
ONTARIO COURT RULES IRANIAN ASSETS SUBJECT TO SEIZURE IN TERRORIST CASE

*By Sean S. Carter and Nancy E. Claridge**

A. INTRODUCTION

In the recent potentially precedent setting decision of the Ontario Superior Court of Justice released on March 17, 2014, *Edward Tracy v Iranian Ministry of Information and Security* (“Edward Tracy”),¹ the court made an order ultimately enforcing a U.S. foreign judgment and ordering the seizure of \$7-million worth of property belonging to the Islamic Republic of Iran, The Iranian Ministry of Information and Security, and The Iranian Revolutionary Guard Corp. (“Iranian State Actors”). The original U.S. judgment which is being enforced in several Canadian provincial jurisdictions, including the Ontario enforcement, is a judgment from a case in the United States jurisdiction which awarded damages to be paid by Iran to victims of torture and kidnapping by Iranian State Actors. Edward Tracy is particularly unique and potentially precedent setting in its enforcement of foreign judgments against assets which would otherwise be protected by diplomatic immunity and lifting of a corporate veil instituted to avoid economic sanctions against Iranian State Actors. The enforcement against these types of assets and actors, which to date has failed in the U.S., is made possible by new Canadian legislation which lifts the protection of diplomatic immunity for state actors involved in terrorism related offences under the *Criminal Code*.

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¹ *Edward Tracy v. The Iranian Ministry of Information and Security*, 2014 ONSC 1696. (SCJ). Decision available online at <http://canlii.ca/t/g66v1>.

B. GENERAL ENFORCEMENT OF U.S. JUDGMENTS IN ONTARIO

In general, when a party wishes to enforce a judgment from the United States (whether from a competent federal or state court), the normal avenue of enforcement is that the applicant seeking to enforce a U.S. judgment in Canada will rely on the well-established principle of judicial comity between the two nations and their established legal systems, particularly since there is no overarching reciprocal recognition of judgment agreement or treaty between the United States and Canada (like there is between Canadian provinces, discussed below). Assuming the following elements are met, most Canadian courts, and particularly Ontario courts, will likely enforce a U.S. judgment against defendants with assets in Ontario:

- a) the U.S. judgment is for a final, *in personam* judgment for a fixed definite sum of money;
- b) the originating process in the U.S. jurisdiction was properly served (all parties notified);
- c) the U.S. appeal period has expired;
- d) the U.S. judgement is not in contravention of Canadian public policy nor obtained by fraud;
- e) the U.S. judgment does not run afoul of the principle of natural justice;
- f) and there is a real and substantial connection with the Ontario defendant (and its assets).

(collectively, “Comity Elements”)

Assuming all the Comity Elements are met, Ontario (and most other Canadian jurisdictions) will enforce the U.S. judgment against an Ontario defendant and its assets by way of application or action (then proceeding directly to summary judgment), by treating the U.S. judgment as simply proof of a liquidated debt which can be enforced against assets in Ontario. The defendant does not have an opportunity to defend on the merits of the original claim or judgment, and can only raise challenges to the basic elements set out above.

C. JUSTICE FOR VICTIMS OF TERRORISM ACT

The applicants in Edward Tracy chose not to rely on direct enforcement of a U.S. judgment in Ontario pursuant to the principles of judicial comity, but rather the applicants relied on both an interprovincial statute allowing judgments of different Canadian provinces to be registered in other provinces and the federal statute *Justice for Victims of Terrorism Act*, S.C. 2012, c.1, s.2, (“JVTA”), which provides a mechanism for

victims of terrorism to sue perpetrators of terrorism and their supporters. The applicants had brought an application in Nova Scotia to enforce the U.S. judgment in accordance with JVTAs and Comity Elements, and had registered that Nova Scotia enforcement judgment in Ontario (according to the reciprocal enforcement statute between the provinces).

The particular advantage of the JVTAs is the ability to enforce against select state actors (and their assets) which might otherwise be protected by diplomatic immunity. Section 4(5) of the JVTAs provides that a court of competent jurisdiction “must recognize” a judgment of a foreign court that, in addition to meeting the Comity Elements, is in favour of a person that has suffered loss or damage referred to in JVTAs 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*, R.S.C., 1985, c. S-18, for the judgment to be recognized. Iran is one of the two states listed in the regulations under the *State Immunity Act* and therefore the U.S. judgment at issue in Edward Tracy could be enforced in Ontario against assets of Iran that would otherwise be protected by diplomatic immunity.

D. THE EDWARD TRACY DECISION

The original U.S. judgment brought by Mr. Tracy was an action against Iranian State Actors alleging that Iran and certain of its agencies had helped to arm and finance Mr. Tracy’s kidnapping and abduction during the Lebanon hostage crisis in 1986. Mr. Tracy was not released until 1991, having endured years of alleged torture, being chained, beaten and threatened with death.

Even though the U.S. judgment held Iranian State Actors responsible for Mr. Tracy’s ordeal, Mr. Tracy and other victims of the same hostage crisis with similar judgments have been, at least to date, unable to enforce the judgments against Iranian assets in the U.S. After the passage of the JVTAs in 2012, and the subsequent limiting of state immunity for countries deemed to be supporting terrorism as set out in the *Criminal Code*, Mr. Tracy brought his enforcement efforts north to Canada, first enforcing the decision in Nova Scotia, then registering that decision in Ontario and seeking enforcement against assets in Ontario.

One of the most important aspects of the decision in Edward Tracy was persuading the court to find that the identified assets were actually that of Iranian State Actors, and were not diplomatic assets or assets of private companies. The court in Edward Tracy essentially lifted the corporate veil of the assets held by a web of

front companies and organizations to avoid existing sanctions against Iran, and, for many of the assets, ruled that the assets were not diplomatic in nature (this includes real property and bank accounts). Iran has been notified of the order for seizure of assets in the Edward Tracy case but as yet has failed to respond and no other appeal to date has been instituted.

E. CONCLUSION

As the decision of Edward Tracy is very recent and the appeal period has yet to expire, it is difficult to speculate on the long-term impact of this decision and whether it may be the harbinger of similar decisions to come. What is clear is that governments around the world, including Canada, are making it easier for government agencies and private citizens to seek redress against any entities related to terrorist activities or the support thereof. For charities and non-profits which work internationally and potentially have contact with state actors or agencies in conflict zones, it is increasingly important to institute substantive due diligence measures to avoid inadvertent contravention of sweeping anti-terrorism laws and regulations.