S.C.C. File No. 38562

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Appellant

- and -

INSTRUBEL, N.V.

Respondent

- and -

THE REPUBLIC OF IRAQ, THE MINISTRY OF INDUSTRY OF THE REPUBLIC OF IRAQ, THE MINISTRY OF DEFENCE OF THE REPUBLIC OF IRAQ, and THE SALAH ALDIN STATE ESTABLISHMENT

Interveners

FACTUM OF THE INTERVENER, THE CHARTERED INSTITUTE OF ARBITRATORS (CANADA) INC.

(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

McCARTHY TÉTRAULT LLP
2500 – 1000 de la Gauchetière Street West
Montréal, QC H3B 0A2

Simon V. Potter, Ad. E.
Adam Goldenberg
Sandra Aigbinode Lange

Tel.: 514-397-4100
Fax: 514-875-6246
E-mail: spotter@mccarthy.ca

Counsel for the Intervener, The Chartered Institute of Arbitrators (Canada) Inc.

GOWLING WLG (CANADA) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

Matthew Estabrooks

Tel.: 613-786-0211
Fax: 613-788-3587
E-mail: matthew.estabrooks@gowlingwlg.com

Ottawa Agent for Counsel for the Intervener, The Chartered Institute of Arbitrators (Canada) Inc.

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THE REPUBLIC OF IRAQ, THE MINISTRY OF INDUSTRY OF THE REPUBLIC F IRAQ, THE MINISTRY OF DEFENCE OF THE REPUBLIC OF IRAQ, and THE SALAH ALDIN STATE ESTABLISHMENT

Appellants

- and -

INSTRUBEL, N.V.

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- and -

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Intervener

ORIGINAL TO: **THE REGISTRAR**
Supreme Court of Canada
301 Wellington Street
Ottawa ON K1A 0J1

COPIES TO:

McMILLAN LLP
2700 – 1000 Sherbrooke Street West
Montréal, QC H3A 3G4

Éric Vallières
Michael J. Hanlon
Émile Catimel-Marchand

Tel.: 514-987-5068
Fax: 514-987-1213
E-mail: eric.vallieres@mcmillan.ca

Counsel for the Appellant,
International Air Transport Association

McMILLAN LLP
2000 – 45 O'Connor Street
Ottawa ON K1P 1A4

David Debenham

Tel.: 613-691-6109
Fax: 613-231-3191
E-mail: david.debenham@mcmillan.ca

Ottawa Agent for Counsel for the Appellant,
International Air Transport Association

LCM AVOCATS INC.
2700 - 600 de Maisonneuve West
Montréal QC H3A 3J2

Patrick Ferland
Nicolas Roche

Tel.: 514-375-2681
Fax: 514-905-2001
E-mail: pferland@lcm.ca

Counsel for the Appellants,
The Republic of Iraq, The Ministry of Industry of The Republic of Iraq, The Ministry of Defence of The Republic of Iraq, and The Salah Aldin State Establishment

CAZA SAIKALEY LLP
350 – 220 Laurier Avenue West
Ottawa ON K1P 5Z9

Alyssa Tomkins

Tel.: 613-564-8259
Fax: 613-565-2087
E-mail: atomkins@pladeurs.ca

Ottawa Agent for Counsel for the
Appellants, The Republic of Iraq, et al.

IMK LLP
1400 – 3500 de Maisonneuve Blvd. W.
Montréal QC H3Z 3C1

Audrey Boctor
Francois Goyer

Tel.: 514-934-7737
Fax: 514-935-2999
E-mail: aboctor@imk.ca

Counsel for the Respondent,
Instrubel, N.V.

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa ON K2P 0R3

Marie-France Major

Tel: 613-695-8855, ext. 102
Fax: 613-695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the
Respondent, Instrubel, N.V.

TABLE OF CONTENTS

PAGE

PART I—OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Canadian law favours the recognition of arbitration agreements. This calls for a liberal approach to the enforcement of arbitral awards. The Chartered Institute of Arbitrators (Canada) Inc. ("**CIArb**") intervenes to propose how such an approach ought to apply in this appeal.

2. When courts and litigants equate arbitral awards to foreign judgments in enforcement proceedings, as occurred in the courts below in this case — and as the Appellants do in their submissions to this Court — they mischaracterize the nature of arbitration and risk undermining the public policy of promoting it. This Court should reject the false equation of arbitral awards and foreign judgments. Just as courts take care to recognize arbitration agreements, they should make special efforts to enforce the awards that those agreements ultimately produce.

3. Enforcing an arbitral award is not akin to enforcing a foreign judgment. The recognition and enforcement of a foreign judgment involves the interaction of one jurisdiction with another jurisdiction, either or both of which may have purported to exercise powers of compulsion over one or more of the parties. The recognition and enforcement of an arbitral award, by contrast, involves judicial ratification of the outcome of an agreed process between parties that have expressly consented to the jurisdiction of an arbitral tribunal, the exercise of its powers, and to the enforceability of its eventual award. The enforcement of arbitral awards should reflect, and should not gloss over, this difference.

4. In relation to this appeal, Canadian courts should enforce arbitral awards by exercising *in personam* jurisdiction over non-parties that hold assets that may be used to satisfy the awards. They should do this even if the non-party holds the assets extraterritorially. The objective of promoting respect for — and encouraging participation in — arbitration, particularly international arbitration, demands it. So does this Court's recent case law. The Court should say as much in disposing of this appeal. It should confirm that Canada is an "arbitration-friendly" jurisdiction and, in so doing, ensure consistency in Canadian courts' interactions with the arbitral process. Simply put, the Court should not fall into the false equation that the Appellants propose.

B. Statement of Facts

5. This appeal arises out of the Respondent's attempt to enforce arbitral awards rendered in its favour in 1996 and 2003. It seeks to enforce these arbitral awards in the Québec courts. The Respondent obtained a writ of seizure before judgment by garnishment with respect to air navigation charges held by the Montreal-based International Air Transport Association ("**IATA**") on behalf of Iraqi authorities.[1] After unsuccessfully attempting to quash the writ, Iraq challenged the jurisdiction of the Québec court to issue it, on the basis that the property seized was held in Switzerland and was for that reason beyond the Québec court's jurisdiction.[2]

6. The motion judge held that the garnishment order was "not merely a personal order affecting only the garnishee", but was also a seizure of assets.[3] Because "[t]he assets are within the jurisdiction of the Swiss courts", "[a] Québec court should not exercise judicial control … and should not be deciding who is the custodian of th[e] assets"; instead, "these are matters for the Swiss courts".[4]

7. The motion judge also indicated, in *obiter*, that he might have declined to exercise jurisdiction in any event.[5] Notably, the motion judge released his reasons before this Court gave judgment in *Equustek*.[6] The implications of that decision are discussed below.

8. The Court of Appeal of Québec allowed the appeal. It rejected the motion judge's determination that IATA held funds in Switzerland on behalf of Iraq. Instead, the Court of Appeal concluded that Montreal-based IATA owed a debt to Iraq.[7] Since Québec courts have jurisdiction over the debts of entities domiciled in the province, nothing turned on whether Québec courts have or should exercise jurisdiction over extraterritorial assets.[8]

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[1] *Instrubel, n.v. v. Republic of Iraq,* 2016 QCCS 1184 [**Motion Judge's Reasons**], ¶¶1-2.
[2] Motion Judge's Reasons, ¶4-17.
[3] Motion Judge's Reasons, ¶74.
[4] Motion Judge's Reasons, ¶76.
[5] Motion Judge's Reasons, ¶78.
[6] *Google Inc. v. Equustek Solutions Inc.,* 2017 SCC 34 [***Equustek***].
[7] *Instrubel, n.v. v. Republic of Iraq,* 2019 QCCA 78 [**Court of Appeal's Reasons**], ¶¶29-41.
[8] Court of Appeal's Reasons, ¶¶42-43, 51.

PART II—STATEMENT OF ARGUMENT

A. Arbitral Awards Are Not Analogous to Foreign Judgments

9. This appeal affords an opportunity to clarify the proper approach to enforcing arbitral awards in Canada. In concluding that the Québec court lacked jurisdiction, the motion judge relied on this Court's comments in *Chevron* — a decision concerning the enforcement of foreign judgments.[9] Other courts have similarly applied principles for the enforcement of foreign judgments to arbitral awards.[10] The Appellants ask the Court to do so here.[11]

10. Neither of the Appellants pays more than passing notice to the underlying arbitral context of this appeal. Nor does the Respondent. The parties frame the question as whether, in IATA's words, "worldwide or extraterritorial enforcement orders are … a proper or legal means of execution of judgments (or arbitral awards) and seizing assets".[12]

11. Other courts have correctly hesitated to equate arbitral awards and foreign judgments.[13] Arbitral awards have long been recognized as creating *sui generis* relationships that justify distinctive judicial frameworks.[14] This Court has consistently held that arbitral awards are not like judgments rendered by courts; "arbitration is an institution without a forum and without a geographic basis" that "is part of no state's judicial system" since it "is a creature that owes its

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[9] Motion Judge's Reasons, ¶¶46-47, 75-76, citing *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 [***Chevron***].

[10] See, e.g., *Solecki v. Stroud Resources Ltd.*, 2017 BCSC 1130, ¶¶1, 22, 30-34, 38; *Yugraneft Corporation v. Rexx Management Corporation*, 2007 ABQB 450, ¶72.

[11] See Factum of the Appellants, The Republic of Iraq, et al., ¶¶45, 47; Factum of the Appellant, International Air Transport Association, ¶105.

[12] Factum of the Appellants, International Air Transport Association, ¶115; See Factum of the Respondents, Instrubel, N.V., ¶62.

[13] See *Yugraneft Corp. v. Rexx Management Corp.*, 2010 SCC 19 [***Yugraneft***], ¶6, 43-45; *Union des consommateurs v. Dell Computer Corp.*, 2007 SCC 34 [***Dell***], ¶¶3, 50-53; *Yugraneft Corporation v. Rexx Management Corporation*, 2008 ABCA 274, ¶¶8, 13-14; *Karaha Bodas Co. L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 2004 ABQB 918, ¶16. See also J. Kenneth McEwan and Ludmila Barbara Herbst, "Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations" (Toronto: Thomson Reuters, 2018) [**McEwan and Herbst**], 12.30.40.10, Book of Authorities of CIArb ("**BOA**") Tab 9.

[14] See Geoff R. Hall, "Canadian Contractual Interpretation Law" (Toronto: LexisNexis, 2016) [**Hall**], at 9.2.6., BOA Tab 7.

existence to the will of the parties alone".[15] There is nothing "foreign" about an arbitral award.

12. Unlike a judgment, an arbitral award is grounded in a contractual, voluntary relationship.[16] The parties themselves confer jurisdiction on the arbitrator. They are largely free to "choose any place, form or procedure they consider appropriate".[17] Conversely, court orders arise through an exercise of mandatory jurisdiction. Litigants in judicial proceedings may be brought before the court compulsorily, and made subject to procedural and substantive rules to which they have never expressly agreed, and even to which they would never expressly agree. This exercise of mandatory jurisdiction gives rise to concern about the legitimacy of the exercise of state power and circumscribes the Court's enforcement jurisdiction.[18] Similar concerns are not present in the arbitral context.

13. Hence, "because arbitral awards are based on contractual agreement between the parties", it is "easier for states to recognize international arbitral awards than it is to recognize judgments of foreign courts".[19] For example, the competence-competence principle, which requires courts to respect an arbitral tribunal's determination of its own jurisdiction,[20] does not apply to foreign judgments; Canadian courts can second-guess whether the foreign courts' taking of jurisdiction should be respected.[21] Just as the recognition of international arbitral awards calls for a different approach, so should the enforcement of arbitral awards concomitantly involve different principles than those that apply to the enforcement of foreign judgments.

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[15] *Dell* (S.C.C. 2007), *supra* note 13, ¶¶51-52 (and ¶3); see also *Yugraneft* (S.C.C. 2010), *supra* note 13, ¶44; *Heyman v. Darwins*, [1942] A.C. 356 (H.L), at 373-374, BOA Tab 4.

[16] See *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 [***Wellman***], ¶¶52-53.

[17] See J. Brian Casey, "Arbitration Law of Canada: Practice and Procedure" (New York, Juris Net: 2011) [**Casey**] at 259, BOA Tab 8.

[18] *Chevron* (S.C.C. 2015), *supra* note 9, ¶¶47-50.

[19] McEwan and Herbst, *supra* note 13, at 12.30.40.10. See also *Wellman* (S.C.C. 2019), *supra* note 16, ¶51.

[20] *Dell* (S.C.C. 2007), *supra* note 13, ¶70; *Seidel v. Telus Communications Inc.*, 2011 SCC 15 [***Seidel***], ¶¶29-30; *Ontario Medical Assn. v. Willis Canada Inc.*, 2013 ONCA 745, ¶¶19-37, 47-48.

[21] *Chevron* (S.C.C. 2015), *supra* note 9, ¶¶31-38.

B. Canadian Courts Should Exercise Jurisdiction To Enforce Arbitral Awards, Including Against Extraterritorial Assets

14. In this appeal, the issue is whether the Québec courts have jurisdiction to make an order, potentially with extraterritorial effect, to a party within the jurisdiction, to aid in the enforcement of an arbitral award. This Court should confirm that Canadian courts have broad jurisdiction to enforce arbitral awards, that they may make orders— including orders against non-parties to the arbitration — in order to do so, and that an extraterritorial consequence is no bar to this.

15. The motion judge concluded otherwise. Underlying his analysis — both with respect to whether he had jurisdiction and whether, if he did, he should exercise it — was his equation of arbitral awards and foreign judgments.[22] However, leaving aside the question whether his conclusion would have been correct even in the presence of a foreign judgment rather than of a binding arbitral award, applying the same approach to the enforcement of arbitral awards as to the enforcement of foreign judgments not only ignores the differences described above, but is also inconsistent with the Canadian approach to arbitration generally.[23]

i. Canadian Law Should Favour the Enforcement of Arbitral Awards

16. Setting aside previously skeptical views of arbitration,[24] Canadian courts and legislatures now promote it, particularly in the commercial setting.[25] This Court has recognized a "broad consensus in favour of the institution of arbitration".[26] Courts interpret arbitration provisions broadly, and resolve ambiguities to favour arbitration.[27] They do so with "an unabashed policy goal: [to] further the modern trend of comity being extended by the judiciary to private dispute

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[22] See Motion Judge's Reasons, ¶¶46-51, quoting *Chevron* (S.C.C. 2015), *supra* note 9, ¶¶46, 49.

[23] See, e.g., *Popack v. Lipszyc*, 2018 ONCA 635 [***Popack***], ¶40; *Hopkins v. Ventura Customs Homes Ltd.*, 2013 MBCA 67 [***Hopkins***], ¶¶59-63; *Haas v. Gunasekaram*, 2016 ONCA 744, ¶¶10, 17; *Singh v Maple Leaf*, 2016 ONSC 1434, ¶4; *Wellman* (S.C.C. 2019), *supra* note 16, ¶46; *Seidel* (S.C.C. 2011), *supra* note 20, ¶23; *Consolidated Contractors Group S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939, ¶¶23-24. See also Casey, *supra* note 17, 264-266.

[24] *Wellman*, *supra* note 16, ¶48.

[25] *Wellman*, *supra* note 16, ¶54.

[26] *Dell* (S.C.C. 2007), *supra* note 13, ¶39. See *Wellman* (S.C.C. 2019), *supra* note 16, ¶¶52-56.

[27] See authorities cited *supra* note 23; Hall, *supra* note 14, at 9.2.4.

resolution procedures which have been adopted by the parties"; this is "one of a limited number of areas in the law of contractual interpretation in Canada in which enforcing the parties' intention is not the paramount principle followed by the Courts".[28]

17. Judicial recognition of arbitral awards, however, is largely meaningless without judicial enforcement of those awards.[29] Canadian law should promote enforcement the way it promotes recognition — by ensuring that the law advances the "unabashed policy goal" described above. Such an approach already has judicial and legislative support. Canadian courts respect the parties' desire (and agreement) to resolve disputes through arbitration, and respect the outcome of the arbitral process.[30] They avoid contractual interpretations that would make it possible to escape arbitral agreements.[31] Failing to take a similar approach to legal rules that can aid or impede enforcement would work against an important, broader trend in the jurisprudence. It would also dilute our courts' commitment to party autonomy, particularly in commercial arbitration.[32]

18. Canada has also subscribed to international conventions that direct courts to enforce international arbitral awards. The New York Convention, which Canada ratified in 1986, requires Canada to recognize and enforce arbitral awards made internationally, even from states that are not parties to the Convention.[33] Indeed, Canada was the first country to adopt legislation based on the Convention; the Québec *Code of Civil Procedure* was modified in 1986 to "reflect [the Convention]".[34] Similarly, the Model Law — which every Canadian jurisdiction has adopted, subject to some modifications[35] — requires enforcement "irrespective of the country in which [the arbitral award] was made".[36]

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[28] Hall, *supra* note 14, at 9.2.4.

[29] See McEwan and Herbst , *supra* note 13, at 12:10.

[30] *Popack* (Ont. C.A 2018), *supra*, note 23, ¶35; *The Dominican Republic v. Geci Española* 2017 QCCS 2619, ¶¶14-15. See also *supra* note 23 and accompanying text.

[31] *Seidel* (S.C.C. 2011), *supra* note 20, ¶119. See also *Dell* (S.C.C. 2007), *supra* note 13.

[32] *Wellman* (S.C.C. 2019), *supra* note 16, ¶¶52-53.

[33] *Yugraneft* (S.C.C. 2010), *supra* note 13, ¶9.

[34] *Nearctic Nickel Mines Inc.* c. *Canadian Royalties Inc.*, 2012 QCCA 385, ¶51.

[35] *Yugraneft* (S.C.C. 2010), *supra* note 13, ¶11.

[36] See *Popack* (Ont. C.A. 2018), *supra* note 23, ¶35.

ii. When a Court Has *In Personam* Jurisdiction over a Non-Party, the Court May Make Orders Against the Non-Party with Extraterritorial Effect

19. The world economy is transnational. Canada is a trading nation. Enforcing arbitral awards in Canada will clearly, from time to time, involve assets situated outside Canada. Though there are territorial limits on a court's enforcement jurisdiction,[37] those limits should not be overstated.[38] As this Court held in *Equustek*, as long as a court has *in personam* jurisdiction over the person subject to an order, including a non-party to the underlying dispute, that order may validly require the person to do or refrain from doing something "anywhere in the world".[39]

20. *Equustek* teaches that a court may exercise jurisdiction to make an order with extraterritorial effect when doing so will advance an important public policy objective. In *Equustek*, the objective was to ensure the effectiveness of court orders.[40] In this appeal, the Court should reach a similar conclusion with respect to two other, but equally important, public policy objectives: encouraging dispute resolution through arbitration,[41] and protecting parties' private ordering of their affairs.[42]

21. Each of these objectives should support the exercise of enforcement jurisdiction to make an order against a non-party, even with extraterritorial effect. Canadian courts, including the courts of Québec, can and should exercise *in personam* jurisdiction to require a person, even if not a party to the arbitration, to take actions to aid in an arbitral award's enforcement.

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[37] See *R. v. Hape*, 2007 SCC 26 [***Hape***], ¶¶35-46; *Hunt v. T & N Plc*, [1993] 4 S.C.R. 289 [***Hunt***], ¶¶56-57; see also *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 [***Van Breda***], ¶¶27-28.

[38] See *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 [***Morguard***], ¶¶33, 39 (WL); *Beals v. Saldanha*, 2003 SCC 72 [***Beals***], ¶27; see also *Hunt* (S.C.C. 1993), *supra* note 37, ¶¶57-58.

[39] *Equustek* (S.C.C. 2017), *supra* note 6, ¶38.

[40] *Equustek* (S.C.C. 2017), *supra* note 6, ¶¶38-41, 52-53; see also *British Columbia (Attorney General) v. Brecknell*, 2018 BCCA 5 [***Brecknell***], ¶¶22, 26, 44-54.

[41] *Wellman* (S.C.C. 2019), *supra* note 16, ¶¶52-54; *Seidel* (S.C.C. 2011), *supra* note 20, ¶89; *Hopkins* (Man. C.A. 2013), *supra* note 23, ¶¶ 59-63; *Hall*, *supra* note 14, at 9.2.1, 9.2.4.

[42] See *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, ¶¶85, 117, per Binnie J. (dissenting on other grounds); see also *Bhasin v. Hrynew*, 2014 SCC 71, ¶79.

22. Non-parties are often subject to court orders with extraterritorial effects that are purposed to support the court's procedures. *Norwich Pharmacal* orders, for instance, can be used to compel non-parties to disclose information or documents in their possession that a claimant requires, even if the documents are held outside the court's territorial jurisdiction.[43] Similarly, *Mareva* injunctions are used against non-parties to freeze assets in order to prevent their dissipation.[44] Such injunctions "have been granted on a worldwide basis with increasing frequency".[45]

23. The fact that the order involves assets — even extraterritorially located — should not be determinative. A court's *in personam* jurisdiction over a party, permitting the court to make orders affecting that party's assets, "is not dependant, related to or 'tied to' a requirement that a defendant has some assets in the jurisdiction".[46] Accordingly, to the extent that a person is in a position to dispose of assets in compliance with a court order, the court can make the order.[47] Many courts across the world have dictated how an individual can use foreign assets on the grounds that "a court should not permit a defendant to take action designed to frustrate … orders of the court".[48]

iii. Comity Should Not Bar Orders Aiding Enforcement of Arbitral Awards

24. Comity circumscribes a court's extraterritorial exercise of jurisdiction.[49] Comity, however, is fluid,[50] and the limits it imposes on a court's jurisdiction are context-specific and depend

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[43] *Equustek* (S.C.C. 2017), *supra* note 6, ¶31.

[44] *Equustek* (S.C.C. 2017), *supra* note 6, ¶33.

[45] *SFC Litigation Trust (Trustee of) v. Chan*, 2017 ONSC 1815 (Div. Ct.) [***SFC Litigation Trust***], ¶38. See *R. v. Consolidated Fastfrate Transport Inc.*, (1995), 83 O.A.C. 1, 24 O.R. (3d) 564 (Ont. C.A.), ¶140.

[46] *SFC Litigation Trust* (Ont. Div. Ct. 2017), *supra* note 45, ¶27.

[47] See *Equustek*, (S.C.C. 2017), *supra* note 6, ¶¶38, 47; *Cardile v. LED Builders Ltd.* (1999), 73 A.L.J.R. 657 (H.C.) at 670, BOA Tab 1; *Glaxo Wellcome PLC v. Minister of National Revenue*, [1998] F.C.J. No. 874 (F.C.A), ¶¶31-33, BOA Tab 3; Justice Robert J. Sharpe, "Injunctions and Specific Performance", (Toronto: Thomson Reuters, 2017), 1.1190, 2.1050, 2.1056, BOA Tab 10.

[48] *Mooney v. Orr*, [1994] B.C.J. No. 2322 (B.C. S.C.), ¶11, BOA Tab 6; see also *Hospital Products Ltd. v. Ballabil Holdings Pty. Ltd.*, [1984] 2 N.S.W.L.R. 662 (S.C. Aus.), BOA Tab 5; *Derby & Co. v. Weldon (Nos. 3&4)*, [1989] 1 All E.R. 1002 (C.A.), BOA Tab 2.

[49] *Morguard* (S.C.C. 1990), *supra* note 38, ¶29; *Van Breda* (S.C.C. 2012), *supra* note 37, ¶26; *Chevron* (S.C.C. 2015), *supra* note 9, ¶53; See *Kriegman v. Dill*, 2018 BCCA 86, ¶1.

[50] *Hunt* (S.C.C. 1993), *supra* note 37, ¶58.

principally on two factors: first, whether interfering with individuals or assets located outside Canada is necessary to ensure the effectiveness of a court order and, second, whether the order conflicts with another state's laws.[51] Comity should not be a bar to making an order against a non-party, even when the order has extraterritorial effect, to aid in the enforcement of an arbitral award.[52]

25. In *Equustek*, the Court was confident that a foreign jurisdiction's respect for intellectual property rights and laws against piracy meant that injunctions with extraterritorial effect promoting the same would not conflict with any foreign state's laws, and thus would not offend comity.[53] The potential impotence of domestically circumscribed injunctions buttressed the Court's conclusion in this regard.[54] Likewise, in *Chevron*, the Court held that, in the absence of a real and substantial connection between the enforcing jurisdiction and the dispute or the defendant, a foreign judgment could be enforced in Canada to prevent debtors from too easily escaping their obligations.[55]

26. These same considerations militate in favour of enforcing arbitral awards, even when the order would have some extraterritorial effect. The international arbitration system, to which the vast majority of countries in the world subscribe, promotes uniform recognition and enforcement rights.[56] Enforcing an arbitral award is unlikely to conflict with any foreign laws, and no such conflict is presented here. Facilitating the enforcement of arbitral awards will also foster respect for arbitration agreements, which have continued to increase in importance in our economy.[57]

27. Here, the motion judge suggested that Canadian courts should be wary of exercising jurisdiction "[i]f the intervention of the courts of the country where the assets are located will be

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[51] See *Beals* (S.C.C. 2003), *supra* note 38, ¶27; *Hunt* (S.C.C. 1993), *supra* note 37, ¶53; *Equustek* (S.C.C. 2017), *supra* note 6, ¶44; *Chevron* (S.C.C. 2015), *supra* note 9, ¶¶50-57.

[52] See *Hape* (S.C.C. 2007), *supra* note 37,¶¶47-48.

[53] *Equustek* (S.C.C. 2017), *supra* note 6, ¶¶44, 46.

[54] *Equustek* (S.C.C. 2017), *supra* note 6, ¶¶41, 47.

[55] *Chevron* (S.C.C. 2015), *supra* note 9, ¶53. See ¶30, 42, 44, 48, 57, 68. See *Pro Swing Inc v. ELTA Golf Inc.*, 2006 SCC 52, ¶11, 77 (per McLachlin C.J., dissenting, but not on this point); *Morguard* (S.C.C. 1990), *supra* note 38, ¶¶31, 41.

[56] *Yugraneft* (S.C.C. 2010), *supra* note 13, ¶¶9-11; *Dell* (S.C.C. 2007), *supra* note 13, ¶¶38-41.

[57] *Supra* notes 23-25. See also *Beals* (S.C.C. 2003), *supra* note 38, ¶27; *Hunt* (S.C.C. 1993), *supra* note 37, ¶57.

necessary later to execute the arbitral awards".[58] With respect, this concern is unwarranted in relation to the enforcement of arbitral awards. When a Canadian court exercises *in personam* jurisdiction over a person who can do something in aid of enforcing an arbitral award, the court should not refrain from exercising that jurisdiction because of hypothetical comity concerns.

28. Any violation of comity in a specific instance would be grounds for a court to decline to exercise its jurisdiction in that particular case, rather than generally, as the motion judge suggested in *obiter*. Establishing jurisdiction does not mean that a Court must exercise it in all instances.[59] In *Equustek,* this Court rejected the argument that Canadian courts cannot issue injunctions with extraterritorial effects because it is possible that such orders could not be obtained in a foreign jurisdiction, or complying with it would result in the violation of foreign laws.[60] Instead, the Court reasoned that such issues should be addressed on a case-by-case basis.[61] Potential comity concerns equally cannot support a general rule against exercising jurisdiction to enforce arbitral awards extraterritorially. The Court should recognize as much in deciding this appeal.

PART III—SUBMISSIONS CONCERNING COSTS

29. CIArb does not seek costs and requests that no costs be awarded against it.

PART IV—ORDER SOUGHT

30. CIArb takes no position on the outcome of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of November, 2019.

per: Simon V. Potter, Ad. E.

Adam Goldenberg

per: Sandra Aighinode Lange

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[58] Motion Judge's Reasons, ¶78.

[59] *Chevron* (S.C.C. 2015), *supra* note 9, ¶¶77, 95. See also *Brecknell* (B.C. C.A. 2018), *supra* note 40, ¶¶49-52.

[60] *Equustek* (S.C.C. 2017), *supra* note 6, ¶44.

[61] *Equustek* (S.C.C. 2017), *supra* note 6, ¶46.

PART V—TABLE OF AUTHORITIES

Case Law	Paragraph(s) Referenced in Memorandum of Argument
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