CITATION: Petrochemical Commercial Company International Ltd v. Nexus Management Group SDN BHD, 2019 ONSC 1142
COURT FILE NO.: CV-19-611984
DATE: 20190220

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LTD, PCCI LTD and NAVAK ASIA KISH TRADING CO (PJS), Applicants

AND:

NEXUS MANAGEMENT GROUP SDN BHD, ASIAN TRADE INVESTMENT BANK LTD, MEHDI EBRAHIMIESHRATABADI (aka MIKE ROBERTSON aka MIKE ROBINSON aka TONY NEWMAN), MALEKSABET EBRAHIMI, OMID LTD, ATIB LTD, 5M INVESTMENT HOLDING LTD, KHADIJEH TAGHAVI SABZEVARI, MOHAMMAD EBRAHIMIESHRATABADI (aka EMANUELE EBRAHIMI), MEHRANEH EBRAHIMI ESHRABADI, AMIR KARGAR NEGHAB, ALI VASHAEE, 5M CAPITAL INVESTMENT PTY LTD, 5M CAPITAL INVESTMENT PTY LTD, 5M INVESTMENT LTD, MEDIVILLE INVESTMENTS LTD, GLOBAL NEWMAN PTY LTD, HORIZON INVESTMENT HOLDING LTD, EBM CORPORATION, IMBS SDN BHD and MPO LTD, Respondents

BEFORE: Penny J.

COUNSEL: *Johnathan Stainsby, Marcus Klee,* and *Scott Beeser* for the Applicants

Monique Jilesen, Jonathan Chen, and *Graham Henry* for the Canadian Respondents

HEARD: February 13, 2019

ENDORSEMENT

[1] On January 8, 2019 I granted an *ex parte* Mareva injunction against the Canadian respondents[1] in this proceeding, freezing their assets, requiring them to deliver a sworn statement

[1] The "Canadian respondents" include a number of individuals and two corporations. I will refer to the individuals by their first names for ease of reference. The Canadian respondents are: Maleksabet (**Malek**), Khadijeh, Mohammad, Mehraneh, Amir, Ali, 5M Capital Investment Pty Ltd [the Canadian company] (**5M Canada**) and Mediville Investment Holding Ltd (**Mediville**).

of assets in Canada and to submit to an examination under oath concerning their assets. This followed a similar order issued by the High Court of Malaysia Kuala Lumpur, made on January 3, 2019. Since January 8, freezing orders have also been made against the Canadian respondents in Australia and Cyprus.

[2] The Canadian respondents were served with the Mareva order and supporting material, have provided their sworn statements of assets and submitted to examinations under oath. They now move to set aside the Mareva order in its entirety. In the alternative, they seek access to funds sufficient to pay living expenses and legal fees. They also seek an order sealing the transcripts of their cross-examinations to protect their rights against self-incrimination. Finally, the Canadian respondents seek an order requiring the applicants to post security in the amount of $500,000 to support their undertaking as to damages.

[3] The Canadian respondents seek to set aside the Mareva order on essentially two grounds:

(1) non-disclosure of material facts at the *ex parte* hearing; and

(2) that the evidence, even accepting it is correct and admissible, is not capable of supporting the test for a Mareva injunction.

[4] As is their right, the Canadian respondents did not file affidavit evidence regarding the merits of the fraud claims being made against them. The only evidence they have filed personally is that which was compelled by the terms of the Mareva order – disclosure of their assets in Canada – and some evidence concerning their living and legal expenses.

[5] Similarly, the Canadian respondents submitted to examinations on their sworn statements of assets as ordered, but generally refused to answer any questions "going to the merits" of the underlying claims against them.[2]

The Alleged Fraud

[6] In 2013, Petrochemical Commercial Company International Ltd (**PCCI**) was subject to American economic sanctions and was looking for a bank or intermediary that would permit it to deposit funds in US currency. PCCI was introduced to Mehdi Ebrahimieshratabadi (**Mehdi**)[3], Malek and Nexus. As a result, PCCI entered into an agreement with Nexus under which Nexus would receive funds from PCCI's customers in US dollars and remit them in accordance with PCCI's instructions. Mehdi also introduced PCCI to Asian Trade Investment Bank Limited

[2] I should point out that the applicants also have, with respect to some of the Canadian respondents' document demands, refused to produce material on the basis that it goes to the merits of the main action in Malaysia, not to the Mareva order itself.

[3] Mehdi is Malek's son.

(**ATIB**). PCCI and the co-applicant, Navak Asia Kish Trading Co (PSJ) (**Navak**), then entered into an agreement with Nexus and ATIB under which ATIB agreed to provide banking services to Navak and PCCI.

[7] Under these agreements, Nexus was supposed to receive funds from PCCI's customers and, at the applicants' instructions, transfer them to PCCI's suppliers or to an account at ATIB. Between October 2013 and June 2015, over US $96 million was transferred on behalf of PCCI customers to an account held by Nexus at Bank Islam Malaysia Berhad (**BIMB**) for PCCI's benefit. From September 2014 to October 2016, PCCI instructed Nexus to pay approximately US $22.7 million to PCCI suppliers or certain nominated accounts. These payments were made. Between January 2014 and September 2015, PCCI instructed Nexus to transfer approximately US $73.3 million from the BIMB account to Navak's account at ATIB. The applicants also instructed Nexus and ATIB to transfer approximately $21.3 million of this amount to PCCI's account at ATIB. Nexus, ATIB and Mehdi represented that these transfers had been completed and provided the applicants with bank statements evidencing the purported transfers. In late 2015, the applicants asked Nexus and ATIB to return the funds. To date, only approximately US $2 million of these funds have been returned to the applicants. As a result, US $71.7 million of the applicants' funds are missing and have not been repaid.

[8] The applicants allege that Mehdi and Malek, among others, are the masterminds of this fraud, and that the other Canadian respondents have, at the very least, knowingly assisted in the fraud or the laundering of funds obtained by the fraud. Mehdi, it should be noted, appears to have absconded with the misappropriated funds. His present whereabouts are not known. Where the bulk of the money went is also not known.

Was There Non-disclosure of Material Facts?

[9] It is well-established that, on a motion without notice, the applicant must make full disclosure of all material facts. Material facts are facts that are relevant to the balancing exercise the Court must engage in when deciding whether or not to grant a Mareva injunction. It is not necessary that these facts, if not disclosed, would have dictated a different result. The focus is on the facts relevant to the position the absent respondents would have put forward if they had been present.

[10] Further, it is not sufficient that relevant documentary evidence is simply attached or included "somewhere" in the Record so that the court, given sufficient time and effort, might have unearthed the information on its own. Material facts must be highlighted or brought to the court's attention at the *ex parte* hearing.

[11] The centrepiece (but by no means the only piece) of the Canadian respondents' argument regarding non-disclosure arises from the description of the applicant PCCI. The supporting affidavit states:

> PCCI is a company registered in the federal territory of Labuan, Malaysia that carries on business as a commercial trading company, brokering the sale of petrochemical and oil products and providing related logistics services including

> shipping, storage tanks and warehousing. *Prior to 2011, PCCI was a publicly owned company in Iran; in 2011, it was privatized and became indirectly owned by Parsian Oil & Gas Development Group Company, one of the largest companies on the Tehran Stock Exchange* [emphasis added].

[12] Counsel for the Canadian respondents argues forcefully that this statement is misleading and obscures important additional facts. Those facts, the Canadian respondents argue, are that:

(a) the Parsian Oil & Gas Development Group Company (**Parsian**) or its parent Ghadir Investments (**Ghadir**) are owned or controlled by: (i) the government of Iran; (ii) various Iranian armed forces pension and social security funds; and/or (iii) the Islamic Republican Guard Corps (**IRGC**);

(b) a clandestine branch of the IRGC is the IRGC "Qods Force" which facilitates international terrorist operations and is listed in the Canadian *Criminal Code* as a terrorist organization; and

(c) PCCI is on a sanctions list issued by the U.S. Office of Foreign Assets Control (**OFAC**) on the basis that PCCI is "owned or controlled, or acting for or on behalf of" the Iranian government.

[13] It is argued that these "facts" are relevant and material for at least two reasons. First, the applicants' evidence suggests the Canadian respondents are subject to a criminal investigation by officials within the Iranian judiciary. The Canadian respondents argue that this court ought to have been told that the owner of the plaintiff in this civil action is also sponsoring a criminal investigation into the Canadian respondents' conduct in Iran.

[14] Second, the Canadian respondents argue that the IRGC's connection to the Qod Force, a terrorist organization, means that PCCI does not come before the court with "clean hands." This too, they say, ought to have been disclosed as it was material to the court's consideration of whether to grant equitable relief in this case.

[15] I am unable to agree with this argument. The description of PCCI in the evidence before the court on the *ex parte* motion was accurate. The reference to PCCI being "privatized" was in the context of it having ceased to be listed on the Tehran Stock Exchange (which appears to be true). Further, PCCI disclosed that it was subject to sanctions published by OFAC. This, indeed, was the very reason PCCI had need of the intermediary banking services which lie at the heart of the alleged fraud. The affidavit stated:

> Since July 16, 2010, PCCI has been subject to sanctions published by [OFAC] relating to Iran. Although the sanctions are not recognized outside of the US as having extra-territorial effect, banks with links to the US are reluctant to continue business with an entity that is named in the OFAC list. This was problematic for PCCI because certain of its customers would only pay invoices in US dollars. Therefore, PCCI required a bank that would permit it to deposit funds in US currency.

[16] The reference, in the evidence filed on behalf of the Canadian respondents, to the IRGC being "heavily invested" in Parsian comes from a 2017 KPMG briefing piece on the Iranian petrochemical industry. This statement does not appear to be consistent with the content of 2019 extracts from material posted on the Tehran Stock Exchange, which does not list the IRGC as a significant shareholder in Parsian (or Ghadir). I find the argument that PCCI is owned by a terrorist organization to be overreaching and unsupported by the weight of the available evidence.

[17] More generally, PCCI does not appear to be owned or controlled by the Iranian government at all. Rather, significant shareholders, as noted above, appear to include a number of armed forces pension and social security funds. Even if PCCI was owned or controlled, or acted for or on behalf of, the Iranian government, I would not regard this, standing alone, as the omission of a relevant fact. The fact that PCCI was on a US sponsored sanctions list was disclosed. Further, government owned entities are as exposed to fraudulent activity as non-government entities and, absent other factors, are equally entitled to the protection of the civil law in the face of such activities.

[18] I do not, therefore, agree that failing to provide more details (the accuracy of which is, in any event, disputed) about who owns PCCI constitutes material non-disclosure sufficient to warrant setting the Mareva order side.

[19] Another material non-disclosure of fact is said to be that the respondent Nexus (alleged to be controlled by one of the Canadian respondents, Malek, and his missing son, Mehdi) had at least $8 million in its account that did not come from PCCI. Thus, the Canadian respondents argue, the funds that flowed from Nexus to their Canadian bank accounts could have come from funds having nothing to do with PCCI or the alleged fraud.

[20] I do not accept this argument. First, the applicant's original material did list, in discussing facts and arguments that would favour the Canadian respondents, the argument that there is insufficient evidence to establish that the money received from Nexus came from the applicants' misappropriated funds. This was specifically canvassed at the *ex parte* hearing.

[21] In addition, the applicants disclosed in their affidavit material that up to $8 million in the Nexus account could have come from sources other than PCCI. However, where a defendant mixes stolen monies in an account with legitimate funds and subsequently pays amounts out of that account, the funds do not lose their character as misappropriated by virtue of that commingling and the mixing of the funds does not constitute a bar to recovery, see *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, paras. 79 to 84.

[22] In sum, the fact that there were some non-PCCI funds in the Nexus account was disclosed. And, as a matter of law, this fact alone is irrelevant to the cause of action or to recovery of the allegedly misappropriated funds.

[23] Many of the Canadian respondents' other arguments go to the weight or reliability of the evidence, such as hearsay. Hearsay is admissible on an interlocutory motion provided the source of the information and the fact of the deponent's belief are established. The hearsay nature of the

evidence concerning Malek's involvement in the initial meetings between PCCI and Nexus was disclosed. The source of the document describing Malek as "Chief Supervisor" of ATIB was also explained. The involvement in the alleged fraud of a person called "Dato," who was the sole director of PCCI and a signatory for ATIB, was also disclosed in the material before the court at the *ex parte* hearing.

[24] In summary, I am not able to conclude that the alleged non-disclosure is either established or, if established, was sufficiently material to conclude that the Mareva order must be set aside.

Is the Evidence Capable of Meeting the Mareva Test?

[25] The two principal arguments raised in connection with the test for a Mareva order are that:

(1) there is no evidence connecting any individual Canadian respondent (with the possible exception of Malek) to the fraud itself and insufficient evidence connecting any individual Canadian respondent to knowing assistance with the fraud or the receipt of any funds derived from the alleged misappropriations; and

(2) there is insufficient evidence of risk of dissipation.

Knowing Assistance/Receipt of Funds

[26] It is alleged that over US $96 million of PCCI funds were held in a Nexus account at the BIMB for PCCI's benefit. The applicants obtained banking records from BIMB. The evidence is that these records show that over $20 million of the applicants' funds were transferred via money exchangers to accounts held in Iran by the respondents Malek, Mehraneh and Ali. There is also evidence that, during the relevant period, funds were transferred from the BIMB account of Nexus directly to Malek, Mohammed, Mehraneh and Ali in Canada. There is also evidence of payments made from an account held by Khadijeh in Iran to Nexus Canada, 5M Canada and Ali. It was admitted that a number of accounts and properties controlled by Malek were held by Khadijeh and Ali. Ali agreed to this, he said, because "it was a family thing" and because he "owed Mehdi." It was also admitted that Malek funds the operations of 5M Canada. 5M Canada is a Canadian company of which Malek, Mohammad, Mehraneh and Amir are directors. They have another 5M Capital company in Australia with exactly the same name. Ali did not consider there was any distinction to be drawn between the different 5M entities; he thought there was only one 5M. There is evidence that over $35 million was transferred to a "5M Capital" account from funds in the BIMB Nexus account. It is not yet known whether this was the Canadian or the Australian 5M Capital. Amir was paid over $57,000 per year by 5M Canada, ostensibly for overseeing a development project for a vacant lot in respect of which "nothing is being done." Ali also admitted that he worked on 5M Canada's web site, but was paid by Mehdi. Mehraneh was also employed and paid by 5M Canada but did not do anything. Mediville is also a "family company." Mediville is incorporated in Cyprus; Malek and Mohammed are the directors and shareholders. Misappropriated funds have been traced into Mediville's Canadian account as well.

[27] While it is true that the plaintiff's evidence tends to gloss over the individual distinctions between family members in Canada, this was an issue specifically addressed at the original hearing for the Mareva order. There is supporting evidence that each of the Canadian respondents has received funds traceable to the PCCI funds alleged to have been misappropriated. While the amounts are, by and large, relatively small in relation to the global fraud alleged, there is also evidence of significant other transfers, in and out, of accounts held by the Canadian respondents which are unexplained and not consistent with the Canadian respondents' apparent sources of legitimate employment or other income. The Canadian respondents have chosen not to present evidence rebutting the substantive allegations against them and have refused to provide any evidence about the source or destination of these unknown (to the applicants) tranfers in and out of their Canadian accounts.

[28] In all of the circumstances, notwithstanding the able and forceful arguments of counsel for the Canadian respondents, I am satisfied that there is evidence to support the knowing receipt of misappropriated funds by each of the Canadian respondents.

Evidence of Dissipation

[29] The Canadian respondents argue, however, that there is no direct evidence of dissipation of any misappropriated funds by them. As this is an essential element for the grant of a Mareva injunction, they say the evidence simply cannot support continuation of the Mareva order. They go on to argue that the *inference* of dissipation, available under Canadian law by virtue of evidence of participation in a fraudulent enterprise, is not available in this case. This is so, they argue, because there is no evidence of their direct participation (with the possible exception of Malek) in the fraud itself.

[30] There is however, evidence that:

(a) Malek controls property and bank accounts held in the names of other Canadian respondents;

(b) $20 million was transferred from the Nexus BIMB account to accounts held by Malek, Mehdi, Mehraneh and Ali in Iran;

(c) $35 million dollars was transferred from the Nexus BIMB account to one of the two 5M Capital companies;

(d) Malek funded 5M Canada, and there is no evidence that 5M Canada carried on a business enterprise capable of generating revenues to pay salaries to several of the Canadian respondents;

(e) there have been significant flows of money in and out of the Canadian respondents' accounts, for which they have refused all explanation; and

(f) there has been a lack of forthrightness about disclosure of the Canadian respondents' assets. In many cases, the Canadian respondents have changed their

asset disclosure, or admitted to additional assets, only upon being confronted by evidence provided by the applicants.[4]

[31] Based on this and other similar evidence, in all of the circumstances I am satisfied that the applicants have shown a risk of dissipation if the Canadian respondents are not restrained by court order from unlimited access to their property and assets.

Access to Funds

Living Expenses

[32] It is well settled that a Mareva order may be varied to provide the respondents with access to funds sufficient to cover their living expenses. The test is:

(i) has the defendant established on the evidence that he has no assets other than those frozen by Mareva order available to pay expenses?

(ii) if so, has the defendant shown on the evidence that there are assets caught by the injunction that are from a source other than the plaintiff, i.e., assets that are subject to a Mareva injunction but not a proprietary claim;

(iii) the defendant is entitled to the use of non-proprietary assets frozen by the Mareva injunction to pay reasonable living expenses, debts and legal costs. Those assets must be exhausted before the defendant is entitled to look to the assets subject to the proprietary claim; and

(iv) if the defendant has met the previous three tests and still requires funds for legitimate living expenses, the court must balance the competing interests of the plaintiff in not permitting the defendant to use the plaintiff's money for his own purposes, and of the defendant, in ensuring that he has a proper opportunity to present his defence before assets in his name are removed from him without a trial, *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*, [2003] O.J. No. 40 at para. 26.

[33] The applicants concede that some of the Canadian respondents, such as Ali, who has a job with an unrelated company, have shown that they have "non-proprietary" assets which can be made available to them pending trial. However, for most of the Canadian respondents, the applicants argue they have not discharge their onus.

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[4] In one case, however, this was admitted to be an error of counsel. I accept that explanation.

[34] In the alternative, the applicants argue that the amounts claimed, in most cases, exceed the proven legitimate incomes of the respondents such that if a release of funds is to be permitted, the amounts should be significantly reduced.

[35] The Canadian respondents are, like the other defendants, subject to a worldwide freezing order over all of their assets, wherever situate and of any kind or nature. There are, therefore, no assets not subject to the order of the Malaysian court. Whether the assets are proprietary or not is, in my view, too early to tell. In any event, I conclude that the interests of justice requires that the Canadian respondents all have access to living expenses pending trial.

[36] I conclude based on the evidence that the monthly amounts to be released from the effect of the Mareva order shall be as follows:

Malek and Khadijeh (travel and vacation removed)	$8,632
Mohammad (nanny removed)	$8,168
Mehraneh and Amir (nanny removed)	$9,638
Ali	$5,290

Legal Expenses

[37] The applicants consent to an additional retainer for the Canadian respondents' Ontario counsel. They do not, however, consent to the release of any funds for legal expenses in other jurisdictions. They do so on the basis that Mehdi has absconded and that the Canadian respondents have been less than forthright in their asset disclosure to date.

[38] There is no evidence that the Canadian respondents have assets in Malaysia or Cyprus. They are facing very serious allegations and significant costs to defend themselves. In my view, it is in the interests of justice that funds for legal fees be made available. It is of course important that the release of funds not be duplicated. It is, therefore, incumbent upon the Canadian respondents to ensure that any release of funds in Canada for the defence of foreign proceedings be brought to the attention of those foreign courts. It is so ordered. The amounts shall be as follows:

Lenczner Slaght	CDN $150,000 (in addition to the $100,000 already approved)
Cypriot defence counsel	Euro $50,000
Malaysian defence counsel	USD $50,000

Sealing Order

[39] The Canadian respondents seek an order prohibiting the use of the transcripts from their examinations from being used for any purpose other than this application and sealing any copies filed with the court. The Canadian respondents argue that their examinations in this proceeding were compelled testimony by virtue of the *ex parte* Mareva order.

[40] This request is made on the basis of s. 13 of the *Charter* which provides:

> A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

[41] Under Canadian law, a party may not refuse to answer questions but, in return, receives the constitutional promise that his statements shall not be used against him in a subsequent proceeding. The concern here is uncertainty about how that protection would be enforced should the compelled information come into the hands of future prosecutors in Iran.

[42] The applicants placed significant reliance on their evidence that all of the Canadian respondents, except Ali, are alleged to be subject to or suspects in a criminal investigation being conducted by the judiciary in Iran. The Canadian respondents argue, therefore, there is a real risk that the filing of the transcripts in the public record will make the transcripts available to Iranian prosecutorial authorities. The implied and deemed undertaking rules will not, they say, protect them once the transcripts are filed in the court record.

[43] The requirement that a litigant submit to an examination is an intrusion on the litigant's interest in privacy and the confidentiality of private information. That intrusion is permitted in certain circumstances in order to ensure that there is full disclosure and, therefore, a better chance of a just result in the action in which the examination occurs. The implied undertaking exists to limit the effect of the intrusion by ensuring that the information is used only for the purpose for which the litigant is obliged to provide it. The plaintiffs are, therefore, subject to an implied undertaking not to use the information obtained from the Canadian respondents for any purpose other than the action. The undertaking is to the court. A breach is a contempt of court.

[44] There is, of course, a countervailing principle of the openness of courts and the court's proceedings. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, the Court established a two part test for the sealing of a court file. Such an order should only be made when:

> (a) the order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the

> effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[45] Under the first branch of this test, there are three important elements to be considered. First, the risk in question must be real and substantial, in that the risk is well grounded in the evidence and poses a serious threat to the interest in question. That interest must also be one which can be expressed in terms of a *public* interest in confidentiality. Second, the court must be cautious in determining what qualifies as an important interest. A confidentiality order involves an infringement on freedom of expression. The interest in question should not be construed in a way that would enable the concealment of an excessive amount of information. Finally, the court must consider not only whether reasonable alternatives are available but must also limit the scope of the restriction as much as reasonably possible without sacrificing the prevention of the risk.

[46] In this case, there is evidence of a criminal investigation in Iran. There is no evidence of a prosecution as yet. Nor is there any evidence of Iranian judicial or criminal procedure protections against self-incrimination from compelled statements. There is some evidence that information has been made available by the Iranian investigators to the plaintiffs. The plaintiffs deny, however, that there has been, or will be, any sharing of information obtained in the course of these proceedings by the plaintiffs to the Iranian investigators.

[47] In the circumstances, I agree with the Canadian respondents that the deemed undertaking rule is insufficient protection and that there is no reasonable alternative to a sealing order. Similar conclusions have been recognized by our courts even in the context of the disparity between US and Canadian law on the protection against self-incrimination, *Ritter v. Hoag* 2004 ABQB 269 at paras 20 and 26. Here, the disparity in protection is likely much greater.

[48] I am satisfied that the derivative use immunity available to the Canadian respondents under Canadian law is an important interest which would be placed at serious risk were the transcripts of their compelled examinations made available to the public. The salutary effect of a sealing order protecting the Canadian respondents' right against self-incrimination outweighs the limited detrimental effect of excluding the public from access to the respondents' answers on a compelled examination about their assets.

[49] Accordingly, there shall be an order sealing the transcripts of the Canadian respondents' examinations.

[50] The plaintiffs have undertaken not to share any statements from the Canadian respondents in this litigation with the Iranian investigators. In the circumstances, it is reasonable to elevate that undertaking to an order of the court, and it is so ordered.

[51] The plaintiffs desire the ability, however, to share the information obtained in these proceedings with the civil courts in Malaysia, Australia and Cyprus which are dealing with essentially the same claims against the same parties. This strikes me as a reasonable request. That request is granted provided those courts also make an order sealing the transcripts of the

Canadian respondents' examinations and providing that no transcripts filed may be shared with Iranian investigators.

The Applicants' Undertaking as to Damages

[52] The mere fact that a plaintiff is non-resident in Canada, or even that the plaintiff has insufficient assets in the jurisdiction, is not a basis for ordering security for an undertaking as to damages. The evidence before the court is that PCCI is a substantial commercial trading company and that it has sufficient assets to meet any order for damages the Court may make. The Canadian respondents have not established that the applicants' undertaking, standing alone, is insufficient. Accordingly, the request that the applicants be ordered to post security for their undertaking is denied.

Penny J.

Date: February 20, 2019