

Ontario Court Enforces American Judgments Against Iran

Under the *State Immunity Act*, foreign states are generally immune from being sued in Canada. This includes being sued on a foreign judgment. However, in 2012 Canada enacted legislation to give victims of terrorism the ability to sue a foreign state that sponsored the terrorism. It also made it easier for foreign judgments against such a state to be enforced in Canada.

In *Tracy v The Iranian Ministry of Information and Security*, 2016 ONSC 3759 (released June 9, 2016; likely to be posted in the week of June 13, 2016, in CanLII) the Ontario Superior Court of Justice had to consider these legislative reforms and how they applied to a series of American judgments rendered against Iran in favour of American victims of terrorist acts which Iran was found to have sponsored. The court held that Iran was not immune from the enforcement proceedings and that accordingly the American judgments were enforceable against certain assets of Iran in Ontario.

The decision is reasonably detailed. It involves interpretation of the *State Immunity Act* and the *Justice for Victims of Terrorism Act*. It also considers issues relating to the limitation period and the enforcement of punitive damages awards (in this case, in the hundreds of millions of dollars). Not all of the analysis resonates as convincing and there is considerable scope for a possible appeal. For example, Iran's argument that the loss or damage suffered by the victim had to have been, on the language of s 4(1) of the *JVTA*, suffered after January 1, 1985, did not prevent the enforcement of American decisions in respect of acts of terror which happened before that date because, the court held, the victims continued to suffer harm on an ongoing basis. This seems vulnerable to challenge. In addition, the court's reasoning as to why the enormous punitive damages awards were not contrary to public policy is extremely brief.

However, on any appeal, Iran does have a significant procedural problem to overcome. It did not defend the enforcement actions when they were initially brought in Ontario. All of the immunity arguments were canvassed by the court as part of Iran's motion to have the resulting default judgments set aside, on the issue of whether Iran might have a viable defence on the merits. But at no

point did Iran offer any explanation for the initial failure to defend. While not conclusive, this weighs against setting the judgments aside even if Iran can show merit to its position on immunity.

The timing of the court's decision against Iran could pose challenges for the current Canadian government, which is currently working to re-engage with Iran after the previous government cut ties in 2012 (see news story [here](#)). In addition, a Montreal-based professor has recently been jailed in Iran and this has caused considerable concern in Canada (see news story [here](#)).