**Receiver**”), without security, of the Properties beneficially owned by Iran (the “**Debtor**”), on the terms set out below, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of John Adair sworn May 17, 2018 and the exhibits thereto, and on hearing the submissions of counsel for the Plaintiffs/Applicants, no one appearing for the Defendants/Respondents although duly served as appears from the affidavit of service of [NAME] sworn [DATE], and on reading the consent of Albert Gelman Inc. to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and service is validated, so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 101 of the CJA and Rules 37, 41 and 60 of the *Rules of Civil Procedure*, Albert Gelman Inc. is hereby appointed Receiver, without security, of the following properties beneficially owned by the Debtor:
  - (a) PT LT 3 PL 2069 TWP OF YORK AS IN TB862589; TORONTO (N YORK) CITY OF TORONTO, PIN NO. 10146-0396 (LT) and municipally known as 290 Sheppard Avenue West, Toronto, ON (hereinafter the “**Sheppard Property**”), with legal title being held in the name of Farhangeiran Inc.;
  - (b) PART OF LOT F, CONCESSION D, RIDEAU FRONT, BEING PARTS 3 AND 4 ON PLAN5R-14667 PART OF WHICH BEING PART OF HURDMAN ROAD OPENED BY BYLAW NS79171 AND CLOSED BY BYLAW N633492 AND PART 41 ON PLAN 4R-299 LYING EAST OF PART 1 ON PLAN 5R-

10234 AND PART 1 ON PLAN 4R-11899, OTTAWA, PIN No. 04204-0267 (LT) and municipally known as 2 Robinson Avenue, Ottawa, ON (hereinafter the “**Robinson Property**”), with legal title being held in the name of The Mobin Foundation.

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Sheppard Property and Robinson Property (collectively, the “**Properties**”).
  
4. THIS COURT ORDERS that without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable, in respect of the Properties:
  - (a) to take possession of and exercise control over the Properties and any and all proceeds, receipts and disbursements arising out of or from the Properties;
  
  - (b) to receive, preserve, and protect the Properties, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  
  - (c) to manage, operate, and carry on the business in respect of the Properties, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts in relation to the Properties;
  
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets;
- (f) to receive and collect all monies and accounts now owed or hereafter owing and to exercise all remedies in collecting such monies;
- (g) to settle, extend or compromise any indebtedness owing in respect of the Properties;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Properties for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Properties or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Properties, including advertising and soliciting offers in respect of the Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Properties or any part or parts thereof out of the ordinary course of business, with the approval of this Court.
- (l) to apply for any vesting order or other orders necessary to convey the Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such the Properties;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Properties and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Properties against their title;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof;
- (p) to enter into agreements with any trustee in bankruptcy who may be appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any of the Properties;
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations including without limitation, undertaking a review of any documentation that may be located at the Properties and to report to the Court in the event the Receiver discovers information it opines may assist in enforcing the Ontario Recognition Order;
- (r) in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person; and
- (s) if the Receiver deems it necessary it may exercise any of its powers set forth herein with the assistance of the local police authorities and/or the RCMP.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) The Mobin Foundation, (iii) Farhangeiran Inc., (iv) all of their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”), shall grant immediate and continued access to the Properties to the Receiver, and shall deliver possession of the Properties to the Receiver upon the Receiver’s request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Properties, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
  
7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Properties shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Properties are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Receiver, or affecting the Properties, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court and further provided that nothing in this paragraph shall (i) empower the Receiver to carry on any business, (ii) exempt the Receiver from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in relation to the Properties, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements in respect of the Properties are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating such oral or written agreements without the Receiver’s written consent, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source in relation to the Properties such as but not limited to hydro deposits and rents, if any, and from the sale of all or any of the Properties shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Properties and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Properties (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any of the Properties shall be entitled to continue to use the personal information provided to it, and related to the Properties purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Properties that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Properties within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Properties, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), of the BIA.

18. THIS COURT ORDERS that should the fees of the Receiver and counsel to the Receiver exceed the retainer funds provided to them, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal

counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, if same becomes necessary, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court, if applicable.

### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **“Receiver’s Borrowings Charge”**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the **“Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.albertgelman.com/corporate-solutions/other-engagements/>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
29. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
-

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly] not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:

\_\_\_\_\_

Name:

Title:

THE ESTATE OF MARLA BENNETT, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.

Court File No. CV-13-10204-00CL

EDWARD TRACY, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.

Court File No. CV-14-10403-00CL

Plaintiffs / Applicants

Defendants / Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for the Plaintiffs / Applicants

RCP-E 4C (May 1, 2016)

THE ESTATE OF MARLA BENNETT, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.

Court File No. CV-13-10204-00CL

EDWARD TRACY, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.

Court File No. CV-14-10403-00CL

Plaintiffs / Applicants

Defendants / Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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Lawyers for the Plaintiffs / Applicants

RCP-E 4C (May 1, 2016)

Court File No. CV-13-10204-00CL  
Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE RECIPROCAL  
ENFORCEMENT OF JUDGMENTS ACT, R.S.O. 1990, c. R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE SUPREME COURT OF  
NOVA SCOTIA ISSUED MARCH 22, 2013**

**B E T W E E N:**

ESTATE OF MARLA BENNETT, MICHAEL BENNETT,  
LINDA BENNETT and LISA BENNETT

Plaintiffs

and

ISLAMIC REPUBLIC OF IRAN and  
IRANIAN MINISTRY OF INFORMATION AND SECURITY

Defendants

and

THE ATTORNEY GENERAL FOR CANADA

Intervener

**A N D B E T W E E N:**

EDWARD TRACY, by his Litigation Guardian Charles Murphy, ELIZABETH  
CICCIPIO-PULEO, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO,  
DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD DENNIS CICIPPIO,  
THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO, ALLEN JOHN CICIPPIO,  
estate of ROSE ABELL, ANTHONY CICIPPIO, estate of ALEXANDER  
CICIPPIO, NICHOLAS B. CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY,  
THE ISLAMIC REPUBLIC OF IRAN and  
THE IRANIAN REVOLUTIONARY GUARD CORP.

Respondents

**AFFIDAVIT**

I, John J. Adair, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Partner with the law firm of Adair Goldblatt Bieber LLP, the lawyers for the Plaintiffs in Court File No. CV-13-10204-00CL (collectively, the “**Bennetts**”) and the Applicants in Court File No. CV-14-10403-00CL (collectively, the “**Tracys**”).
2. As such, I have personal knowledge of the matters contained in this affidavit. If my knowledge is based on information or belief, I have indicated the source of my information or belief, and believe it to be true.
3. I make this affidavit in support of the Bennetts’ and Tracys’ joint motion for an order appointing Albert Gelman Inc. (“**AGI**”) as equitable receiver and receiver in aid of execution to enforce their judgments against the Defendants/Respondents (collectively, “**Iran**”), and if necessary, for an order abridging and validating service of the notice of motion and supporting motion record, and for no other or improper purpose.
4. The form of order sought (the “**Appointment Order**”) is attached hereto as **Exhibit “A”**, and is Schedule “A” to the Notice of Motion.

**I. Background**

5. The factual background and procedural history relevant to this motion are thoroughly reviewed in:
  - (a) The Reasons for Judgment of Brown J. dated March 17, 2014, attached as **Exhibit “B”**;
  - (b) The Reasons for Judgment of Hainey J. dated June 9, 2016, attached as **Exhibit “C”**; and
  - (c) The Reasons of Hourigan J.A. dated June 30, 2017, attached as **Exhibit “D”**.
6. The following high-level summary is drawn from these decisions.

**a. The Parties' Recognition and Enforcement Efforts**

7. Between 2003 and 2007, the Bennetts and Tracys obtained judgments in the United States against Iran for its support of acts of terrorism by Hamas and Hezbollah (collectively, the “**US Judgments**”).<sup>1</sup>

8. The Bennetts obtained judgment for approximately US\$13,000,000. The Tracys obtained judgment for \$US91,000,000.

9. The Bennetts and Tracys – and others (addressed below) – have sought to have their U.S. judgments against Iran recognized and enforced in Canada under relatively new Canadian legislation: the *Justice for Victims of Terrorism Act*, S.C. 2012, c. 1, s. 2 (the “**JVTA**”).<sup>2</sup>

10. The Bennetts in 2012 commenced recognition proceedings in Ontario and obtained a *Mareva* injunction (the “**Mareva Injunction**”) restraining Iran from dissipating its assets including in particular two properties: 290 Sheppard Avenue West, Toronto, and 2 Robinson Avenue, Ottawa (collectively, the “**Properties**”).

11. The *Mareva* Injunction was subsequently expanded to include additional property and to apply to the registered owners of the Properties, Farhangeiran Inc. (“**Farhangeiran**”) and The Mobin Foundation (“**Mobin**”).

12. Despite being served, Iran, Farhangeiran, and Mobin did nothing to defend, respond to, or appear in the Bennett proceedings.

13. The Tracys obtained an Order on March 22, 2013 from Robertson J. recognizing their U.S. Judgment as an order of the Supreme Court of Nova Scotia (the “**Nova Scotia Order**”). On May

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<sup>1</sup> The particulars of these attacks are summarized at paragraphs 29 to 35 of Hainey J.’s June 6, 2009 Reasons for Judgment, attached as **Exhibit “C”**.

<sup>2</sup> Section 4(5) of the *JVTA* provides for the recognition of foreign judgments in favour of persons that have suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission, that had it been committed in Canada, would have been punishable under the terrorism offences in the *Criminal Code*. These include offences related to the facilitation, support and contribution to terrorist activities, and the provision of support to terrorist groups that carry out such activities. Where the judgment is against a foreign state, the state must – as Iran is – be listed in subsection 6.1(2) of the *State Immunity Act*, R.S.C. 1995, C. S-18.

22, 2013, Chapnik J. ordered that the Nova Scotia Order be registered as an order of the Ontario Superior Court (the “**Tracy Recognition Order**”, attached as **Exhibit “E”**).

14. Both the Nova Scotia Order and the Tracy Recognition Order were served on Iran. Iran was advised that it could move to set them aside, but did not do so. Again, Iran did nothing.

15. The Tracys were therefore free to enforce the Tracy Recognition Order. In January 2014, they moved to enforce against property in Ontario alleged to belong to Iran.

16. On March 17 2014, Brown J. (as he then was) made an order (the “**Tracy Enforcement Order**”, varied in part by order of Brown J. on May 1, 2014, attached as collective **Exhibit “F”**) enforcing the Tracy Recognition Order that:

- (a) Declared two bank accounts – one at Scotiabank and one at RBC – as property of Iran (the “**Bank Accounts**”);
- (b) Ordered Scotiabank and RBC to pay the full balance of the Bank Accounts to the Sheriff, and ordered Scotiabank and RBC to advise the Tracys of the existence and balance of any other accounts held by Iran of which the Tracys were not already aware; and
- (c) Declared that the Properties are beneficially owned by Iran, and directed the Sheriff in each locality to enforce the Tracys’ writs of seizure and sale against the Properties.

17. Iran then retained counsel, and advised the parties and court that it would bring motions to set aside the various Bennett and Tracy orders (as well as a recognition order made in a third proceeding).

18. On July 18, 2014, Brown J. (with Iran’s consent) ordered the Sheriff to pay the funds recovered from the Bank Accounts to my law firm (previously, Adair Barristers LLP), in trust, pending the outcome of the Tracys’ enforcement motions. Justice Brown’s July 18, 2014 order is attached as **Exhibit “G”**. The parties agreed at the same time that the Applicants in the Tracy

proceeding would take no further enforcement steps pending the outcome of Iran's motions to set aside the existing court orders.

19. The Properties were not seized, but remained subject to the *Mareva* Injunction obtained by the Bennetts.

20. Justice Hainey heard Iran's motions in late January 2016. At the same time, he heard the Bennetts' motion for summary judgment for an Order recognizing and enforcing their U.S. Judgments in Ontario.

21. On June 9, 2016, Hainey J. denied Iran's motions, recognized the Bennetts' U.S. Judgments in Ontario, and ordered that a writ of seizure and sale be issued in respect of the Bank Accounts and the Properties in favour of the Bennetts (the "**Bennett Recognition Order**"). In doing so, Justice Hainey found that:

Iran has not provided a reasonable explanation for its failure to defend the Ontario proceedings. The failure to provide any reasonable explanation for Iran's failure to defend these motions suggests to me that the defendants were attempting to gain a procedural advantage and were "gaming the process".

22. On June 30, 2017, the Court of Appeal for Ontario dismissed Iran's appeal, for largely the same reasons as Hainey J.<sup>3</sup> The Court's reasons are attached as **Exhibit "D"**.

23. The Supreme Court of Canada dismissed Iran's application for leave to appeal on March 15, 2018.

24. On March 29, 2018, Hainey J. made an order, attached as **Exhibit "H"**, permitting the Tracys to take such steps as are permitted by law to enforce the Tracy Enforcement Order (which was necessary because of the parties' prior consent order not to take further enforcement steps).

**b. Recognition and Enforcement Efforts by Other Judgment Creditors**

25. Other U.S. judgment creditors have commenced recognition proceedings against Iran in Ontario. To the best of my knowledge, the only such proceedings are:

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<sup>3</sup> Except in respect of the underlying U.S. judgments relating to terrorist activities that occurred prior to the date the *JVTA* came into force, and therefore could not be recognized under that statute.

- (a) The “Jacobsen” matter, in which Mr. Mark Arnold acts for the plaintiffs (CV013-10240-00CL);
- (b) The “Wise” matter, commenced by Dr. Sherri Wise in British Columbia. Lerner LLP acts for Dr. Wise in Ontario. While Dr. Wise does not have a proceeding in Ontario, she was given leave to intervene in the Bennett proceeding;
- (c) The Holland, Marthaler, and Higgins matters. Torys LLP acts for the plaintiffs in those matters (CV-14-497414, CV-13-493290, and CV-14-499468, respectively); and
- (d) The “Havlish” matter (CV-17-584851). Klein Lawyers acts for the Applicants in that proceeding.

These various other judgment holders are referred to herein as the “**Other Judgment Creditors**”.

## II. Appropriateness of Appointing an Equitable Receiver

26. The Bennetts and Tracys seek the appointment of an equitable receiver to facilitate the enforcement of their Ontario judgments against the Properties.

27. The Bennett and Tracy parties seek the appointment of an equitable receiver because:

- (a) there are legal impediments that may render the Properties not exigible for execution by the Sheriff;
- (b) even if technically exigible, special circumstances would render this normal method of execution ineffective and impractical; and
- (c) The Other Judgment Creditors in Ontario support the Appointment Order.

**a. The Properties are not readily exigible**

28. As canvassed in Brown J.'s Reasons for the Tracy Enforcement Order (attached as **Exhibit "B"**), Iran is not the registered owner of the Properties. Legal title is held by Farhangeiran and Mobin.

29. We have made inquiries with the Sheriffs of Toronto and Ottawa to inquire about the process for enforcing the Tracy and Bennett Enforcement Orders against the Properties in these circumstances. My understanding as a result of those inquiries is that the Sheriffs will not enforce a writ of seizure and sale against a property if the registered owner of the property and the judgment debtor are different.

30. This has been addressed in both the Tracy and Bennett Enforcement Orders. In the former, Brown J. declared that Iran beneficially owns the Properties, and that the Properties are exigible for the purposes of enforcing the Tracy Recognition Order. Justice Brown also directed the Sheriff to enforce against the Properties.

31. However, a legal impediment to enforcement against the Properties remains. Title searches on the Properties (attached as **Exhibit "I"**) reveal "no dealings" registrations in favour of Michael, Linda and Lisa Bennett (three of the four Bennetts in this case) as a result of the Mareva Injunction.

32. Based on our conversations with the Sheriffs, I believe that this irregularity would result in their seeking further judicial direction before enforcing the Tracy Recognition Order against the Properties.

**b. Normal methods of execution would be ineffective and impractical**

33. Even in the absence of a true "legal impediment" (in the sense that, with further direction from the Court, the Sheriffs would ultimately execute the Tracy and Bennett writs of seizure and sale against the Properties), the special circumstances of this case are such that use of the normal means of enforcement will be ineffective and impractical.

34. The circumstances described above in paragraphs 28 to 31 are, at minimum, factors that would complicate the Sheriffs' enforcement efforts. Given that a foreign state, Iran, is the judgment debtor, and in light of what the Sheriffs have told us, I believe that the Sheriffs' offices will act with an abundance of caution. This will result in further expense and delay for the Bennetts and Tracys.

35. The Sheriffs have advised us that due to a backlog of enforcement matters, in an ordinary case it currently takes approximately 12 months, and as many as 15 months, for their offices to enforce writs of seizure and sale and distribute the proceeds to judgment creditors. The unique circumstances of this case – namely, the legal obstacles discussed above and identity of the judgment debtor – will add to this.

36. Such a delay would jeopardize my clients' recovery and thereby cause inordinate and irreparable prejudice to them.

37. The Sheriffs must under the governing legislation distribute the proceeds of any seized and sold property to all judgment creditors that have filed writs of seizure and sale against the property owner on a pro-rata basis, based on the quantum of the outstanding judgments.<sup>4</sup>

38. The Bennetts and Tracys were the first to rely on the *JVTA* to enforce foreign terrorism judgments against Iran in Canada. As a result of Iran's attempts to "game the process", the litigation has been protracted and expensive. Legal fees have consumed almost all of the \$2.1 million that the Bennetts and Tracys recovered from the Bank Accounts.<sup>5</sup>

39. Meanwhile, as discussed above, other victims of Iranian terrorism have come forward with foreign judgments and sought recognition and enforcement in Ontario. We can reasonably expect there to be more going forward. These future judgment creditors will benefit from the path paved by Bennetts' and Tracys' hard-fought victories.

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<sup>4</sup> See paragraph 18 of the Reasons of Justice D.M. Brown dated March 17, 2014, attached as **Exhibit "B"**.

<sup>5</sup> These legal fees were earned on a contingency basis. The lawyers for Bennett and Tracy were compensated on a deferred-fee basis, to be recovered only in the event that Bennett and Tracy were successful.

40. In this context, a delay at the Sheriff's office of at least 12-15 months risks rendering the Bennetts' and Tracys' recovery efforts wholly ineffective. Given that the Sheriff will distribute the proceeds from the Properties pro-rata, the Bennetts and Tracys are at risk of being squeezed out. Depending on the quantum of judgments obtained by other victims of Iranian terrorism in Ontario, the Bennetts and Tracys are at risk of recovering only pennies on the dollar.

41. The Bennetts and Tracys have made exhaustive efforts to identify Iranian property and assets in Canada. The Properties are the full extent of what remains. It is their legal efforts that have rendered the Properties exigible and available for enforcement. However, if forced to pursue enforcement on the Properties through the Sherriffs in Toronto and Ottawa, their recovery efforts are at risk of being rendered functionally impossible.

42. After 15 years of emotional and costly litigation, the Bennetts and Tracys are at risk of recovering nothing, only to see other victims of Iranian terrorism recover the fruits of their efforts. Such an outcome would be wholly unjust.

43. While other victims that may come forward with enforceable judgments are certainly deserving of sympathy, compassion, and compensation, they should not be permitted to benefit – at the Bennetts' and Tracys' expense – from Iran's abusive litigation tactics, the legal irregularities of this case, and a backlog at the Sheriffs' offices.

**c. The Other Judgment Creditors Support the Appointment Order**

44. The Court need not be concerned that the Bennetts and Tracys are "leap frogging" over the Other Judgment Creditors, or prejudicing their right to share proportionally in any proceeds generated by the seizure and sale of the Properties.

45. I have spoken with counsel for the Jacobsen, Wise, Holland, Marthaler, and Higgens groups. Those parties have a sharing arrangement in place with the Bennett and Tracy groups. The existence of that sharing arrangement is already a matter of public record, but the details are confidential among the parties. Those parties all support the Appointment Order sought on this motion, and will all benefit from execution against the Properties.

46. I have also spoken with counsel for the Applicants in the Havlish matter.

47. The Havlish Group is aware of this motion, and has executed an Acknowledgment, attached as **Exhibit “J”**, waiving any right to notice in connection with this proceeding and confirming it will not participate herein and shall not file any claim or demand any payment or dividend from any proceeds derived from the Properties.

### **III. Appropriateness of Dispensing with Service on Farhangeiran and Mobin**

48. There have been various orders for substituted service on Farhangeiran and Mobin in the course of these proceedings. In December 2013, the April and June 2013 orders for substituted service in the Bennett matter (attached as **Exhibits “K”** and **“L”**) were ordered to apply to the Tracy matter (attached as **Exhibit “M”**).

49. Despite being on notice, neither Farhangeiran nor Mobin have responded to or appeared at any of the motions engaging their interest in the Properties. In his Reasons the Tracy Enforcement Order, Brown J. observed that:

- (a) Notwithstanding that the Bennetts served the *Maerva* Injunction on Farhangeiran and Mobin on multiple occasions, neither appeared to seek to set aside or vary the orders that restrained them from dealing with the Properties;<sup>6</sup> and
- (b) Notwithstanding service of the Tracys’ motion (seeking orders declaring that Iran beneficially owned the Properties and that they were exigible) on Farhangeiran and Mobin, neither appeared at the motion’s return.

50. The Bennetts and Tracys seek an order pursuant to Rule 16.04 dispensing with the requirement to serve Farhangeiran and Mobin with this motion. The concern is that effecting service will cause further delay, which in light of the circumstances discussed above, risks substantial prejudice to their recovery.

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<sup>6</sup> The only response to service was from the individual listed as the director of Farhangeiran, who subsequently obtained an order that he was not a party to the Bennett proceeding because he had resigned as a director of Farhangeiran some years before.

51. In the alternative, the Bennetts and Tracys seek orders for substituted service on Farhangeiran and Mobin in accordance with the earlier orders to this effect (see Exhibits “K”, “L”, and “M”), and abridging the time for service, if necessary.

52. I am not aware of, and do not believe there will be, any prejudice to Farhangeiran or Mobin if this Court dispenses with service (or orders substituted service). It has already been determined that the Bennetts and Tracys are entitled to recover their US Judgments against the Properties. This motion for the appointment of an equitable receiver impacts only the manner of that enforcement. Accordingly, Farhangeiran and Mobin’s rights and interests are not meaningfully engaged by the relief sought.


53. I am similarly not aware of, and do not believe there will be, any prejudice to Iran if this Court makes an order abridging and validating service, if necessary. Iran’s lawyers have advised me that they are unlikely to appear at or participate in the motion.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on May  
*17<sup>th</sup>*  
....., 2018



Commissioner for Taking Affidavits

*(or as may be)*

} 

**JOHN ADAIR**

This is Exhibit "A" referred to in the Affidavit of John J. Adair  
sworn May ...17..., 2018

A handwritten signature in blue ink, appearing to read "Alex Hutz", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Court File No. CV-13-10204-00CL  
Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) , THE  
JUSTICE ) DAY OF , 2018

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT, R.S.O. 1990, c.  
R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE SUPREME  
COURT OF NOVA SCOTIA ISSUED MARCH 22, 2013**

B E T W E E N:

ESTATE OF MARLA BENNETT, MICHAEL BENNETT,  
LINDA BENNETT and LISA BENNETT

Plaintiffs

and

ISLAMIC REPUBLIC OF IRAN and  
IRANIAN MINISTRY OF INFORMATION AND SECURITY

Defendants

and

THE ATTORNEY GENERAL FOR CANADA

Intervener

A N D B E T W E E N:

EDWARD TRACY, by his Litigation Guardian Charles Murphy, ELIZABETH  
CICCIPIO-PULEO, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO,  
DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD DENNIS CICIPPIO,  
THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO, ALLEN JOHN  
CICIPPIO, estate of ROSE ABELL, ANTHONY CICIPPIO, estate of  
ALEXANDER CICIPPIO, NICHOLAS B. CICIPPIO and estate of JOSEPH J.  
CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY,  
THE ISLAMIC REPUBLIC OF IRAN and  
THE IRANIAN REVOLUTIONARY GUARD CORP.

Respondents

**ORDER**

**WHEREAS** in 2003 and 2005 the Applicants obtained judgments against the Respondents, The Iranian Ministry of Information and Security (“**MIS**”), the Islamic Republic of Iran (“**Iran**”) and The Iranian Revolutionary Guard Corp. (the “**Revolutionary Guards**”), in the United States District Court for the District of Columbia (the “**US Judgments**”);

**AND WHEREAS** by order made March 22, 2013, Roberston J. of the Nova Scotia Supreme Court recognized the US Judgments and made them an order of the Supreme Court of Nova Scotia;

**AND WHEREAS** by Order made May 22, 2013, Chapnik J. of the Ontario Superior Court of Justice ordered that the Nova Scotia Order be registered as an order of the Ontario Superior Court of Justice (the “**Ontario Recognition Order**”) pursuant to the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5;

**AND WHEREAS** recognition proceedings were also started in the Ontario Superior Court of Justice Court in 2012 by the Estate of Marla Bennett (CV-12-463434) which resulted in the granting of a *Mareva* injunction to restrain Iran/MIS from dissipating 290 Sheppard Avenue West, Toronto and 2 Robinson Avenue, Ottawa (hereinafter collectively referred to as the “**Properties**”) which injunction was expanded to include the registered owners of the Sheppard Avenue and Robinson properties, Farhangeiran Inc. and The Mobin Foundation respectively;

**AND WHEREAS** by Order dated March 17, 2014 Justice D.M. Brown, as he then was, ordered and declared that the Properties are beneficially owned by Iran and that the Sheriffs of the City of Toronto and City of Ottawa are to enforce the Applicants’ Writs of Seizure and Sale as against the Properties;

**THIS MOTION** made by the Plaintiffs/Applicants for an Order pursuant section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), and Rules 37, 41 and 60 of the *Rules of Civil Procedure*, appointing Albert Gelman Inc. as equitable receiver and receiver in aid of execution (the “**Receiver**”), without security, of the Properties beneficially owned by Iran (the “**Debtor**”), on the terms set out below, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of John Adair sworn May 17, 2018 and the exhibits thereto, and on hearing the submissions of counsel for the Plaintiffs/Applicants, no one appearing for the Defendants/Respondents although duly served as appears from the affidavit of service of [NAME] sworn [DATE], and on reading the consent of Albert Gelman Inc. to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and service is validated, so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 101 of the CJA and Rules 37, 41 and 60 of the *Rules of Civil Procedure*, Albert Gelman Inc. is hereby appointed Receiver, without security, of the following properties beneficially owned by the Debtor:
  - (a) PT LT 3 PL 2069 TWP OF YORK AS IN TB862589; TORONTO (N YORK) CITY OF TORONTO, PIN NO. 10146-0396 (LT) and municipally known as 290 Sheppard Avenue West, Toronto, ON (hereinafter the “**Sheppard Property**”), with legal title being held in the name of Farhangeiran Inc.;
  - (b) PART OF LOT F, CONCESSION D, RIDEAU FRONT, BEING PARTS 3 AND 4 ON PLAN5R-14667 PART OF WHICH BEING PART OF HURDMAN ROAD OPENED BY BYLAW NS79171 AND CLOSED BY BYLAW N633492 AND PART 41 ON PLAN 4R-299 LYING EAST OF PART 1 ON PLAN 5R-

10234 AND PART 1 ON PLAN 4R-11899, OTTAWA, PIN No. 04204-0267 (LT) and municipally known as 2 Robinson Avenue, Ottawa, ON (hereinafter the “**Robinson Property**”), with legal title being held in the name of The Mobin Foundation.

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Sheppard Property and Robinson Property (collectively, the “**Properties**”).
4. THIS COURT ORDERS that without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable, in respect of the Properties:
  - (a) to take possession of and exercise control over the Properties and any and all proceeds, receipts and disbursements arising out of or from the Properties;
  - (b) to receive, preserve, and protect the Properties, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate, and carry on the business in respect of the Properties, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts in relation to the Properties;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets;
- (f) to receive and collect all monies and accounts now owed or hereafter owing and to exercise all remedies in collecting such monies;
- (g) to settle, extend or compromise any indebtedness owing in respect of the Properties;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Properties for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Properties or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Properties, including advertising and soliciting offers in respect of the Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Properties or any part or parts thereof out of the ordinary course of business, with the approval of this Court.
- (l) to apply for any vesting order or other orders necessary to convey the Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such the Properties;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Properties and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Properties against their title;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof;
- (p) to enter into agreements with any trustee in bankruptcy who may be appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any of the Properties;
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations including without limitation, undertaking a review of any documentation that may be located at the Properties and to report to the Court in the event the Receiver discovers information it opines may assist in enforcing the Ontario Recognition Order;
- (r) in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person; and
- (s) if the Receiver deems it necessary it may exercise any of its powers set forth herein with the assistance of the local police authorities and/or the RCMP.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) The Mobin Foundation, (iii) Farhangeiran Inc., (iv) all of their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”), shall grant immediate and continued access to the Properties to the Receiver, and shall deliver possession of the Properties to the Receiver upon the Receiver’s request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Properties, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
  
7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Properties shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Properties are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Receiver, or affecting the Properties, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court and further provided that nothing in this paragraph shall (i) empower the Receiver to carry on any business, (ii) exempt the Receiver from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in relation to the Properties, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements in respect of the Properties are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating such oral or written agreements without the Receiver’s written consent, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source in relation to the Properties such as but not limited to hydro deposits and rents, if any, and from the sale of all or any of the Properties shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Properties and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Properties (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any of the Properties shall be entitled to continue to use the personal information provided to it, and related to the Properties purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Properties that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Properties within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Properties, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), of the BIA.

18. THIS COURT ORDERS that should the fees of the Receiver and counsel to the Receiver exceed the retainer funds provided to them, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal

counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, if same becomes necessary, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court, if applicable.

### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **“Receiver’s Borrowings Charge”**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
21. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the **“Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.albertgelman.com/corporate-solutions/other-engagements/>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
29. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
-

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly] not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**THE ESTATE OF MARLA BENNETT, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.**

Court File No. CV-13-10204-00CL

**EDWARD TRACY, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.**

Court File No. CV-14-10403-00CL

Plaintiffs / Applicants

Defendants / Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT  
TORONTO

**ORDER**

**ADAIR GOLDBLATT BIEBER LLP**

95 Wellington Street West  
Suite 1830, P.O. Box 14  
Toronto ON M5J 2N7

**John J. Adair (52169V)**

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**Gordon McGuire (58364S)**

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Lawyers for the Plaintiffs / Applicants

RCP-E 4C (May 1, 2016)

This is Exhibit "B" referred to in the Affidavit of John J. Adair  
sworn May ..17....., 2018

A handwritten signature in blue ink, appearing to read "Alex H. ...", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**CITATION:** Edward Tracy v. The Iranian Ministry of Information and Security,  
2014 ONSC 1696  
**COURT FILE NO.:** CV-14-10403-00CL  
**DATE:** 20140317

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** Edward Tracy, by his Litigation Guardian Charles Murphy, Elizabeth Ciccipio-Puleo, estate of Helen Fazio, estate of Domenic Cicippio, David B. Cicippio, Eric R. Cicippio, Richard Dennis Cicippio, Thomas J. Cicippio, estate of Paul V. Cicippio, Allen John Cicippio, estate of Rose Abell Anthony Cicippio, estate of Alexander Cicippio, Nicholas B. Cicippio and estate of Joseph J. Cicippio Jr., Plaintiffs

**AND:**

The Iranian Ministry of Information and Security, The Islamic Republic of Iran and The Iranian Revolutionary Guard Corp., Respondents

**BEFORE:** D. M. Brown J.

**COUNSEL:** G. Adair, for the Plaintiffs

**HEARD:** January 23, 2014

**REASONS FOR DECISION**

**I. Motion to enforce a judgment against the Islamic Republic of Iran**

[1] On September 7, 2012, the federal *Justice for Victims of Terrorism Act*<sup>1</sup> came into force. As expressed in section 3 of the *JVTA*:

3. The purpose of this Act is to deter terrorism by establishing a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters.

Section 4(5) of the *JVTA* provides:

4. (5) A court of competent jurisdiction must recognize a judgment of a foreign court that, in addition to meeting the criteria under Canadian law for being recognized in Canada, is in favour of a person that has suffered loss or damage referred to in subsection (1). However, if the judgment is against a foreign state, that state must be set out on the

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<sup>1</sup> S.C. 2012, c. 1,

list referred to in subsection 6.1(2) of the *State Immunity Act* for the judgment to be recognized.

The Islamic Republic of Iran is one of the states set out on that list.<sup>2</sup>

[2] In 2003 and 2005 the plaintiffs obtained judgments against the defendants, The Iranian Ministry of Information and Security (“MIS”), the Islamic Republic of Iran (“Iran”) and The Iranian Revolutionary Guard Corp. (the “Revolutionary Guards”), in the United States District Court for the District of Columbia (the “US Judgments”). By order made March 22, 2013, Roberston J. of the Nova Scotia Supreme Court recognized the US Judgments and made them an order of the Supreme Court of Nova Scotia pursuant to section 4(5) of the *JVTA*. On May 22, 2013, Chapnik J. ordered that the Nova Scotia Order be registered as an order of this Court (the “Ontario Recognition Order”) pursuant to the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5. The plaintiffs moved for certain declarations and orders in respect of the enforcement of the Ontario Recognition Order.

## II. Background Facts

[3] The Tracy Action was one of several enforcement proceedings commenced against Iran after the coming into force of the *JVTA*.

[4] Recognition proceedings also were started in this Court in 2012 by the Estate of Marla Bennett (CV-12-463434) which resulted in the granting of a *Mareva* injunction to restrain Iran/MIS from dissipating two properties: 290 Sheppard Avenue West, Toronto and 2 Robinson Avenue, Ottawa.<sup>3</sup> The *Mareva* injunction was expanded to include additional property<sup>4</sup> and to cover the registered owners of the Sheppard Avenue and Robinson properties, Farhangeiran Inc. and The Mobin Foundation.<sup>5</sup>

[5] Section 12.1 of the *State Immunity Act*, R.S.C. 1985, c. S-18, provides:

12.1 (1) At the request of any party in whose favour a judgment is rendered against a foreign state in proceedings referred to in section 6.1, the Minister of Finance or the Minister of Foreign Affairs may, within the confines of his or her mandate, assist, to the extent that is reasonably practical, any judgment creditor in identifying and locating the following property, unless the Minister of Foreign Affairs believes that to do so would be injurious to Canada’s international relations or either Minister believes that to do so would be injurious to Canada’s other interests:

(a) in the case of the Minister of Finance, the financial assets of the foreign state that are held within Canadian jurisdiction; and,

<sup>2</sup> SOR/2012-170.

<sup>3</sup> 2012 ONSC 5866

<sup>4</sup> Order of Lederman J. made October 18, 2012.

<sup>5</sup> Order of E. Macdonald J. made October 31, 2012.

(b) in the case of the Minister of Foreign Affairs, the property of the foreign state that is situated in Canada.

On September 4, 2013, the Department of Foreign Affairs, Trade and Development Canada ("Foreign Affairs") wrote to plaintiffs' counsel in the Bennett Estate Action providing a list of Iran's non-diplomatic and diplomatic properties in Canada. By Reasons dated September 9, 2013, I granted an order confirming that the non-diplomatic assets of Iran identified by Foreign Affairs fell within the ambit of the *Mareva* injunction.<sup>6</sup>

[6] By further Reasons dated November 5, 2013, I granted an order at the request of the Attorney General of Canada deleting from the reach of the *Mareva* injunction two diplomatic properties owned by Iran in Ottawa.<sup>7</sup>

[7] In addition to the Bennett Estate Action, an enforcement proceeding was commenced by the Jacobsen/Steen plaintiffs in respect of similar types of judgments obtained in the United States against Iran (CV-13-10240-00CL). Last fall a British Columbia resident, Dr. Sherri Wise, commenced an original action under the *JVTA* against Iran in the British Columbia Supreme Court. The Ontario Court of Appeal granted Dr. Wise leave to intervene in the *JVTA* judgment enforcements proceedings brought by the Bennett Estate and the Jacobsen/Steen plaintiffs in Ontario.

[8] As a result of that decision, counsel for the plaintiffs in the two Ontario actions informed the Court that in light of an agreement reached amongst all four sets of plaintiffs, they wished to defer the hearing of the Bennett Estate and Jacobsen/Steen enforcement proceedings in favour of this motion to enforce the Ontario Recognition Order in the Tracy proceeding. I granted leave that the evidence filed in the Bennett Estate and Jacobsen/Steen proceedings could be used at the hearing of this motion.

### III. Analysis

#### A. The enforcement of the Ontario Recognition Order

[9] The legislative regime dealing with the enforcement of judgments against a foreign state for its support of terrorism or terrorist activity involves a combination of the *JVTA*, the *State Immunity Act* and the *Ontario Rules of Civil Procedure*.

[10] Section 4(5) of the *JVTA* provides that a court of competent jurisdiction "must recognize" a judgment of a foreign court that, in addition to meeting the criteria under Canadian law for being recognized in Canada, is in favour of a person that has suffered loss or damage referred to in *JVTA* s. 4(1) provided that, if the judgment is against a foreign state, that state must be set out on the list referred to in subsection 6.1(2) of the *State Immunity Act* for the judgment to be recognized. Iran is one such state. Section 12(1)(d) of the *State Immunity Act* provides:

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<sup>6</sup> 2013 ONSC 5662

<sup>7</sup> 2013 ONSC 6832

12. (1) Subject to subsections (2) and (3), property of a foreign state that is located in Canada is immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture except where

...

(d) the foreign state is set out on the list referred to in subsection 6.1(2) and the attachment or execution relates to a judgment rendered in an action brought against it for its support of terrorism or its terrorist activity and to property other than property that has cultural or historical value.

[11] The foreign judgments obtained by the Tracy applicants met the requirements of the *JVTA* and *State Immunity Act*, the result of which was that they obtained the Ontario Recognition Order. That order can be enforced using the various devices available under Rule 60 of the *Rules of Civil Procedure* against any non-diplomatic property of Iran/MIS “other than property that has cultural or historical value”.

[12] Paragraph 2 of the Ontario Recognition Order required the Tracy applicants, pursuant to section 5 of the *Reciprocal Enforcement of Judgments Act*, to send a copy of the order to Foreign Affairs within one month after registration for service upon Iran/MIS/Revolutionary Guards through diplomatic channels and stated that pursuant to section 6 of that Act, Iran/MIS/Revolutionary Guards “may apply to set aside this Order, if so advised”.<sup>8</sup> Section 10 of the *State Immunity Act* also required the default Ontario Recognition Order to be served on Iran.

[13] An August 21, 2013 Certificate from Foreign Affairs confirmed service of the Ontario Recognition Order and the Nova Scotia Order on Iran on August 19, 2013. That service satisfied the requirements of paragraph 2 of the Ontario Recognition Order and section 10 of the *State Immunity Act*. None of the respondents moved to set aside the Ontario Recognition Order. Consequently, the Tracy applicants were free to enforce the Ontario Recognition Order in the

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<sup>8</sup> Sections 5 and 6 of the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5, provide:

5. In all cases in which registration is made upon an order made without notice, notice thereof shall be given to the judgment debtor within one month after the registration, and the notice shall be served in the manner provided by the practice of the registering court for service of originating process, and no sale under the judgment of any property of the judgment debtor is valid if made prior to the expiration of the period fixed by section 6 or such further period as the court may order.

6. In all cases in which registration is made upon an order made without notice, the registering court may on the application of the judgment debtor set aside the registration upon such terms as the court thinks fit, and such application shall be made within one month after the judgment debtor has notice of the registration, and the applicant is entitled to have the registration set aside upon any of the grounds mentioned in section 3.

same fashion as any other order of this Court, subject to the one qualification about property with cultural or historical value contained in section 12(1)(d) of the *State Immunity Act*.

#### **B. The bank accounts**

[14] The Tracy applicants sought declarations that two bank accounts were the property of Iran:

- (i) Scotiabank account 40006 04451 18 in the name of the “Embassy of Islamic Republic of Iran Higher Education Advisory”; and,
- (ii) Royal Bank of Canada account 864-949-3 in the name of “Embassy of Islamic Republic of Iran”.

Both accounts were identified by Foreign Affairs as “Iran’s Non-Diplomatic Assets in Canada” in its September 4, 2013 letter and, according to the information provided by Foreign Affairs, the Scotiabank account contained \$1,651,942 and the RBC account €333,445.23.

[15] The Scotiabank account is in the name of: “Embassy of Islamic Republic of Iran Higher Educ Advisory, 245 Metcalfe Street, Ottawa”. The Tracy applicants filed evidence showing that the signing officer for the Scotiabank account was one Dr. Hamid Moharrami, an Iranian diplomat appointed to Canada as “Counsellor”. The Scotiabank account signing certificate identified Dr. Moharrami as “scientific counsellor”.

[16] The RBC account is in the name of: “Embassy of the I.R. of Iran, 245 Metcalfe Street, Ottawa”. An August 22, 2008 letter from the Iranian Embassy to RBC clearly demonstrated that the RBC account was opened at the request of Iran and that the Higher Education Advisory was a department of the embassy funded by ministries of the Iranian government. The RBC advised that the names and contact information for the account holders were one Jamal Elhousseini of Nepean, Ontario and Reza Shaker of Ottawa, Ontario. Mr. Shaker previously was the Chargé D’Affaires for the Iranian Embassy in Ottawa. Applicants’ counsel contacted Mr. Shaker who advised that the Higher Education Advisory was “just a section of the Embassy”.

[17] This evidence adduced by the Tracy applicants overwhelmingly establishes that the funds in the Scotiabank and RBC accounts are the property of the respondent, Iran, and are non-diplomatic assets of Iran available to satisfy the Ontario Recognition Order, and I so find.

[18] The Tracy applicants requested orders directing Scotiabank and RBD to deliver forthwith the entire contents of both accounts to their counsel. Under the *Creditors’ Relief Act, 2010*<sup>9</sup> there is no priority among creditors by execution or garnishment issued by the Superior Court of Justice and monies seized by writ or attached by garnishment are payable to the sheriff who must distribute the monies proportionately amongst all execution creditors whose executions were

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<sup>9</sup> S.O. 2010, c. 16, Sch. 4.

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filed with the sheriff at the time the sheriff received the money.<sup>10</sup> There was no evidence filed showing what efforts the Tracy applicants had made to enforce the Ontario Recognition Order by way of writ of seizure and sale or garnishment.

[19] The Tracy applicants filed evidence that they had conducted execution searches in some, but not all, of the 51 jurisdictions in Ontario in which such records are maintained – the eight larger urban areas in this province. (One might well query why, in this day and age, the Ontario government has not put in place the IT infrastructure which would enable a creditor to conduct a single, province-wide search of all filed executions; that simply reflects the pervasive lack of commitment by successive Ontario governments to providing an adequate justice information technology infrastructure in this province.) Those searches came up “clear”, showing that no other person had filed a writ against the Iranian defendants in those eight jurisdictions.

[20] Notwithstanding that evidence, foreign judgments recognized under the *JVTA* enjoy no special status under the Ontario rules of judgment enforcement found in the *Rules of Civil Procedure, Execution Act* and *Creditors' Relief Act, 2010*. Consequently, I see no basis to grant an order requiring Scotiabank or RBC to pay the amounts in their accounts directly to applicants' counsel. I order Scotiabank and RBC to pay such amounts to the local sheriff, and the Tracy applicants may take the appropriate steps under provincial legislation to secure payment out of those funds from the sheriff.

[21] The September 4, 2013 letter from Foreign Affairs did not guarantee that the list of Iranian non-diplomatic assets was complete. In the present case Iran has ignored all recognition and enforcement proceedings. There is no reason to think that Iran would respond or submit to a request to submit to an examination-in-aid-of-execution. In those circumstances, I think it appropriate to grant the order sought by the Tracy applicants in paragraph (i) of their Notice of Motion, so I order Scotiabank and RBC to advise the applicants, within 30 days of the date of these Reasons, of the existence and balance of any account at any Scotiabank or RBC branch or location that is in the name of the Embassy of the Islamic Republic of Iran or the Higher Education Advisory, other than accounts that have been identified by Canada's Department of Foreign Affairs, Trade and Development as diplomatic accounts.

### **C. Real property at 290 Sheppard Avenue, Toronto and 2 Robinson Avenue, Ottawa**

[22] Title to 290 Sheppard Avenue, Toronto is in the name of Farhangeiran Inc. Title to 2 Robinson Avenue, Ottawa, is in the name of The Mobin Foundation which acquired title from Fatima Cultural Activities Inc. Allen J. conducted an extensive review of the evidence relating to the ownership and use of both properties in her Reasons dated October 17, 2012 in the Bennett Estate Action. (The Tracy applicants filed that same evidence on this motion.) After reviewing the evidence Allen J. concluded:

I am satisfied based on the information from the Plaintiffs' sources, combined with the expert opinion of Professor Zandi and evidence of the U.S experience, that the Plaintiffs

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<sup>10</sup> See, generally, sections 2, 3 and 4 of the *Creditors' Relief Act, 2010*.

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have established a strong *prima facie* case that Iran has assets in the two properties that could possibly be used to enforce the U.S Judgment. This conclusion of course can be challenged by the Defendants on the return of the motion.

[23] Notwithstanding the service of the *Mareva* injunctions in the Bennett Estate Action on Farhangeiran Inc. and The Mobin Foundation on various occasions, neither defendant ever appeared to seek to set aside or vary the orders which restrained them from dealing with the properties.<sup>11</sup> Indeed, the only response to service was by one Donald James Grant who had been listed as a director of Farhangeiran. On June 26, 2013, Greer J. granted his request for an order that he was not a party to the Bennett Estate Action because he had resigned as a director of Farhangeiran some years before.

[24] The Tracy applicants served the motion record for this motion on Farhangeiran Inc. and The Mobin Foundation; neither appeared on the return of the motion.

[25] The Tracy applicants filed evidence that various building and construction permit applications in respect of the 2 Robinson Avenue property had listed Iran and/or Fatima Cultural Activities Inc. as the applicant. The sole registered director of the current owner, The Mobin Foundation, is Syed Adeli, a former Iranian ambassador to Canada. The 2 Robinson property was identified as a non-diplomatic asset of Iran in the letter from Foreign Affairs dated September 4, 2013.

[26] In light of (i) the evidence about the two properties which was before Allen J. in the Bennett Estate Action, and which was filed again before me, (ii) the findings made by Allen J. in support of the grant of a *Mareva* injunction in respect of both properties, (iii) the further evidence about the involvement of Iran or its embassy in the building application process for the 2 Robinson Avenue property, and (iv) the failure of Farhangeiran Inc. and The Mobin Foundation to respond to the injunctions against both properties or to this motion, although properly served, I conclude that the evidence overwhelmingly permits me to conclude that both properties are beneficially owned by Iran and constitute non-diplomatic assets of Iran in Canada, and I so find.<sup>12</sup>

[27] Property of a foreign terrorist state “that has cultural or historical value” is immune from attachment and execution by virtue of section 12(1)(d) of the *State Immunity Act*. In the case of the 290 Sheppard property, the applicants filed evidence which called into serious question whether that property was operating as a cultural centre, or as a front for Iranian governmental activities in Canada.<sup>13</sup> Evidence to the same effect was adduced in respect of the 2 Robinson property, including evidence that the Mobin Trust Consortium is used by the Revolutionary

<sup>11</sup> The details of the attempts at service can be found in the affidavit of Gordon McGuire sworn September 11, 2013 in the Bennett Estate Action.

<sup>12</sup> *Executions Act*, R.S.O. 1990, c. E.24, s. 9; *Banglar Progoti Ltd. v. Ranka Enterprises Inc.*, [2009] O.J. No. 1470, paras. 27 to 29.

<sup>13</sup> Affidavit of Lauren Rakowski sworn October 5, 2012 in the Bennett Estate Action, paras. 19 to 21, and the exhibits referred to therein. Affidavit of Farrokh Zandi sworn October 5, 2012 in the Bennett Estate Action, paras. 14 to 18.

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Guards as an economic engine to conduct business.<sup>14</sup> I think it open to this Court to take judicial notice of the fact that the Revolutionary Guards are hardly a cultural or charitable organization.

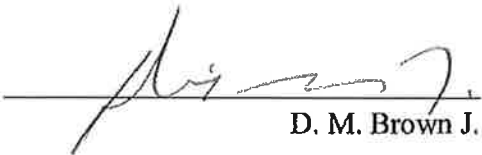
[28] None of the Iranian respondents, Farhangeiran Inc. or The Mobin Foundation, filed any evidence to the contrary.

[29] Consequently, I find that the properties at 290 Sheppard and 2 Robinson are not properties of Iran which have "cultural or historical value". The properties therefore are not immune from attachment or execution. I therefore make the following orders:

- (i) Iran beneficially owns the property at 290 Sheppard Avenue West, Toronto and that property is exigible property available to satisfy the Ontario Recognition Order;
- (ii) The Sheriff of the City of Toronto is directed to enforce the applicant's writ of seizure and sale against the property at 290 Sheppard Avenue West, Toronto;
- (iii) Iran beneficially owns the property at 2 Robinson Avenue, Ottawa, and that property is exigible property available to satisfy the Ontario Recognition Order;
- (iv) The Sheriff of the City of Ottawa is directed to enforce the applicant's writ of seizure and sale against the property at 2 Robinson Avenue, Ottawa; and,
- (v) The applicants shall serve a copy of these Reasons on Farhangeiran Inc. and The Mobin Foundation, by the means of service previously authorized by this Court, no later than 10 days after this date.

#### IV. Costs

[30] The applicants are entitled to their costs of this motion against the Iranian respondents. They may file brief cost submissions and a Bill of Costs for my consideration.

  
D. M. Brown J.

**Date:** March 17, 2014

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<sup>14</sup> Rakowski Affidavit, paras. 22 to 26 and the exhibits referred to therein; Zandi affidavit, *supra*.

This is Exhibit "C" referred to in the Affidavit of John J. Adair  
sworn May 17....., 2018

A handwritten signature in blue ink, appearing to read "Alex W. [unclear]", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

CITATION: Tracy v. The Iranian Ministry of Information and Security, 2016 ONSC 3759  
 COURT FILE NO.: CV-14-10403-00CL  
 COURT FILE NO.: CV-14-497414  
 COURT FILE NO.: CV-13-10204-00CL  
 COURT FILE NO.: CV-13-493290  
 COURT FILE NO.: CV-14-499468  
 DATE: 20160609

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST

BETWEEN: )  
 )  
 EDWARD TRACY, by his Litigation ) *John J. Adair*, for the Applicants Edward  
 Guardian, Charles Murphy and others ) Tracy and Estate of Marla Bennett  
 Applicants )  
 - and - )  
 )  
 THE IRANIAN MINISTRY OF ) *Colin P. Stevenson* and *J. Daniel*  
 INFORMATION AND SECURITY and ) *McConville*, for the Moving Parties, Iran *et*  
 others ) *al.*  
 Respondents )  
 AND BETWEEN: )  
 )  
 CHAD PHILLIP HOLLAND ) *John B. Laskin* and *Sarah Whitmore*, for the  
 Plaintiff ) Applicants/Plaintiffs Chad Phillip Holland,  
 - and - ) Katie L. Marthaler and American Center for  
 ) Civil Justice, Inc./Christine Higgins  
 THE ISLAMIC REPUBLIC OF IRAN and )  
 others )  
 Defendants ) *Jacqueline Dais-Visca*, for the Attorney  
 AND BETWEEN: ) General of Canada, Intervener  
 )  
 ESTATE OF MARLA BENNETT and )  
 others )  
 Applicants )  
 - and - )  
 )  
 THE IRANIAN MINISTRY OF )  
 INFORMATION AND SECURITY and )  
 others )  
 Respondents )  
 )  
 )  
 )  
 )

- Page 2 -

AND BETWEEN: )  
 )  
 KATIE L. MARTHALER and others )  
 Plaintiffs )  
 - and - )  
 )  
 THE ISLAMIC REPUBLIC OF IRAN and )  
 others )  
 Defendants )  
 AND BETWEEN: )  
 )  
 AMERICAN CENTER FOR CIVIL )  
 JUSTICE, INC., as Assignee for Christine )  
 Higgins )  
 Plaintiff )  
 - and - )  
 )  
 THE IRANIAN REVOLUTIONARY )  
 GUARD CORPS )  
 Defendant )  
 )  
 )  
 )  
 ) HEARD: January 25-27, 2016

**HAINES J.**

**OVERVIEW**

[1] Terrorism is one of the world's greatest threats. This case involves claims by victims of terrorist attacks carried out by two terrorist organizations, Hamas and Hezbollah. The defendant, the Islamic Republic of Iran, has been designated as a foreign state supporter of both of these terrorist organizations. The plaintiffs in the five actions before the court are U.S. citizens who obtained judgments against the defendants in proceedings before U.S. courts. The U.S. courts found the defendants liable for the plaintiffs' damages resulting from these terrorist attacks on the basis that Iran actively supported Hamas and Hezbollah. The U.S. judgments remain largely unpaid.

[2] The plaintiffs commenced proceedings in Canada to enforce the U.S. judgments after the Canadian government made significant legislative changes in 2012 to facilitate claims by terrorist victims. These changes enable plaintiffs to bring lawsuits against terrorists and their supporters before Canadian courts. According to the Canadian government, the purpose of this legislation is to deter and prevent acts of terrorism against Canadians.

[3] Iran did not defend any of the actions in the U.S. or Canada. The plaintiffs submit that Iran was properly served and had notice of the U.S. and Canadian proceedings.

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[4] The U.S. judgments were recognized and enforced by this court in default proceedings. Iran now moves to stay or set aside these default judgments primarily on the ground that it is immune from the jurisdiction and enforcement of this court.

[5] The broad issue before the court is whether Iran is entitled to immunity from the jurisdiction of Canadian courts for its support of terrorism.

## **BACKGROUND**

### **U.S. Judgments**

[6] The five Ontario proceedings before the court on this motion involve the recognition and enforcement of twelve U.S. judgments against the Islamic Republic of Iran, its Ministry of Information and Security (“MOIS”), and the Islamic Revolutionary Guard Corps (“IRGC”). The IRGC is a military wing of the MOIS (referred to collectively as “Iran”). The U.S. judgments against Iran arose from eight different terrorist attacks summarized below.

[7] The U.S. courts assumed jurisdiction over the defendants in the plaintiffs’ actions under the “state sponsored terrorism” exception to the general grant of immunity provided to foreign states in the *Foreign Sovereign Immunities Act of 1976*<sup>1</sup> (“*FSIA*”). The state sponsored terrorism exception to the *FSIA* removes a foreign state’s immunity from a claim for damages arising out of personal injury or death caused by acts of “torture, extrajudicial killing, aircraft sabotage, [or] hostage-taking” for which the foreign state provided “material support or resources”.

[8] The *FSIA* imposes the following three additional requirements for jurisdiction:

1. The U.S. has designated the defendant country a “state sponsor of terrorism”;
2. The act complained of occurred outside of the foreign state; and
3. The claimant or victim is a U.S. national, member of the U.S. Armed Forces, or employee of the U.S. government.

[9] In each of the plaintiffs’ actions, the U.S. courts found that all of the requirements under the *FSIA* had been satisfied. The U.S. courts concluded that the defendants were liable to the plaintiffs for the terrorist attacks and awarded the plaintiffs significant damages.

### **Summary of Terrorist Attacks**

[10] The U.S. judgments are based upon the following eight terrorist attacks:

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<sup>1</sup> 28 U.S.C. §§ 1602.

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1. *Suicide bombing on Ben Yehuda Street in Jerusalem, Israel on September 4, 1997*

[11] Diana Campuzano, Avi Elishis and Greg Salzman ("Campuzano Plaintiffs") were at the Ben Yehuda Street pedestrian mall in Jerusalem on the afternoon of September 4, 1997 when suicide bombers detonated several bombs. The bombs killed five people and wounded nearly 200, including the Campuzano Plaintiffs. Hamas claimed responsibility for the bombing and was found by the U.S. court to have deliberately detonated the bombs that caused the Campuzano Plaintiffs' injuries.

[12] The U.S. court found that Iran provided Hamas with material support, including ongoing terrorist training and economic assistance, for the specific purpose of carrying out the bombings at the Ben Yehuda Street pedestrian mall.

[13] The U.S. court awarded damages against the defendants on September 10, 2003 ("Campuzano Judgment").

2. *Suicide bombing of the United States Embassy Annex in East Beirut, Lebanon on September 20, 1984*

[14] On September 20, 1984, a suicide bomber drove a truck packed with explosives through the gates of the United States Embassy Annex building in East Beirut. The explosion killed 14 people and wounded 35 others. Army Warrant Officer Kenneth V. Welch was killed and Richard Paul Brewer, a United States Marine Officer, was knocked unconscious and wounded during the explosion.

[15] Hezbollah carried out the terrorist attack. The U.S. court found that Iran provided Hezbollah with material support, including extensive military training and substantial financial support, for the bombing. The U.S. court also found that Iran's material support of Hezbollah constituted a proximate cause of the terrorist attack and that Hezbollah committed the attack at the direction of the MOIS.

[16] The U.S. court awarded damages against the defendants for Officer Welch's death on October 15, 2007 ("Welch Judgment") and for Officer Brewer's injuries on October 15, 2009 ("Brewer Judgment").

3. *Suicide bombing of the United States Marine Barracks in Beirut, Lebanon on October 23, 1983*

[17] On October 23, 1983, Hezbollah carried out a suicide bombing at the U.S. Marine barracks in Beirut by detonating a bomb in a truck being driven by an Iranian citizen. The attack killed 241 American servicemen. Petty Officer Robert Holland was killed instantly. Because of the nature of the blast, Petty Officer Holland's family had to wait nearly two weeks for his body to be identified.

[18] The U.S. court found that Iran provided material support, including financing, training and strategic planning to Hezbollah in respect of the bombing. The U.S. court also found that Iran's support for the bombing was a proximate cause of Petty Officer Holland's death and that

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the defendants had engaged in deliberate conduct to assist with the attack, which was aimed at destroying the Marine barracks.

[19] The U.S. court awarded damages against the defendants for Petty Officer Holland's death on February 1, 2006 ("Holland Judgment").

4. *Bombing of the Khobar Towers Residence in Dhahran, Saudi Arabia on June 25, 1996*

[20] On June 25, 1996, a terrorist attack was carried out at the Khobar Towers in Dhahran where a number of U.S. Air Force personnel lived. The attack involved an explosion of a large gasoline tanker truck outside the perimeter wall of the Khobar Towers complex. Nineteen United States Air Force personnel were killed and hundreds of others were injured in the explosion. Among the Air Force personnel killed were Master Sergeant Michael Heiser, Airman Cielito Valencia and Paul Blais.

[21] The U.S. court found that Iran provided material support, in the form of funding and planning, to Hezbollah for the purpose of carrying out the bombing. The court also found that the terrorist attack was approved by the Supreme Leader of Iran and that the Iranian government planned, funded and sponsored the bombing. The U.S. court found that without Iran's support, the terrorist attack would not have occurred.

[22] The U.S. court awarded damages against the defendants for Mr. Blais' death on September 29, 2006 ("Blais Judgment"), for Master Sergeant Heiser's death on September 30, 2009 ("Heiser Judgment") and for Airman Valencia's death on March 31, 2010 ("Valencia Judgment").

5. *Suicide bombing of the Israeli Embassy in Buenos Aires, Argentina on March 17, 1992*

[23] On March 17, 1992, a suicide bomber drove a pickup truck loaded with explosives into the front of the Israeli Embassy in Buenos Aires. The explosion destroyed the Embassy and the surrounding buildings. Twenty-nine people were killed and 242 were injured. A group called "Islamic Jihad", an alias used by Hezbollah, claimed responsibility for the bombing. David Ben-Rafael, the Deputy Chief of Mission at the Israeli Embassy, was killed in the suicide bombing.

[24] The U.S. court found that Iran provided material support to Hezbollah for the bombing. The support included the provision of material, financial and technical resources. The U.S. court also found that Iran knew of the bombing plot and provided the necessary support to allow Hezbollah to carry out the attack on the Embassy. The court also found that Hezbollah would not have succeeded in its attack on the Embassy without the money, training and technical expertise provided to it by Iran.

[25] The U.S. court awarded damages against the defendants for the death of David Ben-Rafael on February 25, 2008 ("Ben-Rafael Judgment").

6. *Hostage taking and killing of Colonel Higgins in Lebanon between 1988 and July 1989*

[26] Colonel William Higgins was an Officer in the United States Marine Corps. He was assigned to the United Nation's unarmed peacekeeping initiative in Lebanon. On February 17,

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1988, Colonel Higgins was kidnapped by the "Organization of the Oppressed on Earth". This is a name used by Hezbollah. Colonel Higgins was held hostage for 18 months under cruel and primitive conditions. When Hezbollah's demands were not met, the terrorists killed Colonel Higgins and released a gruesome videotape of his body hanging from the neck. The videotape was played worldwide by CNN.

[27] The U.S. court found that Iran had provided material support to Hezbollah, including the provision of funds, training, and equipment for the hostage-taking and killing of Colonel Higgins. The court also found that at the time Colonel Higgins was taken hostage, Iran "virtually directed the terms and conditions under which hostages would be held or released".

[28] The U.S. court awarded damages against the defendants for Colonel Higgins' death on September 21, 2000 ("Higgins Judgment").

*7. Bombing of the Frank Sinatra Cafeteria at Hebrew University in Jerusalem, Israel on July 31, 2002*

[29] In July 2002, Marla Bennett, a 24-year-old student from California, was enrolled at Hebrew University in Jerusalem. On July 31, 2002, she was eating her lunch in the Frank Sinatra Cafeteria at the University. A local Hamas agent had constructed a bomb that had been planted in the cafeteria. After a failed attempt to detonate the bomb the previous day, another Hamas agent triggered the bomb in the cafeteria on July 31, 2002, killing Marla Bennett.

[30] The U.S. court found that Iran had provided persistent and material financial and technical support to Hamas and knew that Hamas was engaged in acts of terrorism.

[31] The U.S. court awarded damages against the defendants for Marla Bennett's death on August 30, 2007 ("Bennett Judgment").

*8. Hostage taking and captivity of Joseph J. Cicippio, Sr. and Edward Tracy in September 1986 and October 1986*

[32] In 1986, Joseph Cicippio was employed as the Controller for the American University of Beirut in Lebanon. On September 12, 1986 he was abducted by members of Hezbollah. He was held captive for 1,908 days. Throughout his captivity he was tortured, and Hezbollah continually threatened to publicly execute him.

[33] Edward Tracy was also abducted by Hezbollah on October 21, 1986. He was held captive for almost five years. Throughout most of his time in captivity he was chained to Mr. Cicippio. He was beaten and tortured regularly while he was held hostage.

[34] The U.S. court found that Iran provided material support and resources to Hezbollah. The court also found that Iran caused Mr. Cicippio and Mr. Tracy to be abducted, tortured and held hostage.

[35] The U.S. court awarded damages against the defendants with respect to Mr. Tracy on August 21, 2003 ("Tracy Judgment") and with respect to Mr. Cicippio on October 7, 2005 ("Cicippio Judgment").

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### Canadian Legislation

[36] Foreign states generally enjoy immunity from suit in Canada pursuant to the *State Immunity Act*<sup>2</sup> (“*SIA*”).

[37] In 2012, Parliament enacted legislation that gives victims of terrorism the ability to sue foreign states that have materially contributed to terrorism and have sponsored terrorist attacks. Parliament also created a process that facilitates the enforcement of foreign judgments obtained by victims of terrorist attacks against foreign states that support terrorism.

[38] The amendments to the *SIA* came into force in March 2012. Section 6.1(1) provides that:

A foreign state that is set out on the list referred to in subsection (2) is not immune from the jurisdiction of a court in proceedings against it for its support of terrorism on or after January 1, 1985.

[39] Section 6.1(2) of the *SIA* authorizes the Governor in Council to establish a list of states that are reasonably believed to be supporters of terrorism. The Islamic Republic of Iran is on the list.

[40] Section 2.1 of the *SIA* sets out the circumstances in which a foreign state will be held to support terrorism. It provides as follows:

... a foreign state supports terrorism if it commits, for the benefit of or otherwise in relation to a listed entity as defined in section 83.01 (1) of the *Criminal Code*, an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

[41] These offences under the *Criminal Code* relate to the facilitation, support, and contribution to terrorist activities and the provision of support to terrorist groups that carry out such activities.

[42] The *Justice for Victims of Terrorism Act*<sup>3</sup> (“*JVTA*”) came into force at the same time as the amendments to the *SIA*. The preamble to the *JVTA* refers to the nature, purpose and national importance of this legislation as follows:

Whereas Canadians and people everywhere are entitled to live their lives in peace, freedom and security;

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<sup>2</sup> R.S.C. 1985, c. S-18.

<sup>3</sup> S.C. 2012, c. 1, s. 2.

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Whereas Parliament recognizes that terrorism is a matter of national concern that affects the security of the nation and considers it a priority to deter and prevent acts of terrorism against Canada and Canadians;

Whereas acts of terrorism threaten Canada's political institutions, the stability of the economy and the general welfare of the nation;

Whereas the challenge of eradicating terrorism, with its sophisticated and trans-border nature, requires enhanced international cooperation and a strengthening of Canada's capacity to suppress and incapacitate acts of terrorism;

...

Whereas hundreds of Canadians have been murdered or injured in terrorist attacks;

Whereas terrorism is dependent on financial and material support;

Whereas certain states that support terrorism should not benefit from state immunity in this regard;

And whereas Parliament considers that it is in the public interest to enable plaintiffs to bring lawsuits against terrorists and their supporters, which will have the effect of impairing the functioning of terrorist groups in order to deter and prevent acts of terrorism against Canada and Canadians;

...

[43] Section 4(1) of the *JVTA* gives victims of terrorism a cause of action against foreign states that support terrorism. It provides as follows:

4(1) Any person that has suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*, may, in any court of competent jurisdiction, bring an action to recover an amount equal to the loss or damage proved to have been suffered by the person and obtain any additional amount that the court may allow, from any of the following:

(a) any listed entity, or foreign state whose immunity is lifted under section 6.1 of the *State Immunity Act*, or other person that committed the act or omission that resulted in the loss or damage; or

(b) a foreign state whose immunity is lifted under section 6.1 of the *State Immunity Act*, or listed entity or other person that - for the benefit of or otherwise in relation to the listed entity referred to in paragraph (a) - committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

[44] Section 4(5) of the *JVTA*, the provision relied upon by the plaintiffs in this case, provides that Canadian courts must recognize an otherwise enforceable foreign judgment granted in favour of a person who has suffered a loss or damage referred to in s. 4(1) of the *JVTA*. If the judgment is against a foreign state, that state must be included on the list of foreign states established to be supporters of terrorism under s. 6.1(2) of the *SLA*.

#### Ontario Judgments

[45] Iran's motions concern the following five Ontario proceedings in which orders have been made for the recognition and enforcement of the 12 U.S. judgments ("Ontario Judgments"):

##### *Tracy (1 plaintiff) / Cicippio (14 plaintiffs) CV-14-10403*

[46] In March 2013, the Tracy and Cicippio plaintiffs jointly brought an application in chambers before the Nova Scotia Supreme Court to have their U.S. judgments recognized. On March 22, 2013, Robertson J. recognized their U.S. judgments and made an order pursuant to s. 4(5) of the *JVTA* ("Nova Scotia Order").

[47] The plaintiffs then brought an application without notice before the Ontario Superior Court of Justice for a recognition order pursuant to the *Reciprocal Enforcement of Judgments Act*<sup>4</sup> ("*REJA*"). On May 22, 2013, Chapnik J. ordered the registration of the Nova Scotia Order pursuant to the *REJA* ("Ontario Recognition Order").

[48] According to the plaintiffs, the Ontario Recognition Order was served upon the Islamic Republic of Iran through Canada's Department of Foreign Affairs on August 19, 2013.

[49] In January 2014, the Tracy and Cicippio plaintiffs moved without notice before the Ontario Superior Court to enforce the Ontario Recognition Order against certain property in Ontario alleged to belong to Iran.

[50] On March 17, 2014, D. M. Brown J. (as he then was) granted the motion. He declared that real property located at 2 Robinson Avenue, Ottawa, and 290 Sheppard Avenue West, Toronto, is beneficially owned by Iran and is exigible property available to satisfy the Ontario Recognition Order ("Iran's Exigible Real Property"). He made a similar order with respect to a bank account held at Scotiabank (Account Number 04451-18) and another bank account held at the Royal Bank of Canada (Account Number 864-949-3) in the name of the Embassy of the Islamic Republic of Iran ("Iran's Exigible Bank Accounts").

[51] Subsequently, on consent, the funds in Iran's Exigible Bank Accounts were paid into the plaintiffs' counsel's trust account to be held pending the outcome of these motions. Iran's Exigible Real Property has not been seized pending the outcome of these motions. However, it is subject to the *Mareva* injunction referred to below.

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<sup>4</sup> R.S.O. 1990, c. R.5.

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*Holland (2 plaintiffs) CV-14-497414; Marthaler (79 plaintiffs) CV-13-493290; Higgins (2 plaintiffs) CV-14-499468*

[52] The U.S. judgments obtained by the Holland plaintiffs, the Marthaler plaintiffs and the Higgins plaintiffs were the subject of three separate statements of claim issued to recognize and enforce them in Ontario. According to the plaintiffs, the three statements of claim were served upon the defendants in accordance with s. 9(2) of the *SLA*. Certificates were issued by the Canadian Department of Foreign Affairs, Trade and Development (“Department of Foreign Affairs”) confirming that service of the statements of claim was effected upon the defendants pursuant to s. 9(5) of the *SLA* on the following dates:

- December 8, 2013, in respect of the Marthaler statement of claim;
- March 18, 2014, in respect of the Holland statement of claim; and
- April 13, 2014, in respect of the Higgins statement of claim.

[53] The defendants did not defend these actions. They were noted in default.

[54] The U.S. judgments obtained by these plaintiffs were recognized by Corbett J. in three separate default judgments dated October 3, 2014.

*Bennett (4 plaintiffs) CV-13-10204*

[55] The Ontario action brought by the four Bennett plaintiffs is based upon a U.S. judgment dated August 30, 2007. The Bennett plaintiffs have requested that their summary judgment motion to recognize and enforce their U.S. judgment against the defendants be dealt with on this motion.

[56] On October 17, 2012, Allen J. granted the Bennett plaintiffs an *ex parte Mareva* injunction in respect of certain of Iran’s property in Canada. The *Mareva* injunction was continued and eventually varied by D. M. Brown J. to apply only to Iran’s “non-diplomatic properties” in Canada as specified in a letter dated September 4, 2013, from Canada’s Department of Foreign Affairs. Iran disputes that these are non-diplomatic assets.

[57] The assets that are subject to this *Mareva* injunction are Iran’s Exigible Real Property and Iran’s Exigible Bank Accounts (collectively “Iran’s Exigible Property”).

#### **Iran’s Motions**

[58] Iran’s motions seek to set aside, vacate or stay the following:

- Chapnik J.’s order dated May 22, 2013, with respect to the Tracy/Cicippio plaintiffs;
- D. M. Brown J.’s order dated March 17, 2014, with respect to the Tracy/Cicippio plaintiffs;

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- Corbett J.'s three default judgments dated October 3, 2014, with respect to the Holland/Marthaler/Higgins plaintiffs; and
- E. Macdonald J.'s order dated October 31, 2012, that continued Allen J.'s *Mareva* injunction with respect to the Bennett plaintiffs.

[59] The specific relief sought and the grounds of Iran's motions are set out in detail in Appendix "A".

#### **Attorney General of Canada's Intervention**

[60] The Attorney General of Canada ("Canada") was granted leave to intervene in these proceedings by Moore J. on April 12, 2013.

[61] After the suspension of diplomatic relations with Iran in September 2012, Canada recognized that certain Iranian property had diplomatic status in order to meet its obligation to "respect and protect" the premises of Iran's diplomatic mission in accordance with Article 45 of the *Vienna Convention*. On August 15, 2013, amended certificates were issued by the Department of Foreign Affairs on behalf of the Minister of Foreign Affairs ("Minister"). These amended certificates ("Minister's Certificates") were forwarded to the Ontario Superior Court of Justice and the Supreme Court of Nova Scotia pursuant to ss. 11(a) and 11(c) of the *Foreign Mission and International Organizations Act*<sup>5</sup> ("FMIOA"). The Minister's Certificates identified Iran's diplomatic property as consisting of a number of real properties located in Ottawa, Ontario and two bank accounts at the Royal Bank of Canada and Scotiabank. These bank accounts are different accounts than Iran's Exigible Bank Accounts.

[62] Iran's Exigible Property is not included in the Minister's Certificates.

#### **ISSUES**

[63] According to Iran, the major issues that I must decide are as follows:

1. Does the *SIA* remove Iran's immunity from the jurisdiction of Canadian courts?
2. Does the *JVTA* require Canadian courts to recognize the U.S. judgments against Iran?
3. Does the *SIA* remove Iran's immunity from enforcement or attachment of Iran's Exigible Property?
4. Is Iran's Exigible Property immune from enforcement under international law or the *FMIOA*?

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<sup>5</sup> S.C. 1991, c. 41.

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5. Did the *Mareva* injunction require the plaintiffs to establish that s. 11(3) of the *SIA* applied?
6. Did the plaintiffs make full and frank disclosure on the application for the *Mareva* injunction?
7. Did the plaintiffs act properly in obtaining the Nova Scotia Order and then registering it in Ontario under the *REJA*?

[64] The plaintiffs submit that I must also consider whether the defendants have satisfied the test for setting aside the Ontario Judgments and the Bennett plaintiffs seek summary judgment to enforce their U.S. judgment.

## ANALYSIS

### Issue #1 – Is Iran’s Immunity Removed by s. 6.1 of the *SIA*?

[65] Iran submits that its immunity is not lost simply because the plaintiffs have brought proceedings under the *JVTA* to enforce judgments for its support of terrorism. Iran maintains that the plaintiffs must first establish that Iran is listed under s. 6.1(2) of the *SIA* and that it has supported terrorism within the meaning of s. 2.1 of the *SIA* before they can succeed with their claims under the *JVTA*. Iran submits that the plaintiffs have failed to meet this two-part test primarily because they failed to prove the elements of any of the prerequisite offences under the *Criminal Code* referred to in s. 2.1 of the *SIA*. Iran argues that the default judgments should be set aside for this reason.

[66] The *JVTA* operates independently of the *SIA* in respect of the plaintiffs’ entitlement to commence proceedings against state sponsors of terrorism. Iran’s submission that the plaintiffs must satisfy a two-part test is inconsistent with the purpose of the *JVTA* and with a plain reading of the federal anti-terrorism legislation as a whole.

[67] The purpose of the *JVTA* is set out in its preamble. It is to “enable plaintiffs to bring lawsuits against terrorists and their supporters, which will have the effect of impairing the functioning of terrorist groups in order to deter and prevent acts of terrorism against Canada and Canadians”. Section 3 of the *JVTA* states as follows:

The purpose of this Act is to deter terrorism by establishing a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters.

[68] In enacting legislation, Parliament is presumed to be aware of the operation of other legislation. As a result, in enacting the *JVTA* to “enable plaintiffs to bring lawsuits” against state sponsors of terrorism, Parliament is presumed to have been aware of the general immunity afforded to states and the need to waive that immunity to enable plaintiffs to sue states that sponsor terrorism. The preamble to the *JVTA* specifically recognizes that “certain states that support terrorism should not benefit from state immunity.”

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[69] The *JVTA*'s preamble and its stated purpose set out in s. 3 make clear that the *JVTA* was intended to provide a free-standing procedural and substantive mechanism for a plaintiff's recovery of losses caused by the acts of state sponsors of terrorism.

[70] Further, a plain reading of s. 4(5) of the *JVTA* demonstrates that it operates independently of the *SIA* for the purposes of recognition and enforcement proceedings against state sponsors of terrorism. This section requires Canadian courts to recognize and enforce foreign judgments granted in favour of victims of terrorism supported by foreign states that are on the list referred to in s. 6.1(2) of the *SIA*.

[71] To have a foreign judgment recognized, a plaintiff must establish the following three requirements pursuant to s. 4(5) of the *JVTA*:

1. The foreign judgment must meet the criteria under Canadian law for being recognized in Canada;
2. The foreign judgment must be in favour of the plaintiff for loss or damage referred to in s. 4(1) of the *JVTA*; and
3. The state sponsor of terrorism must be on the list referred to in s. 6.1(2) of the *SIA*.

[72] The second and third requirements above would be redundant if Iran's submission is correct and the plaintiffs must establish that Iran has supported terrorism within the meaning of s. 2.1 of the *SIA* and also establish that Iran is listed under s. 6.1(2) of the *SIA*. This is not a reasonable interpretation of the section. I am satisfied that Parliament did not intend this when it enacted s. 4(5) of the *JVTA*. Accordingly, I am of the view that s. 4(5) of the *JVTA* does not require that a plaintiff establish that the foreign state supports terrorism within the meaning of s. 2.1 of the *SIA* if the foreign state is on the list referred to in s. 6.1(2) of the *SIA*.

[73] Iran's motions to set aside or stay the Ontario Judgments on this ground, therefore, fail.

**Issue # 2 – Does the *JVTA* Require the Court to Recognize the U.S. Judgments?**

[74] Iran submits that s. 4(5) of the *JVTA* requires the plaintiffs to satisfy each of the following criteria:

- (a) Did the plaintiffs suffer loss or damage referred to in s. 4(1) of the *JVTA*?
- (b) Do the U.S. judgments meet the criteria for being recognized in Canada under Canadian statute law and, in particular, Ontario's statutes of limitations?
- (c) Do the U.S. judgments meet the criteria for being recognized in Canada under Canadian common law with respect to the following questions:

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- Do they satisfy the principles in the Supreme Court of Canada's decision in *Beals v. Saldanha*<sup>6</sup>? Was there a real and substantial connection between the plaintiffs' causes of action and the U.S. courts' assumption of jurisdiction? Is there a real and substantial connection between the U.S. judgments and Iran's presence in Ontario?
- Were the U.S. judgments obtained fraudulently or by virtue of a denial of natural justice or are they contrary to Canadian public policy?

**(a) Did the plaintiffs suffer loss or damage referred to in s. 4(1) of the *JVTA*?**

*Was the Plaintiffs' loss suffered after January 1, 1985?*

[75] Iran submits that s. 4(1) of the *JVTA* requires that a plaintiff's loss or damage must have been suffered after January 1, 1985. According to the defendants the Welch, Holland and Brewer plaintiffs cannot recover under the *JVTA* because their losses arose as a result of terrorist attacks that occurred before this date.

[76] The January 1, 1985 date referred to in s. 4(1) of the *JVTA* relates to the date that the loss or damage was suffered by the victim of a terrorist attack, not the date when the terrorist attack occurred. The difference in the language used by Parliament in s. 4(1) of the *JVTA* and in s. 6.1(1) of the *SIA* supports this conclusion. The January 1, 1985 date in s. 6.1(1) of the *SIA* relates to the date of the terrorist attack because it specifically refers to the support of terrorism after this date. In contrast, s. 4(1) of the *JVTA* refers to "loss or damage [suffered] in or outside Canada on or after January 1, 1985 as a result of an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*." The date in s. 4(1) of the *JVTA*, therefore, refers to when the loss or damage was suffered by the plaintiff, not the date when the terrorist attack occurred. The U.S. judgments were all granted after January 1, 1985. In each case the U.S. court found that the plaintiffs were continuing to suffer harm at the time of the judgments as a result of the earlier terrorist attacks. I am, therefore, satisfied that the date requirement under s. 4(1) of the *JVTA* has been met by all of the plaintiffs.

*Offence under Part II.1 of the Criminal Code*

[77] Iran also submits that the plaintiffs have failed to establish the specific criminal offence or offences that the defendants committed under Part II.1 of the *Criminal Code* which, it argues is a requirement under s. 4(1) of the *JVTA*. Further, according to Iran, the plaintiffs are required to prove the criminal offence committed by the defendants beyond a reasonable doubt. Iran also submits that the plaintiffs cannot rely upon the findings of fact made by the U.S. courts to establish liability under the *JVTA* because the U.S. courts' findings of fact constitute inadmissible hearsay evidence.

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<sup>6</sup> 2003 SCC 72.

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[78] The cause of action under s. 4(1) of the *JVTA* must result from an act or omission that would have been punishable under Part II.1 of the *Criminal Code* if it had been committed in Canada. Part II.1 of the *Criminal Code* contains offences related to terrorism. Parliament did not intend to require plaintiffs to prove the commission of a specific criminal offence under this part of the *Criminal Code*. Rather, this requirement under s. 4(1) of the *JVTA* was meant to define the type of conduct that constitutes an act of terrorism under the *JVTA*.

[79] Iran's submission that the plaintiffs must establish a specific criminal offence is inconsistent with the purpose of the *JVTA*, which is to make it easier for "victims of terrorism to sue perpetrators of terrorism and their supporters." To require plaintiffs to prove the commission of a specific criminal offence would make it very difficult to establish a cause of action under s. 4(1) of the *JVTA*. I am satisfied that this is not what Parliament intended and that the reference in s. 4(1) of the *JVTA* to Part II.1 of the *Criminal Code* was a means of delineating the type of conduct contemplated by the section.

#### *Standard of Proof*

[80] Iran submits that a plaintiff must establish the commission of a specific criminal offence on a criminal standard of proof beyond a reasonable doubt. This would make it even more difficult for a plaintiff to succeed. Parliament could not have intended this. I am satisfied that the applicable standard of proof under s. 4(1) of the *JVTA* is the normal standard of proof in civil cases of proof on a balance of probabilities. The law in this respect was settled by Laskin C.J.C. in *Continental Ins. Co. v. Dalton Cartage Co.*<sup>7</sup> as follows:

Where there is an allegation of conduct that is morally blameworthy or that could have a criminal or penal aspect and the allegation is made in civil litigation, the relevant burden of proof remains proof on a balance of probabilities.

#### *U.S. Courts' Findings of Fact*

[81] The U.S. courts found that the plaintiffs' losses and damages arose as a result of Iran's material support for the terrorist attacks that caused the plaintiffs' losses and damages. Iran submits that the U.S. courts' findings of fact cannot be relied upon to establish liability under the *JVTA*.

[82] I am satisfied that this court must accept the U.S. courts' findings of fact and should not again adjudicate the merits of the plaintiffs' claims that the defendants' acts constituted material support for terrorism that caused their losses. The Supreme Court of Canada's decision in *Kuwait Airways Corp. v. Iraq*<sup>8</sup> supports this position. LeBel J. stated as follows at para. 23:

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<sup>7</sup> [1982] 1 S.C.R. 164 at page 169.

<sup>8</sup> [2010] S.C.J. No. 40.

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It [the domestic court] may not retry the case and therefore must not reassess the facts. Thus, the issue of state immunity and the exceptions to state immunity must be considered within the framework of the law currently applicable in Canada, including public international law, but on the basis of Steel J.'s [the foreign court judge] findings of fact.

[83] I find that the U.S. courts' findings of fact establish the defendants' material support for the terrorist attacks that caused the plaintiffs' losses and damages. Further, I find that the U.S. courts' findings of fact establish conduct that would be punishable under Part II.1 of the *Criminal Code*, particularly s. 83.03 which provides as follows:

Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

[84] In *United States v. Nadarajah*<sup>9</sup>, Pattillo J. found the essential elements of an offence under s. 83.03(b) of the *Criminal Code* to be the following at para. 58:

- a terrorist group exists;
- the accused collected or provided property or financial or related services to the terrorist group; and
- the accused knew such property or services would be used for facilitating or carrying out a terrorist activity.

[85] "Terrorist activity" is defined in s. 83.01(1) of the *Criminal Code* to include:

an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

...

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<sup>9</sup> (2009), 95 O.R. (3d) 514.

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(iv) the offences referred to in subsection 7(3.1) that implement the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

...

(ix) the offences referred to in subsection 7(3.72) that implement the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

[86] The offence referred to in s. 7(3.1) is the offence of hostage-taking contrary to s. 279.1 of the *Criminal Code*. The offence referred to in s. 7(3.72) is the offence of explosive devices contrary to s. 431.2 of the *Criminal Code*. The terrorist attacks upon which the U.S. judgments are based involve either hostage-taking or bombing. I find that they are, therefore, "terrorist activity" within the meaning of the *Criminal Code*.

[87] On the strength of the U.S. courts' findings of fact I find that the essential elements of an offence under s. 83.03(b) of the *Criminal Code*, as defined by Pattillo J. in *Nadarajah*,<sup>10</sup> have been made out for the following reasons:

- Hamas and Hezbollah are both existing terrorist groups;
- Iran provided significant financial support to both of these terrorist groups; and
- Iran knew that its financial support would be used to facilitate and carry out terrorist activity.

[88] Further, the plaintiffs' statements of claim plead that the damages they suffered resulted from the defendants' acts that would be punishable under Part II.1 of the *Criminal Code*. The defendants did not defend any of the plaintiffs' claims and were noted in default. As a result, the defendants are deemed to have admitted all of the allegations contained in the statements of claim including the allegations that their conduct would be punishable under Part II.1 of the *Criminal Code*.

[89] For these reasons, Iran's motions to set aside or stay the Ontario Judgments on these grounds fail.

**(b) Do the U.S. judgments meet the criteria for being recognized in Canada under Canadian statute law and, in particular, Ontario's statutes of limitations?**

[90] Iran submits that all of the Ontario proceedings are barred either by the former *Limitations Act*<sup>11</sup> ("*Old Limitations Act*") or by the current *Limitations Act*<sup>12</sup> ("*New Limitations Act*"). According to Iran, there is nothing in the *SIA* or *JVTA* that relieves the plaintiffs from the Ontario limitation periods that apply to the enforcement of the U.S. judgments.

<sup>10</sup> *Ibid.*

<sup>11</sup> R.S.O. 1990, c. L.15.

<sup>12</sup> 2002, S.O. 2002, c. 24, Sched. B.

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[91] Iran submits that the limitation period applicable to all of the U.S. judgments obtained prior to January 1, 2004, is six years from the date of the U.S. judgment pursuant to s. 45(1)(g) of the *Old Limitations Act*. Iran maintains that all of these actions are statute-barred and relies upon the Ontario Court of Appeal's decision in *Lax v. Lax*<sup>13</sup> in support of this position.

[92] Further, according to Iran, the two-year limitation period under the *New Limitations Act* applies to all of the post-January 1, 2004 U.S. judgments and in all cases the limitation period expired before the actions were commenced in Ontario. According to Iran, they are, therefore, statute-barred.

[93] It is a fundamental principle under Canadian law that a limitation period does not begin to run until a cause of action and a defendant who is capable of being sued exists. The Supreme Court of Canada held in *Peixiero v. Haberman*<sup>14</sup> that to preclude an action before a person is able to sue amounts to an injustice.

[94] The plaintiffs' claims to recognize and enforce the U.S. judgments are statutory claims under s. 4(5) of the *JVTA*. In *Peixiero*,<sup>15</sup> the Supreme Court of Canada considered a statutory cause of action and held that there can be no cause of action until the plaintiff's injury meets the statutory criteria. In this case it was only when the *JVTA* came into force and Iran's immunity was removed that the plaintiffs met the statutory criteria and their causes of action under s. 4(5) of the *JVTA* arose. I am of the view that the applicable limitation period began to run from the date when the *JVTA* came into force in 2012.

[95] Further, the application of the discoverability principle to the plaintiffs' claims also supports the conclusion that any limitation period governing the plaintiffs' claims in Ontario did not begin to run until the *JVTA* came into force. Under the discoverability principle (codified in ss. 4 and 5 of the *New Limitations Act*), a limitation period begins to run only when the plaintiff discovers or reasonably ought to have discovered his or her claim. "Claim" is defined in s. 1 of the *New Limitations Act* as a "claim to remedy an injury, loss or damage that occurred as a result of an act or omission."

[96] There was no statutory remedy in Ontario for the plaintiffs' losses arising from Iran's nonpayment of the U.S. judgments until s. 4(5) of the *JVTA* came into force and Iran was added to the list of state sponsors of terrorism referred to in s. 6.1(2) of the *SIA*. Prior to the *JVTA* coming into force and Iran being listed under the *SIA*, the defendants were immune from the Ontario court's jurisdiction. The plaintiffs did not have causes of action against the defendants until Iran's immunity was lifted and the *JVTA* came into force in 2012.

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<sup>13</sup> [2004] O.J. No. 1700.

<sup>14</sup> [1997] 3 S.C.R. 459 at para. 44.

<sup>15</sup> *Ibid.*

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[97] Finally, s. 4(3) of the *JVTA* further supports the position that any limitation period that applied to the plaintiffs' claims did not begin to run until the *JVTA* came into force. Section 4(3) of the *JVTA* provides, in part, as follows:

A limitation or prescription period in respect of an action brought under subsection (1) does not begin before the day on which this section comes into force and is suspended during any period in which the person that suffered the loss or damage

(a) is incapable of beginning the action because of any physical, mental or psychological condition; or

(b) is unable to ascertain the identity of the listed entity, person or foreign state referred to in paragraph (1)(a) or (b).

[98] Iran's suggestion that s. 4(3) of the *JVTA* applies only to an action under s. 4(1) and not to an action under s. 4(5) makes no sense and would produce an absurd result. For this reason, I do not accept Iran's submission in this regard.

[99] I find that the plaintiffs' claims under the *JVTA* arose, at the earliest, on September 7, 2012, when Iran was added to the list of state sponsors of terrorism referred to in s. 6.1(2) of the *SLA*. Therefore, even if the most restrictive limitation period is applied to the plaintiffs' claims, the two-year limitation period under the *New Limitations Act*, their claims are not statute-barred. All of the plaintiffs' actions to enforce the U.S. judgments were commenced within two years of September 7, 2012.

[100] For these reasons, I have concluded that the plaintiffs' actions are not statute-barred. Iran's motions to set aside or stay the Ontario Judgments on this ground fail.

**(c) Do the U.S. judgments meet the criteria for being recognized under Canadian common law?**

*The Test in Beals v. Saldanha*

[101] Iran submits that the plaintiffs did not meet the test for the recognition of a foreign judgment established by the Supreme Court of Canada in *Beals v. Saldanha*.<sup>16</sup> This is because the U.S. courts assumed jurisdiction on the basis of the *FSIA*, which was applied unilaterally and retroactively to the acts of third parties in foreign countries under circumstances in which the *FSIA* applied only to U.S. citizens. Iran submits that the *FSIA* contravened international law and the U.S. courts did not exercise a properly restrained jurisdiction. Iran maintains that for this reason the U.S. judgments should not be recognized in Canada.

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<sup>16</sup> *Supra.*

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[102] In *Beals v. Saldanha*,<sup>17</sup> Major J. stated as follows at para. 29:

In the absence of a different statutory approach, it is reasonable that a domestic court recognize and enforce a foreign judgment where the foreign court assumed jurisdiction on the same basis as the domestic court would ...

[103] The U.S. judgments were obtained pursuant to the *FSIA*. This American legislation gives U.S. courts jurisdiction over a foreign state for claims for personal injury or death resulting from a terrorist attack where the foreign state has been designated as a state sponsor of terrorism. The *JVTA* provides essentially the same basis for a Canadian court to assume jurisdiction over a foreign state in a claim for damages resulting from a terrorist attack in a foreign country. Accordingly, the U.S. courts assumed jurisdiction over the plaintiffs' claims on the same basis as a Canadian court would pursuant to a similar statutory scheme in Canada.

[104] For this reason, I have concluded that the plaintiffs have satisfied the test in *Beals v. Saldanha*<sup>18</sup> for the enforcement of their U.S. judgments in Canada.

#### *Canadian Public Policy*

[105] Iran submits that the U.S. courts' application of a "long arm, retroactive, statutory jurisdiction in favour only of U.S. citizens is contrary to international law, contravenes natural justice and the fundamental morality of the Canadian legal system". Iran's submission is based on the following:

1. The amounts awarded in the U.S. judgments are grossly excessive;
2. The U.S. judgments discriminate on the basis of national identity;
3. Higgins' claim has been assigned to a third party and is tainted by champerty and maintenance and by the fact that U.S. law did not authorize punitive damages; and
4. The U.S. judgments are statute-barred.

#### *1. Amounts of the U.S. Judgments*

[106] The U.S. courts awarded millions of dollars in damages to the plaintiffs, including substantial amounts for punitive damages. The Higgins and Brewer plaintiffs were each awarded \$300,000,000 in punitive damages. I agree with Iran's submission that the damages awarded by the U.S. courts greatly exceed what one would expect a Canadian court to award. Iran submits that the amounts awarded in the U.S. judgments are so large that they are arbitrary, and violate Canadian public policy.

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<sup>17</sup> *Supra.*

<sup>18</sup> *Supra.*

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[107] While Canadian law limits the amount that can be awarded for non-pecuniary damages for bodily injury, the fact that the U.S. judgments awarded damages greatly in excess of this amount does not offend any public or moral interest in Canada.

[108] The Supreme Court of Canada has expressly rejected the position that the amount of a foreign judgment alone renders the judgment contrary to Canadian public policy. In *Beals v. Saldanha*,<sup>19</sup> Major J. explained at para. 73 that a “grossly excessive award” by its amount alone, could not “shock the conscience of the reasonable Canadian”. The Supreme Court held that such an award is not the type of perceived injustice that would offend Canadian morality.

[109] While the amounts of the U.S. judgments are substantially greater than the amounts of damages that a Canadian court would likely award to the plaintiffs, I am satisfied that this, in itself, does not render them contrary to Canadian public policy or morality.

## 2. *Discrimination Based on National Identity*

[110] The *FSIA* requires a plaintiff to be a U.S. national, a member of the U.S. Armed Forces or an employee of the U.S. government to pursue a claim under this legislation. Iran submits that a Canadian cannot sue under the *FSIA* or enforce a Canadian judgment in a U.S. court that is based upon acts of terrorism. According to Iran, this constitutes discrimination on the basis of citizenship or national identity and is thereby contrary to “Canadian concepts of justice and inconsistent with international principles of comity”.

[111] I do not agree with Iran’s characterization of the *FSIA* as having a U.S. “citizenship” requirement. The *FSIA* requires that a plaintiff or a victim must be either a U.S. national or a member of the U.S. Armed Forces or government. This requirement only applies to either the plaintiff or the victim of a terrorist attack. It is not a U.S. citizenship requirement. A Canadian citizen could, therefore, pursue a claim pursuant to the *FSIA* on behalf of a family member who was either a U.S. national, an employee of the U.S. government or a member of the U.S. Armed Forces. A Canadian citizen could also pursue a claim under the *FSIA* if he or she was a member of the U.S. Armed Forces or an employee of the U.S. government.

[112] Iran’s submission also ignores the similarities between the *FSIA* and the *JVTA*. Section 4(2) of the *JVTA* provides as follows:

A court may hear and determine the action referred to in subsection (1) only if the action has a real and substantial connection to Canada or the plaintiff is a Canadian citizen or a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*.

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<sup>19</sup> *Supra*.

[113] The approach to standing under the *JVTA* is consistent with the approach to standing under the *FSIA*. It is not an asymmetrical legislative scheme as Iran suggests. I do not consider it contrary to Canadian public policy for a Canadian court to enforce a judgment obtained pursuant to the *FSIA*. Both statutes in Canada and the U.S. adopt a similar approach to standing for the enforcement of judgments obtained in respect of state-sponsored terrorism.

### 3. *Champerty and Maintenance and Punitive Damages*

[114] Iran submits that because the outstanding portion of the Higgins' Judgment for punitive damages has been assigned to the American Center for Justice Inc. it is "tainted by champerty and maintenance and contravenes Canadian public policy." Iran also submits that the punitive damages award was "probably given contrary to U.S. law at the time."

[115] O'Connor J.A. set out the following four general principles regarding champerty and maintenance in the Ontario Court of Appeal's decision in *McIntyre Estate v. Ontario (Attorney General)*<sup>20</sup>:

- Champerty is a subspecies of maintenance. Without maintenance, there can be no champerty.
- For there to be maintenance the person allegedly maintaining an action or proceeding must have an improper motive which motive may include, but is not limited to, officious inter-meddling or stirring up strife. There can be no maintenance if the alleged maintainer has a justifying motive or excuse.
- The type of conduct that has been found to constitute champerty and maintenance has evolved over time so as to keep in step with the fundamental aim of protecting the administration of justice from abuse.
- When the courts have had regard to statutes such as the *Champerty Act* and the *Statute Concerning Conspirators*, they have not interpreted those statutes as cutting down or restricting the elements that were otherwise considered necessary to establish champerty and maintenance at common law.

[116] There is no evidence before me to suggest that the assignment of the Higgins Judgment was made for an improper purpose or motive. The assignment does not contravene Canadian public policy because Canadian public policy accepts that judgments may be assigned.

[117] Further, Iran has not provided any basis for its suggestion that the U.S. courts lacked jurisdiction to award punitive damages. This aspect of the U.S. judgments is not contrary to Canadian public policy.

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<sup>20</sup> [2002] O.J. No. 3417 at para. 34.

























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[193] The Bennett Motion is brought pursuant to s. 4(5) of the *JVTA*. As I have already concluded, a plaintiff who wishes to have a foreign judgment recognized under s. 4(5) of the *JVTA* must establish the following:

1. The foreign judgment meets Canadian common law criteria for the recognition of foreign judgments;
2. The foreign judgment is in favour of a person who suffered the type of loss or damage referred to in s. 4(1) of the *JVTA*. The plaintiff must, therefore, have suffered loss or damage as a result of conduct prohibited by Part II.1 of the *Criminal Code*; and
3. The foreign state is set out on the list of state sponsors of terrorism pursuant to s. 6.1(2) of the *SIA*.

[194] With respect to the first criterion, an Ontario court will recognize a foreign judgment where that judgment is final and binding and where the foreign court properly assumed jurisdiction according to Canadian legal principles of jurisdiction.

[195] The Bennett Judgment meets both of these criteria. It is final and binding and the U.S. court properly assumed jurisdiction with respect to the claim pursuant to the *FSIA*.

[196] The Bennett Judgment, including the U.S. court's findings of fact, establish that Marla Bennett died as a result of a terrorist bombing carried out by Hamas, a terrorist organization actively supported by Iran. The Bennett plaintiffs, therefore, suffered loss and damage as a result of terrorist activity prohibited by Part II.1 of the *Criminal Code*.

[197] Finally, Iran is included on the list of state sponsors of terrorism created pursuant to s. 6.1(2) of the *SIA*.

[198] All three criteria under s. 4(5) of the *JVTA* have been established. I therefore recognize the Bennett Judgment in Ontario pursuant to s. 4(5) of the *JVTA*.

[199] As Iran's Exigible Property has already been determined by Brown J. to be available to satisfy the plaintiffs' judgments against Iran, I order that a writ of seizure and sale be issued in respect of Iran's Exigible Property in favour of the Bennett plaintiffs.

[200] The Bennett plaintiffs are entitled to their costs of this motion.

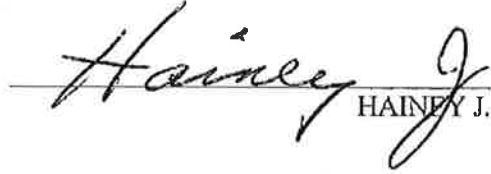
## CONCLUSION

[201] In conclusion, Iran's motions to set aside, vary or stay the Ontario Judgments are dismissed. The Bennett Motion for summary judgment is granted.

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**COSTS**

[202] I urge the parties to settle the issue of costs. If they are unable to do so they may schedule a 9:30 a.m. appointment before me to address this issue.

 HAINES J.

**Date:** June 9, 2016

## APPENDIX “A”

### *Tracy/Cicippio Plaintiffs (two motions)*

#### **First Motion**

##### *Relief Sought*

- Setting aside and vacating the order of Chapnik J., dated May 22, 2013;
- Setting aside and vacating all related writs of seizure and sale, including those dated April 4, 2014;

##### *Grounds*

- The order of Chapnik J., dated May 22, 2013, did not comply with the *REJA* in that:
  - the defendants were not given reasonable notice of the application;
  - the defendants were not personally served with process in the original action and did not appear or defend or otherwise submit to the jurisdiction of the original court;
  - the underlying judgments (two U.S. judgments) were not issued by a court in a reciprocating state;
  - the underlying judgments had been issued more than six years prior to the application and were time-barred;
  - the original court acted without jurisdiction;
  - the defendants neither carried on business nor were ordinarily resident within the jurisdiction of the original court and did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;
  - the judgment was in respect of a cause of action which, for reasons of public policy or for some other similar reason, should not have been entertained by the registering court; or
  - the defendants would have had a good defence if an action had been brought on the original judgment.
- In the alternative, the order should be set aside because notice was not given to the defendants within one month after registration.
- The *REJA* was misused to indirectly attempt to do what the plaintiffs could not do directly, i.e. register U.S. judgments in Ontario.
- There was no sufficient or admissible evidence before Chapnik J. to issue the order.

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- Chapnik J. relied on inadmissible evidence.
- No reasons were given for the order.
- There was a lack of full and fair disclosure to the court.
- If Chapnik J. relied on the *JVTA*, which came into force on September 7, 2012, such reliance was improper because,
  - the *SLA* is contrary to international law, including the customary and treaty rules on state, diplomatic and consular immunity from process;
  - the *SLA* violates the principles of fundamental justice because it is not a neutral law of general application but is discriminatory and directed to a particular country, namely, Iran;
  - the *JVTA*, being retroactive in nature, violates the common law principle against retroactive law and the principles of fundamental justice.
- The evidence before Chapnik J. did not satisfy the requirements of s. 4(5) of the *JVTA* in that,
  - the U.S. judgments did not meet the criteria under Canadian law for being recognized in Canada;
  - there was no proof that the plaintiffs had suffered loss or damage as a result of an act that would have been punishable under Part II.1 of the *Criminal Code* as required by s. 4 of the *JVTA*;
  - the plaintiffs' claims had no real and substantial connection to Canada.
- The proceedings are an abuse of process.

## **Second Motion**

### *Relief Sought*

- Setting aside and vacating the order of D. M. Brown J., dated March 17, 2014;
- Setting aside and vacating all related writs of seizure and sale, including those dated April 4, 2014 as they apply to the two bank accounts and to properties described in the order of D. M. Brown J.

### *Grounds*

- Notice of the motion was not given to the defendants.
- The court should not have relied upon evidence filed in other actions or, in the alternative, should not have done so without notice to Iran.










This is Exhibit "D" referred to in the Affidavit of John J. Adair  
sworn May 17, 2018



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*Commissioner for Taking Affidavits (or as may be)*























Nova Scotia and Royal Bank of Canada accounts were listed in the non-diplomatic section of the list. Reference to the 290 Sheppard Avenue property was not found in either list. The Department of Foreign Affairs also advised in the letter that a list of Iranian properties would be included on its website in the near future.

[27] In January 2016, the appellants brought a motion before the motion judge seeking to set aside, vary or stay each of the following: (1) the Recognition Order and all related writs of seizure and sale; (2) the order of D.M. Brown J., finding that the Iranian Assets were subject to execution, and any writs of seizure and sale flowing from the order; (3) the judgments of Corbett J. enforcing the U.S. judgments in the Holland, Marthaler and American Center for Civil Justice claims; and (4) the order of E. Macdonald J. continuing the *Mareva* injunction in relation to the Bennett respondents' claims.

### **C. DECISION BELOW**

[28] The motion judge dismissed the appellants' motions. He also heard and granted a motion for summary judgment brought by the Bennett respondents for recognition of their American judgment. While the details of his reasons will be considered in the analysis section of my reasons below, in order to frame the issues on the appeal, I will touch upon the motion judge's principal holdings in this section.















[45] Similarly, the presumption of compliance with international law is rebutted where Parliament expresses a clear intention to default on an international obligation: *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, at para. 53.

[46] A plain reading of the *JVTA*, together with the contemporaneous amendments to the *SIA*, establishes that Iran's immunity from civil proceedings related to terrorism was lifted in September 2012, exposing them to liability for acts of terrorism they supported that occurred on or after January 1, 1985. Thus, the presumption of compliance with international law and against retroactivity has been rebutted, to this extent, by the clear wording of the statutes.

[47] The question that remains is whether Iran's state immunity is lifted for terrorist activities that took place prior to January 1, 1985. The issue comes down to this question: can an Ontario court recognize a foreign judgment against a state sponsor of terrorism where the terrorist attacks in question occurred before January 1, 1985 but the resulting harm continued to be suffered after that date? Iran says no, the respondents say yes. This question matters because the U.S. judgments in favour of two claimants in the Marthaler group of respondents, Welch and Brewer, and the respondent Holland arose out of Iranian-supported terrorist attacks that occurred before January 1, 1985, but the resulting harm continued to be suffered after that date.

[48] Iran submits that the trial judge erred when he decided that judgments based on terrorist attacks prior to 1985 could be recognized by a Canadian court

if the damages continued to be suffered after January 1, 1985. It argues that, to the extent that s. 6.1(1) of the *S/A* lifts immunity at all, it is only for terrorist activity that took place after January 1, 1985.

[49] The respondents rely on a purposive reading of s. 4(5) of the *JVTA*, which was intended to make it easier to recognize and enforce judgments obtained abroad similar to those that could be obtained under s. 4(1) of the *JVTA*. Thus, the respondents argue that the statute's words should be interpreted broadly, with a view to promoting access to justice for victims of terrorism. Therefore, they submit that the *JVTA* should be read as a standalone basis for stripping state immunity.

[50] In my view, the motion judge erred in law in his interpretation of the *JVTA* and the *S/A* regarding this issue. A careful review of s. 4(5) of the *JVTA* makes clear that Iran's state immunity is lifted only to the extent permitted by the *S/A*.

[51] To understand the temporal limits of s. 4(5) of the *JVTA*, it is first necessary to take a step back and consider the law of state immunity in Canada. Subsection 3(1) of the *S/A* demonstrates Canada's acceptance of the well-recognized principle of customary international law that states are immune from the jurisdiction of other states; it provides: "Except as provided by this Act, a foreign state is immune from the jurisdiction of any court in Canada."

[52] The rule in customary international law that sovereign states enjoy absolute immunity from the jurisdiction of other states has evolved over time,

resulting in some exceptions to this general rule recognized at common law: *Kuwait Airways Corp. v. Iraq*, 2010 SCC 40, [2010] 2 S.C.R. 571, at para. 13. A number of exceptions have already been codified by Parliament in ss. 4-8 of the *SIA*. Today, it is accepted that these statutory exceptions are exhaustive and that there are no further exceptions at common law: *Steen v. Islamic Republic of Iran*, 2013 ONCA 30, 114 O.R. (3d) 206, at paras. 24-28. Bill C-10, *Safe Streets and Communities Act*, S.C. 2012, c. 1, the bill that enacted the *JVTA* and amended the *SIA* in 2012, simply added a new exception for state support of terrorism.

[53] The Legislative Summary of Bill C-10 reflects Parliament's awareness of its obligation under international law to respect state sovereignty, but it also evidences a clear intention to carve out a new exception to state immunity for the purposes of (i) deterring terrorism and (ii) making it easier for plaintiffs to make claims against states that support terrorism and that have assets in Canada that could assist in satisfying a judgment: see Canada, Parliament, *Bill C-10: An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts*, by Laura Barnett, Tanya Dupuis, Cynthia Kirkby, Robin MacKay, Julia Nichol and Julie B  chard, Legislative Summary 41-1-C10-E (revised February 17, 2012). The authors of the summary write at p. 14:

Although the JVTA itself does not explicitly state that only foreign states on the list established by the Cabinet under the new section 6.1(2) of the *State Immunity Act* may be sued using the cause of action described in section 4(1) of the JVTA, the practical effect of the amendments introduced by the *State Immunity Act* is that only listed foreign states may be sued. This is because the amendments to the *State Immunity Act* create an exception to state immunity only for listed states that support terrorism.

[54] As the motion judge recognized, related legislation forms part of the legal context in which an act of Parliament is passed: see *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 59. Parliament must be taken to have been aware of the general immunity afforded to states and the need to eliminate that immunity to enable plaintiffs to sue states that sponsor terrorism. I would add that where there are two possible interpretations of two different statutes that relate to the same subject matter, the interpretation that achieves maximum harmony between the statutes should be preferred: see *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at para. 121.

[55] The purpose of the amendments to the *SIA* in Bill C-10 was to permit actions under the new *JVTA*. Parliament recognized that the *JVTA* would be ineffective if it did not carve out an exception to the general rule in the *SIA*. Otherwise, the two statutes would be in the following conflict: the *JVTA* would purport to create a new cause of action, but immunity would not have been lifted under the *SIA*, and s. 3(1) of the *SIA* would hold that Iran was immune from prosecution under the *JVTA*. For this reason, Parliament amended the *SIA* at the

same time that it enacted the *JVTA*; the two statutes were intended to work in symmetry to permit the effective operation of the *JVTA*.

[56] It cannot be the case that Parliament amended the *SIA* to permit a cause of action under the *JVTA* but chose to have a more expansive retrospective application in the *JVTA* than in the *SIA*. Such an interpretation would be inconsistent with the purpose of the amendments to the *SIA*, which permit actions under the *JVTA* but only to the extent that state immunity is lifted by the *SIA*. That interpretation would regard state immunity as having been lifted for a broader array of conduct under the *JVTA* than is permissible under the *SIA*. Immunity for the pre-1985 conduct for which damages would be available under the *JVTA* would not be lifted under the *SIA*, and there would be a conflict between the two statutes.

[57] The respondents submit that Iran's interpretation is inconsistent with opening words of s. 4(1) of the *JVTA* that the direct cause of action is available to any person who has "suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission ..." While the wording of s. 4(1) is regrettably not clear, the words relied upon must be read in the context of the two interrelated statutes.

[58] To the extent that it could be argued that there is some ambiguity, this is an appropriate place to employ the presumption of compliance with international law and the presumption against retroactivity. The first few words of s. 4(1) of the

*JVTA*, which suggest an ability to sue on terrorist actions carried out prior to January 1, 1985, do not constitute a sufficiently clear intention from Parliament to defeat either presumption.

**(b) Proof of State Sponsorship**

[59] Iran submits that the motion judge erred when he refused to require the respondents to prove that the “state supporter of terrorism” exception applied so as to lift state immunity. Iran says that a claimant must prove not only that it was listed under the *S/A* s. 6.1(2) but also that it supported terrorism.

[60] This submission is contrary to the plain language of s. 4(5) of the *JVTA*, which provides that a court “must recognize” a judgment of a foreign court where: (i) the criteria under Canadian law for recognition in Canada are met; (ii) the judgment is in favour of a person who has suffered loss or damage referred to in s. 4(1); and (iii) if the judgment is against a foreign state, the state is set out in the list of state supporters of terrorism referred to in s. 6.1(2) of the *S/A*. As the motion judge recognized, the second and third requirements would be redundant if the judgment creditor also had to prove that the debtor state supported terrorism.

[61] Iran’s argument would also run counter to the purpose of the *JVTA*, being the facilitation of claims against state sponsors of terrorism. Parliament intended that in order to facilitate civil claims all that need be established was that the sovereign state be listed under the *S/A*. As the preamble to the *JVTA* affirms

“certain states that support terrorism should not benefit from state immunity in this regard.”

**(c) Proof of Criminal Conduct**

[62] Iran submits that the respondents had to prove beyond a reasonable doubt specific criminal acts committed by the appellants under Part II.1 of the *Criminal Code* and that the appellants cannot rely on the findings of fact made by the U.S. courts to establish liability under the *JVTA*.

[63] I disagree. I accept the analysis of the motion judge on this point. Parliament did not intend to require plaintiffs to prove the commission of a specific criminal offence under this part of the *Criminal Code*. Rather, the requirement under s. 4(1)(b) of the *JVTA* was meant to define the type of conduct that constitutes an act of terrorism under the *JVTA*.

[64] Again, the Legislative Summary of Bill C-10 is of some assistance in understanding Parliament’s intention in referring to the terrorism provisions of the *Criminal Code* in s. 4(1)(b) of the *JVTA*. In discussing arguments concerning the constitutionality of the *JVTA*, the authors of the summary note at p. 6:

Alternatively, it might be possible to view the *JVTA* as functionally connected to Parliament’s power to legislate in relation to criminal law (section 91(27) of the *Constitution Act, 1867*) because the civil remedy is available only if plaintiffs can show that they have suffered loss or damage as a result of “an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*” (clause 4 of the *JVTA*). Whether the courts would

uphold the statute on this basis is, however, open to question, given that it does not appear that securing a criminal conviction under Part II.1 of the Code is a precondition to initiating a civil action under the JVTA. [Emphasis added.]

[65] Reading in a criminal standard of proof into an element of the cause of action under the *JVTA* defeats the clear legislative purpose of the statute. It would take tremendous financial resources, perhaps beyond any potential financial recovery, to prove a state's material support of a terrorist organization, and a connection to a particular terrorist act, beyond a reasonable doubt. Moreover, imposing a criminal standard to an element of the cause of action would be inconsistent with Canadian jurisprudence that, in civil cases, there is only one standard of proof – the standard of “balance of probabilities”: *F.H. v. McDougall*, 2008 SCC 53, [2008] 2 S.C.R. 41, at para. 40.

[66] The role of a court in considering whether the criteria under s. 4(5) of the *JVTA* are met does not extend to reconsidering or reviewing the factual findings underlying the foreign judgments: *Kuwait Airways*, at para. 23; and *Chevron*, at para. 44. Instead, the court's function in the respondents' actions was to consider whether the requirements of s. 4(5) of the *JVTA* were met within the framework of the applicable Canadian law on the basis of the findings of fact made by the American courts. It is also appropriate to take into account Iran's deemed admissions, having been noted in default and therefore deemed to admit the allegations in the statements of claim. Any argument that the court must look

behind the foreign courts' factual findings and conduct its own inquiry is contrary to the plain language of the *JVTA* and the jurisprudence on the enforcement of foreign judgements.

#### **(4) Recognition and Enforcement of the U.S. Judgments**

##### **1. Iran's Position**

[67] Iran submits that Parliament did not leave the question of recognition to be determined solely by common law criteria set out in cases such as *Beals v. Saldanha*, 2003 SCC 72, [2003] 2 S.C.R. 416. Instead, Parliament imposed additional statutory criteria that must be satisfied if a Canadian court is to recognize these types of foreign judgments. Subsection 4(5) of the *JVTA* provides:

A court of competent jurisdiction must recognize a judgment of a foreign court that, in addition to meeting the criteria under Canadian law for being recognized in Canada, is in favour of a person that has suffered loss or damage referred to in subsection (1). However, if the judgment is against a foreign state, that state must be set out on the list referred to in subsection 6.1(2) of the State Immunity Act for the judgment to be recognized. [Emphasis added.]

[68] Iran submits that the motion judge erred when he failed to consider whether all the criteria in s. 4(5) of the *JVTA* for recognition of this type of foreign judgment had been satisfied. Accordingly, in this section of my reasons I will examine each criterion to determine if the motion judge erred in his analysis.

**(d) Proof of Loss under the JVTA**

[69] Iran raises a series of arguments to the effect that the motion judge erred in finding that there was a sufficient evidentiary basis to conclude that the respondents had satisfied the requirement of s. 4(5) of the JVTA that they have “suffered loss or damage referred to in subsection (1)”. In this case, the respondents rely on s. 4(1) (b). I will deal with each of these arguments below.

[70] First, according to Iran, the Governor in Council listed it under the *SIA* on the basis that the “politicians” reasonably believed it to be a supporter of terrorism. Iran submits that court proceedings require more than a reasonable belief: claimants must prove in court that Iran supported terrorism and that its conduct, if carried out in Canada, would have constituted a criminal offence.

[71] This submission has no merit. The inclusion of the reference to terrorism offences in s. 4(1)(b) of the *JVTA* could not have been intended to require proof of the actual commission of an offence – rather, as noted above, it references conduct within the scope of Part II.1 to establish the type of conduct that triggers the direct cause of action created by the *JVTA*. Requiring a judgment creditor seeking enforcement under s. 4(5) of the *JVTA* to prove that the debtor’s acts actually contravened the *Criminal Code* would be inconsistent with the purpose of the *JVTA* and the overall purpose of a recognition and enforcement action. It would also undermine Parliament’s intention that the *JVTA* be retroactive; if Iran’s interpretation were accepted, there would be no recovery under the *JVTA*

for loss or damage suffered from a state-sponsored terrorist act that occurred prior to December 24, 2001, the date when the relevant provisions in Part II.1 of the *Criminal Code* provisions came into effect.

[72] Second, Iran submits that the motion judge erred when he failed to consider that s. 83.03 of the *Criminal Code* requires that Iran provide property or financial or other related services knowing they will be used by or will benefit a “terrorist group” as defined in s. 83.01(1). “Terrorist group” includes a “listed entity”. Hamas and Hezbollah were only listed in 2002 as terrorist entities under the *Order Accepting the Recommendation of the Minister of Public Safety and Emergency Preparedness Concerning the Two-Year Review of the List of Entities*, S.I./2012-103. All of the events underlying the U.S. judgments obtained by the respondents occurred prior to the addition of Hezbollah and Hamas to the list in 2002. It is submitted by Iran that the respondents cannot rely on a list that was created years after the relevant events to establish that Hamas or Hezbollah were terrorist groups within the meaning of (the subsequently enacted) s. 83.03 of the *Criminal Code* at the time of the attacks.

[73] I would not give effect to this argument. It is true that Hamas and Hezbollah were only listed as terrorist groups in 2002, but the *JVTA* does not require that the act or omission be punishable at the time it was committed. What is relevant is whether it would be punishable today.

[74] Third, Iran submits that the motion judge erred with respect to the *actus reus* because a finding by a U.S. court under the *FSIA* that a U.S. citizen suffered personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage or hostage taking, or the provision of material support or resources for such an act by a foreign state (even if admissible in Canada), does not provide an evidentiary basis for concluding that Iran committed or would have committed an offence under s. 83.03 of Canada's *Criminal Code*.

[75] I disagree. The motion judge properly found, on the basis of the U.S. courts' findings of fact and the appellants' deemed admissions that the respondents' losses resulted from acts on the part of Iran that would be punishable under the *Criminal Code*. The motion judge was entitled to rely on the American courts' findings and the deemed admissions. He found all three elements of the offence under s. 83.03(b) were met: Hamas and Hezbollah are both terrorist groups; Iran provided them with significant financial support; and Iran knew that its support would be used to facilitate and carry out terrorist activity.

[76] Fourth, the motion judge found that the U.S. judges' reasons established that "significant financial support" was provided to Hamas or Hezbollah. Iran submits that this is not the same thing as providing "financial services" as required by s. 83.03. I reject this submission. The criminal offence created by s. 83.03 of providing a person with "financial services" with knowledge that they will

be used to carry out terrorist activities is capable of capturing a broad range of conduct. I see no reason to interfere with the motion judge's conclusion that the provision of significant financial support to terrorist organizations amounts to providing financial services under s. 83.03.

**(e) Limitation Defences**

[77] Iran submits the motion judge erred when he found that the American judgments are "statutory claims" under s. 4(5) of the *JVTA* and their recognition is not barred by any limitation period. Its argument is as follows. The subject claims were common law claims for recognition and they could always have been brought even in the absence of the *JVTA*, subject to being stayed by virtue of state immunity. Moreover, these proceedings are barred either by the basic two-year limitation period under s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, or the former six-year limitation period in s. 45(1)(g) of the predecessor *Limitations Act*, R.S.O. 1990, c. L.15, each of which apply to the recognition of foreign judgments: *Independence Plaza 1 Associates, L.L.C v. Figliolini*, 2017 ONCA 44; and *Lax v. Lax* (2004), 70 O.R. (3d) 520 (C.A.). Iran says that nothing in the *JVTA* or the *SIA* relieves the respondents of the limitation periods that apply to the enforcement of foreign judgments. In particular, the suspension of limitation periods in s. 4(3) of the *JVTA* does not apply to proceedings under s. 4(5). According to Iran, Parliament turned its mind to the

possibility of statute-barred claims and specifically provided an extension of time for claims under s. 4(1) but not for those under 4(5).

[78] I see no error in the motion judge's conclusion that the respondents' claims were not barred by the current *Limitations Act, 2002* or its predecessor because they were not discovered until the *JVTA* came into force in 2012. Under s. 5(1)(iv) of the current act, the respondents' claims would not have been discovered until, "having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it." Prior to September 7, 2012, Iran was not added to the list of state sponsors of terrorism in the *SIA* and a proceeding under s. 4(5) of the *JVTA* was not possible. Proceedings to enforce the U.S judgments were not otherwise possible at common law because Iran was immune from civil suit in Canada: *Steen*, at paras. 24-28. Thus, even if the proceedings could always have been commenced before September 7, 2012, subject to being stayed by virtue of state immunity, it was not legally appropriate for the respondents to commence them until that date and, as the motion judge concluded, they were not discovered until that date.

[79] The purpose of the appropriateness criterion in s. 5(1)(iv) of the *Limitations Act, 2002* is to deter needless litigation: *Presidential MSH Corp. v. Marr, Foster & Co. LLP*, 2017 ONCA 325, at para. 17. Given that a stay of the respondents' proceedings on the U.S. judgments would be inevitable if they were brought at common law, it would have been fruitless to commence them before 2012 when

the *JVTA* and *SIA* carved out an exception to Iran's immunity. They were therefore not appropriate or discoverable before 2012.

[80] The same considerations apply to the 1990 *Limitations Act*, as the six-year limitation period applicable to proceedings on a foreign judgment did not begin to run under s. 45(1)(g) of that act until "the cause of action arose." Here the respondents' claims on the U.S. judgments did not "arise" within the meaning of that provision until September 7, 2012 when Iran was added to the list in the *SIA*.

[81] I do not accept Iran's submission that the enactment of s. 4(1) of the *JVTA* and addition of Iran to the list in the *SIA* in 2012 was only a procedural modification to the respondents' pre-existing claim for recognition and enforcement of the U.S. judgments. In my view, the respondents' claims only came into substantive existence in 2012. In their applications for recognition and enforcement of the U.S. judgments, they all specifically relied on s. 4(5) of the *JVTA*, which did not exist before 2012. They did not rely on a pre-existing common law cause of action that was somehow procedurally modified in 2012.

[82] In any event, as this court held in *Steen*, there are no exceptions to state immunity at common law. The respondents' claims were only made possible by the *JVTA* and *SIA*. The inevitability of a stay on a claim brought outside these statutes leads me to conclude that these statutes are more than merely procedural considerations and are in actuality the true sources of the respondents' claims for recognition and enforcement.

[83] I conclude that the respondents' cause of action under the *JVTA* was discoverable, or arose, only after the *JVTA* was enacted and Iran was added to the list in the *SIA* at the earliest. All of the respondents' claims were commenced well within the ensuing two-year and six-year limitation periods.

**(f) Jurisdiction**

[84] Iran submits that America had no connection to the events or the parties other than that the respondents were U.S. nationals and the *FSIA* purported to establish domestic statutory jurisdiction. It argues that the motion judge erred when he failed to consider that the American courts' assumption of jurisdiction was based entirely on an American statute being applied unilaterally and retroactively to acts by third parties in other countries. It further argues that America did not exercise a "properly restrained" jurisdiction. In the absence of any significant factor connecting Iran to the American or Canadian courts, Iran submits that it could not have expected that the Canadian courts would enforce American judgments obtained in breach of international law.

[85] I do not accept this argument. A foreign court will be found to have properly assumed jurisdiction where it had a real and substantial connection with the litigants or with the subject matter in dispute: *Chevron*, at para. 21.

[86] The American courts properly assumed jurisdiction over the respondents' actions against the appellants because they were commenced pursuant to an American statute that authorized them. Unless the *FSIA* offends Canadian public

policy, which will be discussed below, as a matter of comity it was correct for the motion judge not to look behind the American statutory authority. Moreover, as the motion judge recognized, the *FSIA* and the *JVTA* provide essentially the same basis for a court to assume jurisdiction over a foreign state in a claim for damages resulting from a terrorist attack in a foreign country.

**(g) Canadian Public Policy**

[87] Once it is determined that a foreign court properly assumed jurisdiction, a foreign judgment is *prima facie* enforceable. The burden then shifts to the foreign defendant to establish the availability of a defence to the recognition of a foreign judgment: *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, at para. 39.

[88] Iran asserts as a defence that the judgments were contrary to Canadian public policy, advancing the following five arguments:

- (i) The American courts' application of a "long arm" retroactive statutory jurisdiction contravened the fundamental morality of the Canadian legal system.
- (ii) The American legislation discriminates on the basis of national identity and offends the principle of comity in that it fails to provide any mechanism to recognize and enforce Canadian judgments arising out of the *JVTA*.
- (iii) The American judgments contravene public international law, as they all predate the 2012 amendments to the *S/A* and the enactment of the *JVTA*.
- (iv) The American judgments are statute-barred.
- (v) The American judgments are grossly excessive, as the Canadian cap on non-pecuniary damages, adjusted for inflation as of June 2016, is \$367,806.00.

[89] I would not give effect to any of these arguments. Before considering them, I note that the defence of public policy has a high threshold. To be declared unenforceable on the ground of public policy, enforcement of the judgment must violate “conceptions of essential justice and morality”: *Beals*, at para. 222, citing *Boardwalk Regency Corp. v. Maalouf* (1992), 88 D.L.R. (4th) 612 (Ont. C.A.), at p. 615.

[90] Arguments three and four can be dealt with summarily, as they have been considered above. The recognition of the foreign judgments under the *JVTA* may violate international law, but Parliament has expressly authorized their recognition. In addition, for the reasons set forth above, the judgments are not time-barred.

[91] With respect to the first argument, I am not satisfied that the American statute offends Canadian legal morality. As proof, I need only point to the *JVTA*, which is substantially similar to the *FSIA*. It is difficult to see how American legislation that Parliament has chosen to emulate could be considered morally offensive to our legal system.

[92] The terrorist attacks out of which the respondents’ U.S. judgements arise are repugnant to civilized society. The fact that a foreign government would engage in the sponsorship of such atrocities is chilling. Both the *JVTA* and the *FSIA* are designed to use the countries’ respective civil justice systems to fight

the state sponsorship of terrorism. There is nothing offensive about using peaceful legislative means to combat terrorism.

[93] Regarding Iran's second argument, the inclusion of a requirement that the plaintiff or the victim in the proceedings under the "state-sponsored terrorism" exception to the *FSIA* be a U.S. national is not discriminatory and, in any event, does not offend Canadian public policy. The *FSIA* does not use the term "citizen" but specifically uses the term "national," which the U.S. Code defines as someone who, though not a citizen of America, owes permanent allegiance to America. In addition, the requirement is broader than Iran describes – it is met if the plaintiff or victim is an American national, a member of the American armed forces or an employee of the American government. Iran's position also ignores the similarities between the *FSIA* and the *JVTA*. The *JVTA* allows a court to hear a matter based solely on the plaintiff's Canadian citizenship or residency: see s. 4(2).

[94] The fact that there is no explicit mechanism in the *FSIA* for the recognition of foreign judgments is not determinative. Iran has filed an expert opinion from an American law firm to the effect that a judgment granted under the *JVTA* would not be enforceable in the United States. I note that this issue has not been determined by the American courts. Assuming, without deciding, that the opinion is correct, this fact would not, in my view, amount to a violation of Canadian

public policy. Such a lack of reciprocity can hardly be considered to violate conceptions essential to Canadian justice and morality.

[95] With respect to Iran's fifth argument, the quantum of the judgments, and specifically the American courts' application of punitive damages law, cannot ground a defence of public policy. The Supreme Court of Canada expressly rejected the position that the amount of a foreign judgment alone could render its recognition and enforcement contrary to Canadian public policy in *Beals*, at para. 77.

[96] Recognizing and enforcing large damage awards against Iran is consistent with the public policy animating the *JVTA* to "enable plaintiffs to bring lawsuits against terrorist and their supporters." The fact that the American courts award damages in excess of the cap for non-pecuniary damages recognized in Canada does not offend any basic conception of morality. To the contrary, awarding damages that may have a deterrent effect is a sensible and measured response to the state sponsorship of terrorism and is entirely consistent with Canadian legal morals.<sup>2</sup>

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<sup>2</sup> I note that Iran appealed the motion judge's order granting summary judgment on the Bennett respondents' claim for recognition under s. 4(5). Iran did not pursue this aspect of its appeal extensively in its submissions before this court. To be clear, based on the foregoing analysis, I am satisfied that the conditions for recognition of the U.S. judgment held by the Bennett respondents under s. 4(5) of the *JVTA* had been met. I would therefore dismiss this aspect of Iran's appeal.

**(5) State Immunity from Execution of the U.S. Judgments in Canada**

[97] Iran submits that the jurisdictional immunity in s. 3 of the *S/A* and the immunity from attachment and execution in s. 12 are distinct immunities. It argues that immunity from the jurisdiction of a court does not encompass immunity from execution. Iran submits that even after a court has decided that Iran does not enjoy immunity from adjudication and has awarded or recognized a money judgment, it must still satisfy itself that the conditions for lifting execution immunity have been satisfied.

[98] In my view, Iran does not enjoy state immunity from execution.

[99] Section 12(1) provides that the property of a foreign state that is located in Canada is immune from attachment and execution, subject to specified exceptions. Section 12(1)(d) of the *S/A* strips a state of execution immunity where:

(d) the foreign state is set out on the list referred to in subsection 6.1(2) and the attachment or execution relates to a judgment rendered in an action brought against it for its support of terrorism or its terrorist activity and to property other than property that has cultural or historical value.

There is no question that Iran is listed under s. 6.1(2) of the *S/A*. Thus, it is incumbent on the respondents to prove: (i) the underlying judgment was based on Iran's support for terrorism; and (ii) the assets do not have cultural or historical value.

[100] The respondents' American judgments were all obtained in proceedings where the respondents alleged and the American courts found that Iran had engaged in state sponsorship of terrorism. Therefore, the first of the two criteria is established.

[101] The second criterion, being the "cultural or historical value" exception to s. 12(1)(d) does not apply because Iran's affiant, Ms. El-Husseini, conceded in cross-examination that the two real properties – 2 Robinson Avenue and 290 Sheppard Avenue – have no cultural or historical value to Iran. Obviously, the bank accounts would not meet this criterion.

## **(6) Diplomatic Immunity**

### **1. Principles**

[102] Diplomatic immunity is a long-standing principle of international law and entails the protection of a diplomatic mission's property and people from state interference and detention, as well as a duty of protection by the receiving state: see *Reference as to Powers to Levy Rates on Foreign Legations*, [1943] S.C.R. 208, per Duff C.J. These special immunities for diplomatic missions have been consolidated in the *Vienna Convention on Diplomatic Relations*, 18 April 1961, 50 U.N.T.S. 95 ("*Vienna Convention*"). Canada and Iran are both signatories to this convention.

[103] The stripping of Iran's state immunity does not determine what diplomatic immunities, if any, it enjoys under the *Vienna Convention* and customary

international law. For the purposes of determining that issue on this appeal, the following legal principles are relevant.

[104] First, our law recognizes the Crown's prerogative to conduct international affairs and that the executive is best placed to make foreign policy decisions, within a range of constitutional options: *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, at paras. 25-27 and 36-37. Accordingly, the Minister alone has the power to recognize diplomatic status. This power arises from the Crown's prerogative and the *FMIOA*.

[105] Second, a sending state cannot unilaterally attribute diplomatic status over its property with binding effect on the domestic laws of the receiving state: *Philippine Embassy Bank Account Case* (1977), 65 I.L.R. 146 (Fed. Const. Ct. (Germany)), at p.188. It is the Minister who must receive and be satisfied by Iran's due assurances that the property is being used for diplomatic purposes and, if so satisfied, recognize diplomatic status.

[106] Third, the Minister has a right under s. 11 of the *FMIOA* to deliver certificates to communicate a fact to a court pertaining to foreign relations. Under s. 11, the Minister may issue a certificate to communicate any fact relevant to, among other things, "whether any person, diplomatic mission, consular post, office of a political subdivision of a foreign state, international organization or accredited mission has privileges, immunities or benefits under this Act."

[107] Fourth, where diplomatic immunity is going to be stripped from a person, the receiving state must give the person reasonable time after the loss of the immunity to put his or her affairs in order before the loss takes effect: *Re Regina and Palacios*, (1984) 45 O.R. (2d) 269 (C.A.), at p. 274. In other words, the person must be given notice of the loss of immunity.

**(h) Iran's Submissions**

[108] With those principles in mind, I turn to Iran's submissions regarding diplomatic immunity in the circumstances of this case.

[109] Iran submits that the premises of a diplomatic mission, the property thereon, its archives, documents and official communications are all protected by diplomatic immunity. According to Iran, the motion judge erred when he concluded that the Iranian Assets did not enjoy diplomatic immunity. Iran relies on a Minister's certificate that did not state that its bank accounts or properties were not diplomatic and submits that there was other compelling evidence that Canada had accepted that these assets were diplomatic in nature.

[110] With respect to the bank accounts, Iran submits that it is undisputed that the two accounts were used to pay student scholarships and expenses on behalf of one of the Iranian Embassy's branches. Iran relies on the fact that Canada issued a diplomatic note recognizing the diplomatic nature of the Bank of Nova Scotia account in January 2012. It also points out that on June 21, 2012, Iran delivered a diplomatic note confirming that the relevant accounts were used and

intended to be used for diplomatic purposes, that is, student scholarships. In any event, Iran submits that it should have been given notice of its loss of diplomatic immunity in September, 2012 so that it could transfer the funds out of the country.

[111] With respect to the real properties, Iran argues that they are included as premises of its diplomatic mission in Canada and are subject to immunity, regardless of the severance of diplomatic relations or even the outbreak of armed conflict between two states: see *Vienna Convention*, art. 22, as incorporated in s. 3 of the *FMIOA*. Iran argues that the evidence establishes that the two properties were used or were intended to be used as cultural centres. Iran submits, therefore, that these purposes are sufficiently connected with the official purposes of the state and the premises of the mission to permit it to invoke diplomatic immunity. Finally, Iran submits that even if the Minister's certificate that did not explicitly mention that its properties were not diplomatic can be construed as an implicit refusal or withdrawal of diplomatic status, Canada was obliged to give it a reasonable amount of time to sell the real properties and remove the proceeds from Canada.

**(i) Analysis**

[112] I would not give effect to any of these arguments.

[113] Dealing first with the issue of notice of the loss of diplomatic immunity, it is unnecessary to determine whether this court's ruling in *Palacios*, which was













[131] I would not give effect to these submissions. For the reasons given above, Iran has not established that it has viable defences. Regardless of s. 3(2) of the *SIA*, Iran is not protected by immunity, save for the pre-1985 terrorist conduct. Iran has also not tendered any admissible evidence to explain its default. Although art. 5 of the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 15 November 1965, Can. T.S. 1989 No. 2, may require a party serving court documents on a foreign state to provide copies of the documents in the official language of the state addressed, Iran is not a signatory to this convention and therefore cannot invoke art. 5: see *Xela Enterprises Ltd. v. Castillo*, 2016 ONCA 437, 131 O.R. (3d) 193, at para. 21, leave to appeal refused, [2016] S.C.C.A. No. 366. Finally, the rather vague assertion that Canada would protect Iran's interests is unexplained and unpersuasive.

[132] In my view, it is not in the interests of justice to set aside the default judgments, save as mentioned above. Iran was properly served and ultimately chose to effectively take its chances with the court process by not responding to the claims and waiting to have them set aside on a subsequent motion. I agree with the motion judge's observation at para. 186 of his reasons that Iran appears to have been "gaming the process."

















**17** Except to the extent required to give effect to this Act, nothing in this Act shall be construed or applied so as to negate or affect any rules of a court, including rules of a court relating to service of a document out of the jurisdiction of the court.

This is Exhibit "E" referred to in the Affidavit of John J. Adair  
sworn May 17, 2018

A handwritten signature in blue ink, appearing to read "A. J. Adair", is written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*











3. For the purposes of enforcement, the properties located at 245 Metcalfe Street, Ottawa, Ontario, 524 Acacia Avenue, Ottawa, Ontario and Unit 1202 – 570 Laurier Avenue West, Ottawa, Ontario (also known as the Diplomatic Mission of the Islamic Republic of Iran) are protected by the privileges and immunities pursuant to the *Foreign Missions and International Organizations Act*, SC 1991, c. 41, and are therefore exempt from enforcement of the Order.
4. The Plaintiffs shall deliver a copy of this Order to the Department of Foreign Affairs of Canada for service upon the Defendants through diplomatic channels.

Issued March 22, 2013.

*Rhiannon Morgan*  
Prothonotary  
RHIANNON MORGAN  
Deputy Prothonotary

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

MAR 22 2013

*R. Morgan*  
Deputy Prothonotary



Estate of Alexander Cicippio in the amount of \$6,500,000;  
Nicholas B. Cicippio in the amount of \$6,500,000; and  
Estate of Joseph J. Cicippio, Jr., in the amount of \$6,500,000.

This matter shall be considered a derivative action of Cicippio, et al. v Islamic Republic of Iran 96-CV-01805, a Decision and Order filed on August 27, 1998; and it is further

**ORDERED** that plaintiffs shall present the clerk of the court with a translation of this judgment into the official language of Iran, who shall dispatch it to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services, who shall transmit the judgment through diplomatic channels to Iran and send to the clerk of the court a certified copy of the diplomatic note indicating when the judgment was transmitted.

Date: October 7, 2005

Henry H. Kennedy, Jr.  
United States District Court

This is Exhibit "F" referred to in the Affidavit of John J. Adair  
sworn May 17....., 2018

A handwritten signature in blue ink, appearing to read "Alex Ruiz", is written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*









**SCHEDULE "A"**

1. Scotiabank account 40006 04451 18 in the name of "Embassy of Islamic Republic of Iran Higher Education Advisory".
2. Royal Bank of Canada account 864-949-3 in the name of "Embassy of Islamic Republic of Iran".

## SCHEDULE "B"

Institution	Account Number
RBC	8649493
Scotiabank	04451-18
RBC	1029586
RBC	8649589
RBC	1089945
RBC	1089952
RBC	8649574
Scotiabank	04654-10
Scotiabank GIC	17465324

**SCHEDULE "C"**

1. The property municipally known as 290 Sheppard Avenue West, Toronto, Ontario and described as PT LT 3; PL 2069 TWP OF YORK AS IN TB862589.
2. The property municipally known as 2 Robinson Avenue, Ottawa, Ontario and described as:
  - FIRSTLY, Parcel F-2, Section NP-DRF, part of Lot F, Concession D, Rideau Front, geographic township of Nepean, designated as Part 4 on Plan 4R-13811 (PIN 04204-0245 (LT)); and,
  - SECONDLY, Parcel F-29, Section NP-DRF; part of Lot F, Concession D, Rideau Front, geographic township of Nepean, designated as PART 3 on Plan 4R-13811; (PIN 04204-0243 (LT)); and,
  - THIRDLY, Part of Lot F, Concession D, Rideau Front, geographic township of Nepean, designated as PART 1 on Plan 4R-13811 (PIN 04204-0270 (LT)); and,
  - FOURTHLY, part of Lot F, Concession D, Rideau Front, geographic township of Nepean, designated as PART 2 on Plan 4R-13811 (PIN 04204-0267 (LT)).

**EDWARD TRACY, by his Litigation Guardian Charles  
Murphy et al.  
Applicants**

**-and- THE IRANIAN MINISTRY OF INFORMATION AND  
SECURITY et al.  
Respondents**

**Court File No. CV-14-10403-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

**ADAIR BARRISTERS LLP**  
Commerce Court North  
25 King Street West, Suite 1101  
P.O. Box 127  
Commerce Court Postal Station  
Toronto ON M5L 1E2

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Fax: 647.689.2059

Lawyers for the applicants

RCP-E 4C (July 1, 2007)



Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT, R.S.O. 1990, c.  
R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE SUPREME  
COURT OF NOVA SCOTIA ISSUED MARCH 22, 2013**

THE HONOURABLE )  
MR. JUSTICE D.M. BROWN )

THURSDAY, THE 1<sup>st</sup>  
DAY OF MAY - O.  
APRIL, 2014

BETWEEN:

*(Court Seal)*

EDWARD TRACY, by his Litigation Guardian Charles Murphy, ELIZABETH  
CICCIPIO-PULEO, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO,  
DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD DENNIS CICIPPIO,  
THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO, ALLEN JOHN CICIPPIO,  
estate of ROSE ABELL, ANTHONY CICIPPIO, estate of ALEXANDER  
CICIPPIO, NICHOLAS B. CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
GUARD CORP.

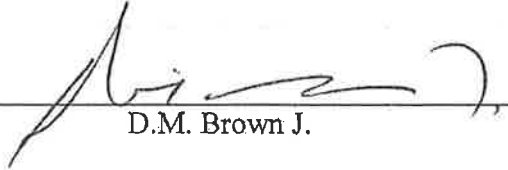
Respondents

**ORDER**

The Order of Justice Brown dated March 17, 2014 is hereby varied as follows:

1. Paragraph 5 of the Order shall be amended such that it will read as follows:

5. THIS COURT ORDERS that Scotiabank and RBC are to advise the applicants, within 30 days of April 11, 2014, of the existence and balance of any non-diplomatic account at any Scotiabank or RBC branch or location that is in the name of the Embassy of the Islamic Republic of Iran or the Higher Education Advisory.

  
\_\_\_\_\_  
D.M. Brown J.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO..

 MAY 02 2014

EDWARD TRACY, by his Litigation Guardian Charles Murphy et al.

-and-

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY  
et al.

Applicants

Respondents

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**ADAIR BARRISTERS LLP**  
Commerce Court North  
25 King Street West, Suite 1101  
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Toronto ON M5L 1E2

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Lawyers for the applicants

RCP-E 4C (July 1, 2007)

This is Exhibit "G" referred to in the Affidavit of John J. Adair  
sworn May <sup>17</sup>....., 2018



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Commissioner for Taking Affidavits (or as may be)

Court File No. CV-14-10403-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT,  
R.S.O. 1990, c. R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE  
SUPREME COURT OF NOVA SCOTIA ISSUED MARCH 22,  
2013**

THE HONOURABLE	)	FRIDAY, THE 18TH
	)	
MR. JUSTICE <sup>D.</sup> BROWN	)	DAY OF JULY, 2014

BETWEEN:

*(Court Seal)*

EDWARD TRACY, by his Litigation Guardian Charles Murphy,  
ELIZABETH CICIPPIO-PULEO, estate of HELEN FAZIO, estate of  
DOMENIC CICIPPIO, DAVID B. CICIPPIO, ERIC R. CICIPPIO,  
RICHARD DENNIS CICIPPIO, THOMAS J. CICIPPIO, estate of PAUL V.  
CICIPPIO, ALLEN JOHN CICIPPIO, estate of ROSE ABELL,  
ANTHONY CICIPPIO, estate of ALEXANDER CICIPPIO, NICHOLAS B.  
CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
GUARD CORP.

Respondents

APPLICATION UNDER \*

**ORDER**

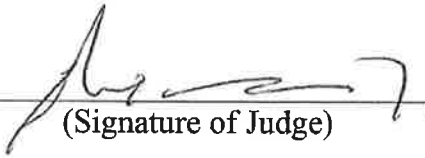
THIS MOTION, made by the Applicants for an Order, was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Applicants' draft Order and on hearing from counsel for the Respondents that the Respondents do not oppose this Order,

1. THIS COURT ORDERS that the Royal Bank of Canada convert the contents of account no. 864-949-3 to Canadian dollars and then pay the contents of that account to the City of Ottawa Sheriff's office pursuant to the Writ of Seizure and Sale dated April 4, 2014 attached hereto as Schedule "A".
2. THIS COURT ORDERS that the City of Ottawa Sheriff's office pay the full amount received by the Sheriff pursuant to paragraph 1 hereof from the Royal Bank of Canada to Adair Barristers LLP in Trust.
3. THIS COURT ORDERS that the City of Ottawa Sheriff's office comply with the May 1, 2014 Direction to Enforce attached hereto as Schedule "B" by paying the amount of \$1,659,536.14 received by the Sheriff in April 2014 from the Bank of Nova Scotia to Adair Barristers LLP in Trust.
4. THIS COURT ORDERS that Adair Barristers LLP place all funds it receives pursuant to this Order into a separate, interest-bearing trust account to the credit of this Action. Adair Barristers LLP must hold the said funds in trust pending final resolution of

this proceeding (including all appeals or the expiry of time for commencing an appeal) and is prohibited from distributing the said funds without agreement of the parties or further Order of this Honourable Court.

5. THIS COURT ORDERS that the Applicants shall not take any further enforcement steps in Canada absent agreement of the parties or further Order of this Honourable Court.

  
(Signature of Judge)

RCP-E 59A (July 1, 2007)

REGISTRY OF THE COURT OF APPEALS  
TORONTO  
187 BAY ST. TORONTO ONT. M5H 2N2  
REGISTRY NO



JUL 18 2014

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT,  
R.S.O. 1990, c. R.5** 14-727

**AND IN THE MATTER OF AN AMENDED ORDER OF JUSTICE AT OTTAWA  
SUPREME COURT OF NOVA SCOTIA ISSUED MARCH 22,  
2013**

FILED SUPERIOR COURT  
OF JUSTICE AT OTTAWA  
APR 15 2014  
DÉPOSÉ À LA COUR  
SUPÉRIEURE DE JUSTICE A OTTAWA

**BETWEEN:**

EDWARD TRACY, by his Litigation Guardian Charles Murphy,  
ELIZABETH CICCIPPIO-PULEO, estate of HELEN FAZIO, estate of  
DOMENIC CICIPPIO, DAVID B. CICIPPIO, ERIC R. CICIPPIO,  
RICHARD DENNIS CICIPPIO, THOMAS J. CICIPPIO, estate of PAUL V.  
CICIPPIO, ALLEN JOHN CICIPPIO, estate of ROSE ABELL,  
ANTHONY CICIPPIO, estate of ALEXANDER CICIPPIO, NICHOLAS B.  
CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
GUARD CORP.

Respondents

**WRIT OF SEIZURE AND SALE**

TO: The Enforcement Office (Sheriff) of the City of Ottawa

Under an Order of this Court made on May 22, 2013, in favour of Edward Tracy, by his  
Litigation Guardian Charles Murphy, Elizabeth Ciccippio-Puleo, estate of HELEN FAZIO,  
estate of DOMENIC CICIPPIO, David B. Ciccippio, Eric R. Ciccippio, Richard Dennis

Cicippio, Thomas J. Cicippio, estate of PAUL V. CICIPPIO, Allen John Cicippio, estate of ROSE ABELL, Anthony Cicippio, estate of ALEXANDER CICIPPIO, Nicholas B. Cicippio and estate of JOSEPH J. CICIPPIO JR., YOU ARE DIRECTED to seize and sell the real and personal property within your county or district of the **City of Ottawa** of

*Surname of individual or name of corporation/firm, etc.*

The Islamic Republic of Iran

*First given name  
(individual only)*

*Second given name  
(individual only)(if applicable)*

*Third given name  
(individual only)(if applicable)*

~~and the person(s)/corporation(s) set out on Schedule "A" and to realize from the seizure and sale the following sums:~~ MB

- (a) An amount sufficient to purchase \$91,000,000 in the currency of the United States of America at a bank in Ontario listed in Schedule I of the *Bank Act* (Canada) at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of currency of the United States of America before the day that any payments of the obligations are received by the Applicants; and
- (b) your fees and expenses in enforcing this Writ.

YOU ARE DIRECTED to pay out the proceeds according to law and to report on the execution of this Writ if required by the party or lawyer who filed it.

Dated at April 4-14 Issued by *N. Brown* <sup>Natasha Brown</sup>  
Registrar

on \_\_\_\_\_ Address of Court office

<sup>1330</sup>  
393 University Avenue, <sup>7th</sup> 10th Floor  
Toronto, Ontario  
M5G 1E6 <sup>REIMS</sup>

EDWARD TRACY, by his Litigation Guardian Charles Murphy et al.  
Applicants

-and-

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY et al.  
Respondents

Court File No. CV-14-10403-00CL

FEES		
Fee	Item	Officer
\$55.00	Paid for this Writ	
\$50.00	Lawyer's fee for issuing Writ	3 NB
	First Renewal	
	Second Renewal	
	Third Renewal	
RENEWAL		
Date	Officer	

This writ will expire six (6) years less one day from the date of issue unless renewed earlier. (No further notice will be provided.)  
Ce bref expirera dans six (6) ans moins un jour à compter de la date de sa délivrance, à moins qu'il ne soit renouvelé plus tôt.  
Vous ne recevrez aucun autre avis à ce sujet.

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO

**WRIT OF SEIZURE AND SALE**

Creditor's Names: Edward Tracy, by his Litigation Guardian Charles Murphy, Elizabeth Cicippio-Puleo, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO, David B. Cicippio, Eric R. Cicippio, Richard Dennis Cicippio, Thomas J. Cicippio, estate of PAUL V. CICIPPIO, Allen John Cicippio, estate of ROSE ABELL, Anthony Cicippio, estate of ALEXANDER CICIPPIO, Nicholas B. Cicippio, estate of JOSEPH J. CICIPPIO JR.

Creditor's Address: Edward Tracy, an incapacitated person, by Charles Murphy, Esquire, his guardian Charles Murphy, Esquire 46 Mordecai Lincoln Rd. Scituate, MA 02066

Lawyer's address and telephone no.:

**ADAIR BARRISTERS LLP**  
Commerce Court North  
25 King Street West, Suite 1101  
P.O. Box 127  
Commerce Court Postal Station  
Toronto ON M5L 1E2

Tel: 416.941.5858  
Fax: 647.689.2059

436

Court File No. CV-14-10403-00CL  
Sheriff's File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

BETWEEN:

EDWARD TRACY, by his Litigation Guardian Charles Murphy, ELIZABETH CICCIPPIO-PULEO, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO, DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD DENNIS CICIPPIO, THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO, ALLEN JOHN CICIPPIO, estate of ROSE ABELL, ANTHONY CICIPPIO, estate of ALEXANDER CICIPPIO, NICHOLAS B. CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Creditors

and

THE ISLAMIC REPUBLIC OF IRAN

Debtor

**DIRECTION TO ENFORCE WRIT**

TO: The Sheriff of the City of Ottawa

Under an Order of this Court in favour of Edward Tracy, by his Litigation Guardian Charles Murphy, Elizabeth Ciccipio-Puleo, estate of HELEN FAZIO, estate of DOMENIC CICIPPIO, David B. Cicippio, Eric R. Cicippio, Richard Dennis Cicippio, Thomas J. Cicippio, estate of PAUL V. CICIPPIO, Allen John Cicippio, estate of ROSE ABELL, Anthony Cicippio, estate of ALEXANDER CICIPPIO, Nicholas B. Cicippio and estate of JOSEPH J. CICIPPIO JR. made on May 22, 2013, The Islamic Republic of Iran was ordered to pay the sum of:

“An amount sufficient to purchase \$91,000,000 in the currency of the United States of America at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada) at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of currency of the United States of America before the day that any payments of the obligations are received by the Applicants”

with interest at the rate of 0 per cent per year and costs of \$0. Since the Order was made, the creditors have received the following payments: **None.**

Under rule 60.19 of the *Rules of Civil Procedure*, the creditors are entitled to costs in the amount of,

- (a) \$0 for the preparation of documents in connection with issuing, renewing and filing with the Sheriff the Writ of Execution or Notice of Garnishment;
- (b) \$0 for disbursements paid to a Sheriff, registrar, official examiner, court reporter or other public officer and to which the creditors are entitled under subrule 60.19(1);
- (c) \$0 for an amount determined in accordance with Tariff A for conducting an examination in aid of execution;
- (d) \$0 for any other costs to which the creditors are entitled under subrule 60.19(1).

-3-

YOU ARE DIRECTED to enforce the Writ of Seizure and Sale issued on April 4, 2014 and filed in your office on April 15, 2014 by:

remitting to the creditors \$1,659,536.14, being the amount transferred by Scotiabank from Scotiabank bank account no. 04451 18 to the Sheriff of the City of Ottawa pursuant to the Order of Justice Brown dated March 17, 2014.

  
 \_\_\_\_\_  
 Gordon McGuire

Date: May 1, 2014

**ADAIR BARRISTERS LLP**  
 Commerce Court North  
 25 King Street West, Suite 1101  
 P.O. Box 127  
 Commerce Court Postal Station  
 Toronto ON M5L 1E2

John J. Adair (52169V)  
 Tel: 416.941.5858  
 jadair@adairbarristers.com  
 Gordon McGuire (58364S)  
 Tel: 416.941.5860  
 gm McGuire@adairbarristers.com

Tel: 416.499.9940  
 Fax: 647.689.2059

Lawyers for the applicants

RCP-E 60F (November 1, 2005)

EDWARD TRACY, by his Litigation Guardian Charles  
Murphy et al.  
Applicants

-and- THE IRANIAN MINISTRY OF INFORMATION AND  
SECURITY et al.  
Respondents

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**DIRECTION TO ENFORCE WRIT**

**ADAIR BARRISTERS LLP**  
Commerce Court North  
25 King Street West, Suite 1101  
P.O. Box 127  
Commerce Court Postal Station  
Toronto ON M5L 1E2

John J. Adair (52169V)  
jadair@adairbarristers.com  
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Gordon McGuire (58364S)  
gmcguire@adairbarristers.com  
Tel: 416.941.5860

Tel: 416.499.9940  
Fax: 647.689.2059

Lawyers for the applicants

EDWARD TRACY, by his Litigation Guardian Charles  
Murphy et al.  
Applicants

-and- THE IRANIAN MINISTRY OF INFORMATION AND  
SECURITY et al.  
Respondents

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**ADAIR BARRISTERS LLP**  
Commerce Court North  
25 King Street West, Suite 1101  
P.O. Box 127  
Commerce Court Postal Station  
Toronto ON M5L 1E2

**John J. Adair (52169V)**

jadair@adairbarristers.com

Tel: 416.941.5858

**Gordon McGuire (58364S)**

gmcguire@adairbarristers.com

Tel: 416.941.5860

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the applicants

This is Exhibit "H" referred to in the Affidavit of John J. Adair  
sworn May <sup>17</sup>....., 2018



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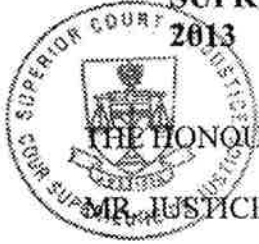
*Commissioner for Taking Affidavits (or as may be)*

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

**IN THE MATTER OF AN APPLICATION PURSUANT TO THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT,  
R.S.O. 1990, c. R.5**

**AND IN THE MATTER OF AN AMENDED ORDER OF THE  
SUPREME COURT OF NOVA SCOTIA ISSUED MARCH 22,**



THE HONOURABLE  
MR. JUSTICE HAINEY

)  
)  
)

THURSDAY, THE 29TH  
DAY OF MARCH, 2018

**BETWEEN:**

EDWARD TRACY, by his Litigation Guardian Charles Murphy,  
ELIZABETH CICIPPIO-PULEO, estate of HELEN FAZIO, estate of  
DOMENIC CICIPPIO, DAVID B. CICIPPIO, ERIC R. CICIPPIO,  
RICHARD DENNIS CICIPPIO, THOMAS J. CICIPPIO, estate of PAUL V.  
CICIPPIO, ALLEN JOHN CICIPPIO, estate of ROSE ABELL,  
ANTHONY CICIPPIO, estate of ALEXANDER CICIPPIO, NICHOLAS B.  
CICIPPIO and estate of JOSEPH J. CICIPPIO JR.

Applicants

and

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
GUARD CORP.

Respondents

**APPLICATION UNDER \***

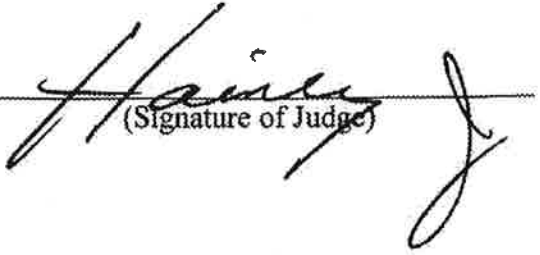
**ORDER**

-2-

THIS MOTION, made by the Applicants for an Order permitting them to take steps to enforce the Judgment of this Court, was read this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the materials filed by the Applicants, the lawyers for the parties having attended on March 22, 2018 for a chambers appointment and this motion being put over to this date, and on hearing the submissions of the lawyers for the Applicants, no one appearing this day for the Respondents (but the Respondents having had notice of the motion),

1. **THIS COURT ORDERS** that the Applicants be and the same are hereby permitted to take such steps as are permitted by law to enforce the Judgment of Brown J. in this proceeding, dated March 17, 2014 (the "Recognition Order").
2. **THIS COURT ORDERS** that paragraph 4 of the July 18, 2014 Order of Brown J. be and the same is hereby varied by permitting Adair Barristers LLP (now known as Adair Goldblatt Bieber LLP) to disburse the funds held in trust to the credit of this proceeding.
3. **THIS COURT ORDERS** that paragraph 5 of the July 18, 2014 Order of Brown J. be and the same is hereby varied to permit the Applicants to take such enforcement steps as are permitted by law.

  
(Signature of Judge)

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 29 2018

PER / PAR: 

EDWARD TRACY, by his Litigation Guardian Charles  
Murphy et al.  
Applicants

-and- THE IRANIAN MINISTRY OF INFORMATION AND  
SECURITY et al.  
Respondents

Court File No. CV-14-10403-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**ADAIR GOLDBLATT BIEBER LLP**

95 Wellington Street West  
Suite 1830, P.O. Box 14  
Toronto ON M5J 2N7

John J. Adair (52169V)

[jadair@agblp.com](mailto:jadair@agblp.com)

Tel: 416.941.5858

Gordon McGuire (58364S)

[gmcguire@agblp.com](mailto:gmcguire@agblp.com)

Tel: 416.941.5860

Tel: 416.499.9940

Fax: 647.689.2059

Lawyers for the Applicants

RCP-E 4C (May 1, 2016)

This is Exhibit "I" referred to in the Affidavit of John J. Adair  
sworn May 17, 2018

A handwritten signature in blue ink, appearing to read "Alegzander", is written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*







ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #4

04204-0267 (LT)

PAGE 3 OF 3  
PREPARED FOR CS  
ON 2018/05/03 AT 14:10:57

teranet *express*

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<i>ENCUMBERING, OR SIMILARLY DEALING WITH ANY OF THEIR ASSETS LOCATED IN CANADA (THE SUBJECT ASSETS)", INCLUDING BUT NOT LIMITED TO THE ASSETS LISTED IN SCHEDULE "A" HERETO;</i>						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.





10146-0396 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT3165148	2012/10/31	RESTRICTIONS ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	BENNETT, MICHAEL BENNETT, LINDA BENNETT, LISA	C
AT3167638	2012/11/02	RESTRICTIONS ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	BENNETT, MICHAEL BENNETT, LINDA BENNETT, LISA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is Exhibit "J" referred to in the Affidavit of John J. Adair  
sworn May <sup>17</sup>....., 2018



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Commissioner for Taking Affidavits (or as may be)

Court File No. CV-14-10403-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**BETWEEN:**

EDWARD TRACY, by his Litigation Guardian Charles Murphy,  
 ELIZABETH CICCIPIO-PULEO, estate of HELEN FAZIO, estate of  
 DOMENIC CICIPPIO, DAVID B. CICIPPIO, ERIC R. CICIPPIO, RICHARD  
 DENNIS CICIPPIO, THOMAS J. CICIPPIO, estate of PAUL V. CICIPPIO,  
 ALLEN JOHN CICIPPIO, estate of ROSE ABELL, ANTHONY CICIPPIO,  
 estate of ALEXANDER CICIPPIO, NICHOLAS B. CICIPPIO and estate of  
 JOSEPH J. CICIPPIO JR.

Applicants

- and -

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, THE  
 ISLAMIC REPUBLIC OF IRAN and THE IRANIAN REVOLUTIONARY  
 GUARD CORP.

Respondents

**ACKNOWLEDGMENT**

**WHEREAS** in 2003 and 2005 the Applicants obtained judgments against the Respondents, The Iranian Ministry of Information and Security ("MIS"), the Islamic Republic of Iran ("Iran") and The Iranian Revolutionary Guard Corp. (the "Revolutionary Guards"), in the United States District Court for the District of Columbia (the "US Judgments");

**AND WHEREAS** by order made March 22, 2013, Roberston J. of the Nova Scotia Supreme Court recognized the US Judgments and made them an order of the Supreme Court of Nova Scotia;

**AND WHEREAS** by Order made May 22, 2013, Chapnik J. of the Ontario ordered that the Nova Scotia Order be registered as an order of the Ontario Superior Court of Justice (the "Ontario Recognition Order") pursuant to the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5;

**AND WHEREAS** recognition proceedings were also started in the Ontario Superior Court of Justice Court in 2012 by the Estate of Marla Bennett (CV-12-463434) which resulted in the granting of a *Mareva* injunction to restrain Iran/MIS from dissipating 290 Sheppard Avenue West, Toronto and 2 Robinson Avenue, Ottawa (hereinafter the "Properties") which injunction was expanded to include the registered owners of the Sheppard Avenue and Robinson properties, Farhangeiran Inc. and The Mobin Foundation;

**AND WHEREAS** by Order dated March 17, 2014 Justice D.M. Brown, as he then was, ordered and declared that the Properties are beneficially owned by Iran and that the Sheriffs of the City of Toronto and City of Ottawa are to enforce the Applicants' Writs of Seizure and Sale as against the Properties;

**AND WHEREAS** the Applicants and all known execution creditors of Iran in Ontario as at the date hereof have consented to the Applicant moving before the Ontario Superior of Justice seeking the appointment of a receiver in aid of execution (equitable receiver) for the purposes of levying execution as against the Properties;

**AND WHEREAS** Fiona Havlish, in her own right and as Executrix of the Estate of Donald G. Havlish, Jr. and other applicants (hereinafter the "Havlish Group") were awarded a Final Judgment from the United States District Court Southern District of New York against Iran, *inter alia*, for economic damages of \$394,277,884, damages for pain and suffering of \$2,000,000 per decedent for a total of \$94,000,000, damages for solatium totaling \$874,000,000, punitive damages of \$4,686,235,921 and prejudgment

interest on the amount of \$968,000,000 in pain and suffering and solatium damages (the "US Havlish Judgment");

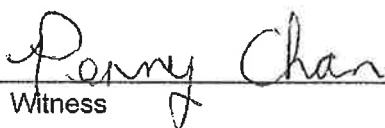
**AND WHEREAS** pursuant to the Order of Groves J. dated October 11, 2017 of the Supreme Court of British Columbia the Havlish Group obtained an Order domesticating the US Havlish Judgment in British Columbia;

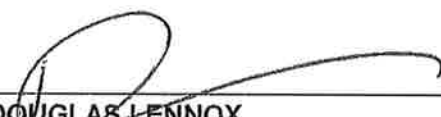
**AND WHEREAS** the Havlish Group has commenced a proceeding in the Ontario Superior Court of Justice pursuant to Court File No. CV-17-584851 at Toronto returnable April 30, 2018 seeking to domesticate its judgment thereat which, if successful, would render it an execution creditor of Iran and entitle it to a pro rata share of any net proceeds derived from execution as against the Properties;

**NOTWITHSTANDING THE FOREGOING** the Havlish Group hereby acknowledges and confirms that it will not participate in the Applicants' equitable receivership proceedings and shall not file any claim therein nor demand any payment or dividend therefrom and hereby waives any right to notice in connection with the said proceedings;

**THE UNDERSIGNED**, Douglas Lennox of Klein Lawyers LLP, solicitor for the Havlish Group, confirms that he has full and irrevocable authority from the members of the Havlish Group to execute and bind the Havlish Group to the terms of this acknowledgement.

EXECUTED at Toronto, on April 27, 2018.

  
 Penny Chan  
 Witness

  
 DOUGLAS LENNOX  
 Solicitor for Fiona Havlish et al, Applicants  
 in Court File No. CV-17-584851

This is Exhibit "K" referred to in the Affidavit of John J. Adair  
sworn May 17, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

Court File No. CV-12-463434

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	FRIDAY, THE 12TH
	)	
MR. JUSTICE MOORE	)	DAY OF APRIL, 2013

BETWEEN:

*(Court Seal)*

ESTATE OF MARLA BENNETT, MICHAEL BENNETT, LINDA BENNETT  
and LISA BENNETT

Plaintiffs

and

ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF  
INFORMATION AND SECURITY

Defendants

**ORDER**

THIS MOTION, made by the Plaintiffs for an Order dispensing with service on Farhangeiran Inc. and The Mobin Foundation or, in the alternative, an Order for substituted service, was heard this day at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6.

ON READING the Affidavit of Gordon McGuire sworn April 10, 2013 and the exhibits attached thereto, and the Motion Record, Factum and Brief of Authorities of the Plaintiffs, and on hearing the submissions of Counsel for the Plaintiffs,

-2-

1. THIS COURT ORDERS that substituted service of default judgment motion materials shall be effected upon Farhangeiran Inc. and The Mobin Foundation by Xpresspost via Canada Post mailing with tracking number but without the need of a signature by the recipient, directed to:

- (a) Donald J. Grant for Farhangeiran Inc. at 1220 Sheppard Avenue East, Suite 412, North York M2K 2S5 and 20 George Henry Blvd., North York M2J 1E2; and
- (b) Mr. Sayed Adeli at The Mobin Foundation at 204-265 Carling Avenue, Ottawa K1S 2E1.

2. These orders shall apply to further service of any and all documents in this action unless or until this court directs otherwise.



---

(Signature of Justice)

**C. CHIBA**


REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE RCP-E 59A (July 1, 2007)

330 UNIVERSITY AVE. 330 AVE. UNIVERSITY  
7TH FLOOR 7E ÉTAGE  
TORONTO, ONTARIO TORONTO, ONTARIO  
M5G 1R7 M5G 1R7

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 16 2013

PER / PAR



ESTATE OF MARLA BENNETT et al.  
Plaintiffs

-and- ISLAMIC REPUBLIC OF IRAN et al.  
Defendants

Court File No. CV-12-463434

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**ADAIR MORSE LLP**

Barristers & Solicitors  
One Queen Street East  
Suite 1800  
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Lawyers for the Plaintiffs



RCP-E 4C (July 1, 2007)

This is Exhibit "L" referred to in the Affidavit of John J. Adair  
sworn May 17, 2018



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*Commissioner for Taking Affidavits (or as may be)*

Court File No. CV-12-463434

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	WEDNESDAY, THE 26TH
	)	
MADAM JUSTICE GREER	)	DAY OF JUNE, 2013

**B E T W E E N:**

*(Court Seal)*

**ESTATE OF MARLA BENNETT, MICHAEL BENNETT, LINDA BENNETT  
and LISA BENNETT**

**Plaintiffs**

**and**

**ISLAMIC REPUBLIC OF IRAN and IRANIAN MINISTRY OF  
INFORMATION AND SECURITY**

**Defendants**



**ORDER**

THIS MOTION, made by Donald James Grant for an Order declaring that he is no longer a Director of Farhangeiran Inc., and that he is not the proper party to respond to the motion returnable July 24, 2013 and for various other relief, was heard this day at the court house, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Affidavit of Donald James Grant sworn May 7, 2013 and exhibits thereto annexed and the Notice of Motion returnable July 24, 2013 and on hearing the submissions of Counsel for Donald James Grant, and on hearing the submissions of Counsel for the Plaintiffs,

-2-

1. THIS COURT ORDERS AND DECLARES that Donald James Grant be and the same is no longer a Director of Farhangeiran Inc.
2. THIS COURT ORDERS that Donald James Grant be and the same is not the proper party to respond to the motion returnable July 24, 2013.
3. THIS COURT ORDERS that Farhangeiran Inc. be served by prepaid Xpresspost of Canada Post with tracking number, but without the need of a signature by the recipient, to the address of the headquarters of Farhangeiran Inc. at 290 Sheppard Avenue West, Toronto Ontario M2K 2S5, and to Mr. Daniel Nakhlestani, the real estate agent who listed that property for sale. Service on Mr. Nakhlestani shall be at his business address: Homelife Victory Realty Inc., 300-250 Sheppard Avenue East, Toronto Ontario M2M 6M9, and at his email address, nakhlestani@hotmail.com. Service shall be effective on both addresses 5 days after the mailing thereof and after the email thereof.
4. THIS COURT ORDERS that the Order of Mr. Justice Moore made April 12, 2013 respecting service on Farhangeiran Inc. is varied accordingly. The balance of such Order remains in place.
5. THIS COURT ORDERS that there are no costs of this motion.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL - 4 2013

PER / PAR:



  
(Signature of Justice)

RCP-E 59A (July 1, 2007)

ESTATE OF MARLA BENNETT et al.  
Plaintiffs

-and- ISLAMIC REPUBLIC OF IRAN et al.  
Defendants

Court File No. CV-12-463434

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

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**ORDER**

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Lawyers for the Plaintiffs

RCP-E 4C (July 1, 2007)

This is Exhibit "M" referred to in the Affidavit of John J. Adair  
sworn May <sup>17</sup>....., 2018



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*Commissibner for Taking Affidavits (or as may be)*

Brown-J



Commercial List File Number:	YR/CLJ Pending
Civil File Number:	CV-13-10204-00CL

Date: December 4, 2013

**SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**  
9:30 A.M. HEARING REQUEST FORM

Dec 18/13  
9:30

A	PLEASE NOTE: The 9:30 hearing procedure is only for "ex parte, urgent, scheduling and consent matters which take no longer than 10 minutes" (Practice Direction, (2002), 57 O.R. (3 <sup>rd</sup> ) 97; paragraph 25). This restriction will be enforced. This matter is (tick one or more); <input type="checkbox"/> ex parte <input type="checkbox"/> urgent <input checked="" type="checkbox"/> scheduling <input type="checkbox"/> consent <input type="checkbox"/> other (explain)
B	Short Title of Proceeding: Bennett Estate v. Iran
C	Date(s) Requested: Wednesday, December 18, 2013
D	The following is a brief description of the matter to be considered at the 9:30 appointment: To schedule motions regarding enforcement of judgments in the various proceedings against Iran.
E	The following materials will be necessary for the matter to be considered. (it is the responsibility of counsel to confirm that the proper materials are available for the Court.)  The plaintiffs' Notice of Motion, which will be delivered to the court on or before December 13, 2013
F	Is any Judge seized of these matters or any judicial conflicts? <input type="checkbox"/> No <input checked="" type="checkbox"/> The Honourable Justice Brown

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	Estate of Marla Bennett	<b>Party</b>	Attorney General for Canada
<b>Counsel</b>	Adair Barristers LLP – John J. Adair  	<b>Counsel</b>	Department of Justice – Jacqueline Dais-Visca    (by John Adair, with authority)
<b>Address</b>	25 King St. W., Suite 1101 Toronto, ON M5L 1E2	<b>Address</b>	The Exchange Tower, Suite 3400 P.O. Box 36, 130 King St. W. Toronto, ON M5X 1K6
<b>Phone</b>	416-941-5858	<b>Phone</b>	(416) 952-6010
<b>Fax</b>	647-689-2059	<b>Fax</b>	(416) 973-0809
<b>E-Mail</b>	jadair@adairbarristers.com	<b>E-Mail</b>	Jacqueline.dais-visca@justice.gc.ca

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 393 University Avenue, 10<sup>th</sup> Floor, Toronto Ontario Fax to: (416) 327-6228  
You may also convert to PDF and email to [Toronto.Commercialist@i.us.gov.on.ca](mailto:Toronto.Commercialist@i.us.gov.on.ca)

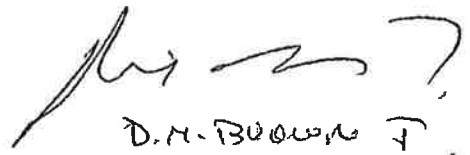
copy John  
via email  
Dec 5/13

Endorsement/Disposition  See attached Yellow Endorsement Form.

Dec 18/13 ① Thursday, Jan 23/14 - endorsement hearing - my last -  
1 hour

Commercial Form A

- ② Civil list Arthur CV-13-479172 transferred to Commercial list
- ③ Motion record in the Tracy action to be removed by Dec 30/13. Order for <sup>and</sup> ~~and~~ service made in the Bennett action, <sup>including</sup> ~~including~~ <sup>wherever</sup> proceedings, shall apply.
- ④ As part of motion record, Tracy may include affidavits from Bennett action regarding the targeted assets. But it is open to any responding party to raise an issue about their admissibility. However, such a concern must be raised before me ① a 9:30 appointment no later than 7 business days before the hearing date.
- ⑤ This endorsement (and a transcription) shall be served together with the motion record.

  
D.M. BROWN J.



**Transcription of December 18, 2013 Endorsement of Brown J.**

Dec. 18/13

1. Thursday, Jan. 23/14 – enforcement hearing – my list – 1 hour.
2. Civil List Action CV-13-479172 transferred to commercial list.
3. Motion record in the *Tracy* action to be served by Dec. 30/13 – Orders for substituted service made in the *Bennett* action, including *Mareva* proceedings, shall apply.
4. As part of motion record, *Tracy* may include affidavits from *Bennett* action regarding the targeted assets. But it is open to any responding party to raise an issue about their admissibility. However, such a concern must be raised before me at a 9:30 appointment no later than 7 business days before the hearing date.
5. This endorsement (and a transcription) shall be served together with the motion record.

“Signed”

D. M. Brown J.

ESTATE OF MARLA BENNETT et al. -and- ISLAMIC REPUBLIC OF IRAN et al.  
EDWARD TRACY, et al. -and- ISLAMIC REPUBLIC OF IRAN et al.

Court File No. CV-13-10204-00CL  
Court File No. CV-14-10403-00CL

Plaintiffs / Applicants

Defendants / Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT  
TORONTO

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Lawyers for the Plaintiffs / Applicants

RCP-E 4C (May 1, 2016)

**THE ESTATE OF MARLA BENNETT, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.**

Court File No. CV-13-10204-00CL

**EDWARD TRACY, et al. -and- THE ISLAMIC REPUBLIC OF IRAN, et al.**

Court File No. CV-14-10403-00CL

Plaintiffs / Applicants

Defendants / Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT  
TORONTO

**MOTION RECORD OF THE  
PLAINTIFFS \ APPLICANTS**

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