Crown Resources Corp. S.A. v. National Iranian Drilling Co.

Between
Crown Resources Corporation S.A. and Ata Olfati (in their capacities as Assignees of the Bankruptcy Estate of Canadian Triton International Ltd., pursuant to Section 38 of the BIA), plaintiffs, and
National Iranian Oil Company, defendant
And between
Crown Resources Corporation S.A. and Ata Olfati (in their capacities as Assignees of the Bankruptcy Estate of Canadian Triton International Ltd. pursuant to Section 38 of the BIA), plaintiffs, and
National Iranian Drilling Company, defendant

[2005] O.J. No. 3871
Court File Nos. 03-CL-4904 and 02-CL-4718

Ontario Superior Court of Justice
Commercial List
S.E. Greer J.

Heard: June 8-10, 2005.
Judgment: September 14, 2005.
(86 paras.)

International law and conflict of laws — Jurisdiction — Exclusion of — By contract — Forum conveniens — Procedure for determining — International — Plaintiffs claimed damages of approximately $350 million US for breach of contract, conspiracy, breach of fiduciary duty and conversion with respect to a contract to drill oil in Iran — Defendants argued that Ontario had no jurisdiction to decide the claims, and in the alternative that Ontario was not the most convenient forum — Plaintiffs' claim would not be heard impartially and fairly in Iran — The plaintiffs had shown cause to ignore the forum selection clause in the contract — Ontario was the most convenient forum.

Motion by defendants for a stay of proceedings on jurisdictional grounds dismissed — Plaintiffs assignees in bankruptcy of company which contracted with Iranian company to drill oil in Iran — Plaintiffs claimed damages of approximately $350 million US for breach of contract, conspiracy, breach of fiduciary duty and conversion — Defendants argued that Ontario had no jurisdiction to decide the claims, and in the alternative that Ontario was not the most convenient forum — Defendants argued that events took place in Iran, that the property in issue had been seized by Iranian officials, and that the contract provided for exclusive jurisdiction by the

Iranian courts — Plaintiffs claimed that they would not receive a fair trial in Iran — Reports by experts in Iranian law established that inherent abuses in Iranian legal system meant plaintiffs' claim would not be heard impartially and fairly — Principles of fairness dictated that Ontario assume jurisdiction — The plaintiffs had shown cause to ignore the forum selection clause in the contract — Ontario was the most convenient forum to decide the plaintiffs' claims.

Statutes, Regulations and Rules Cited:

Bankruptcy and Insolvency Act, R.S. 1985, c. B-3, s. 38

Iranian Civil Code

State Immunity Act, R.S.C. 1985, c. S-18, s. 2, s. 3(1)

Counsel:

Stephen M. Turk and Keith M. Landy, Counsel for the Plaintiffs, in both actions, the Responding Parties on the Motion

Markus Koehnen and Karen S. Kuzmowich, Counsel for the Defendants, in both actions, Moving Party on the Motion

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REASONS

¶ 1 **S.E. GREER J.**:— Canadian Triton International Ltd. ("CTI"), an Ontario corporation, after extended negotiations, entered into a contract with the National Iranian Oil Company ("NIOC") on June 25, 1990, to drill 53 oil wells in Ahwaz, Iran. The National Iranian Drilling Company ("NIDC"), is a wholly owned subsidiary of the Iranian State owned NIOC. The 1990 drilling contract (the "1990 Contract") was to be worth $250,000,000 US to CTI. To carry on the 1990 Contract, CTI built a base camp and storage yards in Ahwaz; which, at the end of the contract and after all equipment was moved out of Iran, would be turned over to NIOC. The Plaintiffs say that CTI had 10 drilling rigs and portable camps in Iran, estimated to be worth in excel of $50,000,000 US. The drilling rigs had been modified to suit NIOC, say the Plaintiffs, and they say the NIOC had agreed to purchase 6 such drilling rigs, after the 1990 Contract was completed.

¶ 2 The Plaintiff, Ata Olfati ("Olfati") was born and educated in Iran. He left Iran in 1983. He is a former employee of CTI, who speaks Farsi fluently. He was involved in the contract negotiations and in helping to secure the contract. Olfati was integrally involved in the work being carried out in Ahwaz, under the terms of the contract. CTI, eventually, before the 1990 Contract was completed, made an assignment in Bankruptcy in Ontario.

¶ 3 Olfati, having been employed by CTI from September 1989 to September 1993, made a claim against CTI, for amounts due under his personal employment contract. He obtained a Judgment against CTI in Ontario, in April 1994. It remains outstanding. Olfati, when CTI was

assigned into bankruptcy, became an Inspector in the bankruptcy. Olfati had been integrally involved in the contract negotiations with NIOC, in supervising financial matters in relation to the contract and equipment needed to carry it out, oversaw the progress payments made under the contract; and supervised the shipping of drilling project materials and equipment to CTI's base camp in Ahwaz.

¶ 4 In that bankruptcy, the Plaintiffs before me, Crown Resources Corporation S.A. and Olfati, the ("Plaintiffs", collectively, or "Crown Resources" and "Olfati" singularly) became assignees of the bankruptcy estate of CTI, pursuant to the Order of Mr. Justice Spence made September 4, 2001, under Section 38 of the Bankruptcy and Insolvency Act, R.S. 1985, c. B-3, the ("BIA"). Crown Resources is a Liberian corporation with offices in the Isle of Man.

¶ 5 CTI, while an Ontario corporation with 16 employees in Canada and an office in Mississauga, also had offices in Calgary, Tehran and Ahwaz. It had over 1600 employees in Iran when the contract was being carried out. The President of CTI was Vladimir Katic ("Katic") and he was also the principal shareholder of CTI. It had carried out drilling projects in Panama and Senegal, prior to the NIOC contract and Katic had other international experience in both Saudi Arabia and Spain.

¶ 6 Two lawsuits were commenced in Ontario by the Plaintiffs, who seek approximately $350,000,000 US in damages against the two Defendants. The Defendants, now move before me to say that Ontario, has no jurisdiction to entertain these two separate but related actions. The Defendants point to the following facts:

A. Under the contract entered into by CTI, the exclusive jurisdiction of the contract falls within the purview of the Iranian courts and is governed by Iranian law. They further say that there has been no change in the Iranian judicial system since that contract was entered into. They say the Plaintiffs' choice of forum clause in the contract, is Iran.

B. Some of the Plaintiffs' claims relate to the conduct of the Iranian government. The Defendants say that under the doctrine of sovereign immunity, these claims are not justifiable in Ontario.

C. The Plaintiffs are seeking damages against the Defendants as subsequent transferees of property located in Iran, which the Plaintiffs say was confiscated in Iran by Iranian police. The Defendants take the position that the "Act of State doctrine" precludes Ontario from assuming jurisdiction over such claims.

D. The Defendants say that the Plaintiffs' claims have no real and substantial connection to Ontario, since the events occurred in Iran, the events involve Iranian residents, the contract is subject to the interpretation of Iranian laws, the contract is in Farsi, as are other documents involved, and a large number of witnesses in the lawsuits, are Iranians living in Iran.

¶ 7 The Defendants move, in the alternative, if the Court in Ontario will not stay the actions on jurisdictional grounds, that the actions be stayed based on the doctrine of forum non conveniens.

The Damages Claims

¶ 8 The Plaintiffs, claim $318,000,000 US in their claim again NIOC, for breach of contract, conspiracy, breach of fiduciary duty and conversion, basing it on the following components:

A. The unpaid balance under the contract of $17,690,919 US;

B. the value of the 4 drilling rigs, which the Plaintiffs allege were confiscated from CTI by representatives of the Iranian Ministry of Security and Information (the "MOSI") being worth $19,000,000 US;

C. damages arising out of a tax assessment levied by the Municipality of Ahwaz, in the amount of $12,000,000 US; and

D. damages arising from NIOC's wrongful refusal to process the export of CTI's property, which the Plaintiffs' estimate is $275,000,000 US.

¶ 9 The Plaintiffs, in their other action commenced against NIDC, claim $31,857,142.86 US in damages, based on two contracts:

A. A 1996 contract for the purchase of spare parts and materials for the drills located in Iran of $18,000,000 US; and

B. A 1998 contract for the purchase of drilling equipment located in Iran of $13,000,000 US.

Some Background Information

¶ 10 The Motion took 3 full days for the parties to argue and it is based on extensive materials, transcripts, and voluminous book of authorities filed by each party. The legal issues are complex and are raised in a background that requires some pertinent facts, given the nature of the Motion and the extent of the damages being claimed. The affidavit evidence filed in support of and against the Motion is carefully crafted, and the expert opinions provided by the parties are intriguing in their opposite views but helpful in placing the issues in the complex legal and political settings in which they arose. All counsel were eloquent and organized in their submissions.

¶ 11 It is the Defendants' position that CTI was a sophisticated, international player in the world oil scene. They say, it solicited the work from NIOC by conducting a week-long seminar in Geneva before going to Ahwaz. They say CTI worked in countries which American companies were prohibited from contracting. They further say that Olfati was a sophisticated business consultant to companies and others interested in doing business in Iran, and that he was

fully aware of how choice of law operated in foreign contracts, and fully aware that the NOIC would not allow the application of foreign law or arbitration agreements to operate under any contracts it entered into. They say that Katic was fully aware that there was a known risk of any foreign government expropriating foreign property and of nationalizing any such expropriated property in Iran.

¶ 12 The Defendants say that the Iranian police allege that CTI paid bribes to NOIC officials, which is denied by Katic, who says they were forced to make "charitable donations".

¶ 13 The Defendants say the 4 rigs owned by CTI were not simply taken over by the Iranian officials but were "assigned over" in lieu of fines levied against CTI. There is conflicting evidence regarding all of these issues, which will be led at trial, and it is not necessary for me to analyze the various documents filed on this Motion, in order for me to reach a decision on the Motion.

¶ 14 The same problem occurs respecting the issue of the Ahwaz taxes, which the City said were owing to it by CTI. There was a dispute about the exchange rate to be applied when converting from one currency to another and this carries over into how the damages have been calculated in US Dollars by the Plaintiffs. The rates presented in the documentation before me vary from 70:1 to as high as 3000:1, depending on who is giving the quote.

¶ 15 There is also conflicting evidence as to how the 4 rigs, which the Plaintiffs say were confiscated, came into the hands of the Iranian agency. Katic says that he was taken from a meeting with NIOC, "at gunpoint", to an unknown location where the transfer of the rigs took place. This is denied by the Defendants, who say the rigs were taken to settle CTI's criminal liability for having paid bribes. The paying of bribes was prohibited under the contract.

¶ 16 The other two rigs were seized by Ahwaz over the assessment of taxes unpaid, and it tried unsuccessfully to auction them off. The NIDC later purchased them from the City for Rls. 13 billion, say the Defendants.

¶ 17 The parties' evidence differs regarding the re-export of CTI property from Iran, which was required under the contract. The Defendants deny trying to prevent this. Olfati had left CTI in 1993, before the export efforts began. The Defendants say it was in their interests to get these goods out of Iran as quickly as possible and permits were issued, some as late as 1996, when two shipments were made before a creditor of CTI attached the remaining goods.

¶ 18 By 1998, CTI's Receiver, Price Waterhouse Coopers ("PWC") was in place and still trying to deal with the issue. In December 1996, NIDC agreed by contract, to purchase spare parts from CTI still in Iran. I infer these were needed to service the CTI rigs already in their hands. They paid 50% of the purchase price of Rls. 2,520,000,000, on closing. The balance was never paid and is now being claimed by the Plaintiffs. Again, there are issues between the parties as to what exchange rates apply and what took place, since CTI was assigned into receivership 3 weeks earlier.

¶ 19 The Plaintiffs' 6th claim relates to the March 10, 1998 contract, which has an attornment clause in it, in favour of Ontario. The Defendants say this has no effect since it was never approved by the NIOC's Board. This contract relates to the purchase of CTI's remaining assets in Iran. The contract was negotiated in England by PWC. The Plaintiffs say it was properly negotiated and Ontario law applies to it. The Defendants say the contract has no effect, as noted.

The Contracts involved in the Claims

¶ 20 The original 1990 NIOC Contract is 233 pages long and has 11 schedules attached to it. It is an intricate and complex document governing the 53 oil wells CTI undertook to drill for NIOC for a contract price of $250,000,000 US. The key paragraphs in the 1990 contract, which relate to the jurisdictional issues before me, are paragraphs 52 and 53. They read as follows:

> 52. Settlement Disputes
>
> If any dispute or difference of any kind shall arise between the Company and Contractor in connection with or arising out of the Contract or the carrying out of the Works ... and is not resolved through correspondence or negotiations ... the case, as per the laws of the Islamic Republic of Iran, shall be resolved by referring it to the competent Iranian Court in Iran.
>
> 53. Relevant Law
>
> The laws governing the Contract shall be the laws of the Islam Republic of Iran and relevant Iranian courts shall have complete competence and jurisdiction in all cases.

¶ 21 Under Articles 17 and 18 of the 1990 Contract, NIOC imported CTI's equipment into Iran as "temporarily imported goods", to exempt CTI from import duties. CTI then undertook to re-export the equipment within 3 months of completing the contract. The dispute between the parties regarding this aspect of the contract and how it was to be carried out, is already set out, herein.

¶ 22 The second contract in question is the 1996 Contract (the "1996 Contract") dated December 1996. Under the terms of this contract, the NIDC agreed to purchase spare parts CTI had in Iran for the 4 oil rigs in question in one of these two actions. The damages claim for alleged breach of this contract is in the amount of $18,857,142 US. This is half the value of the 1996 Contract, this other half having been paid by NIDC. This is the contract which is silent with respect to jurisdiction or applicable law. The Defendants say it is subject to Iranian law, as it was negotiated and signed in Iran. The currency used in the contract is Iranian and the goods to be purchased were situate in Iran. There was at least part-performance of the contract in Iran and the Defendants further say that CTI had 2 offices in Iran at that time situate in Ahwaz and Tehran.

¶ 23 The third contract in question is the 1998 Contract (the "1998 Contract") between PWC and NIDC respecting the purchase of more CTI equipment in Iran, now under the control of PWC as Trustee Receiver in bankruptcy of CTI. This is the contract, which has a clause stating that the parties "irrevocably attorn to the jurisdiction of the Court in Toronto, Ontario, Canada". It provides that the contract shall be governed and construed in accordance with the laws of Ontario. I have noted earlier in these Reasons what positions the parties have taken regarding the 1998 Contract, under which the Plaintiffs claim $18,000,000 US in damages.

¶ 24 The 1998 Contract was negotiated by PWC and the NIDC. Important meetings were held in Toronto in December 1997 at PWC's offices. Mr. Hadari and Mr. Momini were present on behalf of NIDC in these negotiations and in the communications, which took place between PWC and NIDC. The Asset Purchase Agreement or the 1998 Contract was signed by the parties in London, England. This 1998 Contract has an interesting clause in it, which is connected to the 1996 Contract and the debt under it still owing by NIOC to CTI. It calls for NIDC to:

> "... use its best efforts to provide assistance" to PWC in connection with the documenting, settling and collection of the account receivables owing from the NIOC and the settlement of all disputes or matters with any person, firm, company, government or agency relating to CTI in Iran.

This Asset Purchase Agreement was approved by our Court, and it is the position of the Plaintiffs that the 1996 Contract was encompassed by the 1998 Contract, and is therefore subject to the jurisdiction of the Ontario Court of Justice and the laws of Ontario.

¶ 25 The Plaintiffs say that the 1998 Contract was unilaterally terminated by NIOC/NIDC by letter of November 2, 1998. The letter states that NIOC Board, "... has reconsidered and dropped its approval for purchase of CTI's assets in Iran." They ask PWC to consider "our purchase" as cancelled. The Plaintiffs say that after this alleged cancellation took place, the NIDC/NIOC entered CTI's base camp and began removing equipment. PWC also says that NIOC had now stopped it from removing or re-exporting the balance of CTI's equipment and parts from Iran. These allegations are denied by NIOC/NIDC.

¶ 26 Finally, in February 2001, PWC sold whatever remained of the CTI assets in Iran to ICON Energy for $5,000,000 US, taking what it says is a huge loss on the real value of assets.

¶ 27 There is a great deal of conflicting evidence as to how the parties see the operation of these contracts and how the re-exportation of CTI's equipment was to be carried out. It does not in my view, however, affect the issues before me, and requires no further analysis at this point in these proceedings.

The various witnesses who provided affidavits and who may appear at Trial

¶ 28 A number of affidavits have been filed by each of the parties in support of their positions in the lawsuits. The Defendants, who want these actions stayed in Ontario, put forth affidavits sworn by the following persons:

1) Seyed Mohammad Madani - a former Director of Operations for NIDC. He negotiated with PWC. He swore 2 affidavits, with one in the initial proceeding and one in response to that of Mr. Katic.

2) S.M. Zeinodden - head of Legal Affairs and Member of the Board of Directors of NIOC. He says he has knowledge of the negotiations regarding the 1998 Contract, which he says was never approved. He swore 2 affidavits, as did Madani.

3) Mehdi Niknejad - head of Legal Affairs until 2002 of NIDC, and who dealt with CTI regarding the 1996 Contract. He is presently the Executive Adviser to the Managing Director of NIDC.

4) Mohammad Aghai - the manager of NIOC, during the periods covered by this litigation and presently Deputy Minister of Petroleum and Managing Director of the National Iranian Oil Refinery and Distribution Company. This affidavit is in response to that sworn by Mr. Katic.

5) Seyfollah Jashnsaz - from 1990 to 2002, the Managing Director of Services for the National Iranian Oil Company-Fields and presently the Managing Director of the NIDC. His affidavit is in response to that sworn by Mr. Katic.

6) Mohammad Ebrahim Kafaei - senior expert of drilling commodity in the National-Iranian South Oil Company and co-ordinator of the re-export of CTI materials from Iran. He has sworn 2 affidavits, one in the NIOC action initially and on in response to that of Olfati, sworn November 24, 2003.

7) Peter Konig - a lawyer practicing in the Federal Republic of Germany, in his affirmation, he provides the statutory evidence regarding what court costs and trial costs would be in Germany, if the actions were heard in that jurisdiction.

8) Rahmattolah Khaki - employee of NIDC responsible for materials and procurement in Ahwaz. He has knowledge about the removal of the 2419 drill pipes of CTI from its base camp.

9) Tajedin Vazirian - legal advisor with NIOC, the person responsible for dealing with the issues concerning municipal taxation in Ahwaz.

¶ 29 Many of these affiants were cross-examined, in London, England and Toronto, Ontario, on their affidavits. Transcripts of these cross-examinations or portions thereof are filed in the proceedings before me.

¶ 30 All of these affiants (except Konig) profess to know little English, speak Farsi and would require interpreters in that language if a Trial takes place in Ontario. The opposite would be true of some of the Plaintiffs' witnesses, who would require interpretation from Farsi into the English

language, if the Trial took place in Iran. Some of the Plaintiffs' witnesses are fluent in Farsi, as well as English.

¶ 31 In my view, the issue of interpreters is a non-issue in the question of whether the proceedings should be stayed in Ontario. Our Courts have the use of interpreters on a daily basis in Civil matters in Toronto, so the Defendants cannot be seen to say that this would somehow affect their rights or harm their introduction of evidence in the Ontario Court system.

¶ 32 The Plaintiffs put forth affidavits sworn by the following persons:

1) Ata Olfati - a creditor of CT, a Plaintiff in these actions, a former employee and Executive Vice-President of CTI from 1989 to September 1993, who obtained a Judgment against CTI, which is still outstanding. He is a Canadian citizen of Iranian origin with extensive international business experience and extensive experience in Iran, in particular. He is fluent in the Farsi language, both written and spoken. Olfati was integrally involved in the 1990 Contract negotiations and in the operations of CTI in Ahwaz. He is familiar with what later took place in Ahwaz regarding CTI assets and the later contracts, as well as the bankruptcy proceedings. He swore two affidavits, namely, November 24, 2003 and October 4, 2004.

2) Vladimir Katic - a creditor of CTI and a principal of CTI, who immigrated to Canada from Iran, in 1966, at the age of 20. He has worked in the oil and gas industry his entire working life for major oil companies, as well as his own company, and in Saudi Arabia and Spain, as well as in Iran. He was instrumental in negotiating and obtaining the 1990 Contract and is familiar with the demise of CTI. He swore his affidavit on October 27, 2003.

Other witnesses to be called by the Plaintiffs are:

3) Representatives of PWC in Toronto - to be called upon to give evidence are: Steven Golick, counsel to PWC in the CTI bankruptcy and Jim Williams, a Senior Vice-President of PWC.

4) George Duschane - last representative of CTI in Iran, who resides in either Canada or the USA, and is available to give evidence.

¶ 33 Katic makes it clear, in his affidavit, that he fears for his life and that of his family, and would not return to Iran to give evidence. He sets out how he says he was forced by the Ministry of Intelligence and Security (the "MOIS") to leave the meeting in Ahwaz and sign over the 4 oil rigs in to the NIOC. This is denied by the Defendants but if Katic failed to give evidence as one of CTI's key players, the Plaintiffs would not be able to fully put forward their cases. Katic, in his affidavit, says that he was told, that he would be questioned about alleged bribery payments to Iranian officials, was forced to sign a "Secrecy Agreement", forced to sign letters retyped on

CTI letterhead and says he co-operated "with this extortion" so that he and his family would be allowed to leave Iran.

¶ 34 Olfati also, in paragraphs 34 and 35 of his initial Affidavit, says that he, too, is fearful of attending in Iran to litigate these matters. He also says his fear is for his "safety". He says his fear is based upon the fact that the Iranian Ministry of Intelligence and Security "Etelaate Kohzitan", has been involved in the matter set out in Katic's Affidavit. He says this Ministry has been deemed to be "a terrorist organization by the Canadian government." Olfati bases his statement on the finding by the Federal Court of Canada in Ahani v. Her Majesty the Queen, The Minister of Citizenship and Immigration, [2000] F.C.J. No. 53, Docket A-413-99 and A-414-99, January 18, 2000. On page 4 of that decision, the Court says that the MOIS has persons who co-ordinate, "... the assassination of Iranian dissidents living in and outside Iran." On page 6 of the Judgment, the Court again refers to the MOIS as sponsoring or undertaking "... directly a wide range of terrorist activities including the assassination of political dissidents world-wide."

¶ 35 Given the findings of the Federal Court regarding the role of the MOIS, the group which Katic alleges escorted him from the meeting in Ahwaz and forced him to sign the 4 drilling rigs over to NIOC, neither Katic nor Olfati feel they can enter Iran without fear for their safety.

The Experts' Reports and Opinions

1. The Legal Opinion of Dr. Amir Hossein-Abadi

¶ 36 Both the Plaintiffs and the Defendants have filed reports and opinions prepared by experts in Iranian law. The Defendants obtained their legal opinion from Dr. Amir Hossein-Abadi ("the Hossein-Abadi Opinion"). Dr. Hossein-Abadi has an M.A. in private law from Tehran University and a Ph.D. from Montesquieu University in Bordeaux, France. He says that he has held a variety of positions within the Iranian legal system, as a judge, lawyer and professor. He says he took a "judicial internship program in 1974" and became a judge of the "Court of First Instance in Tehran" and a judge of the Court of Grand Instance in 1980. In 1985 he became a counsellor at the Legal Department of the Judiciary. He then went into research and was a professor at two different universities, and at the time of his Opinion, he was doing research in Germany and continues to act as a lawyer. In 2002, he was elected the Board of Trustees of the Tehran Bar Association.

¶ 37 In his Opinion, Dr. Hossein-Abadi outlines the background of the Iranian legal system, sets out how claims are filed by foreigners, such as CTI and sets out some case law in Iran where foreigners have been successful in legal proceedings against the Iranian government. He says that the Iranian Civil Code provides specific remedies for allegations of the sort that have been raised by the Plaintiffs in the proceeding before me.

¶ 38 Dr. Hossein-Abadi is of the opinion that the Plaintiffs' action in Iran would be commenced before the Public Tribunal's non-matrimonial chambers of that Tribunal. He also says that there are, "... precise and well-defined regulations regarding commercial transaction and the legal relationship between merchants and commercial companies in the Commercial

Code." There are also courts of appeal, such as the Provincial Court and the Supreme Court, where matters can be appealed to from the lower court.

¶ 39 Dr. Hossein-Abadi is of the opinion that the Judges in Iran, who are appointed, are independent. Plaintiffs in the Iranian legal system may represent themselves in court or may hire an attorney to act on their behalf. There is also a Bar Association to which attorneys belong, and he says that these attorneys act independently.

¶ 40 There is no date on the Hossein-Abadi Opinion. I have been told, however, that it preceded that of Mr. Katirai. Dr. Hossein-Abadi then gave a written reply to the Report of Mr. Katirai. That reply is dated March 11, 2004, wherein Dr. Hossein-Abadi sets out why he feels that the Katirai Report has incomplete information and mistakes in it. His critique is 13 pages in length and I have reviewed it. In my view, Dr. Hossein-Abadi skirts some of the issues raised by Mr. Katirai by adding details to statements made, that do not directly deal with the points raised by Mr. Katirai. He says, for instance, that the action would not come before the Revolutionary Courts of Iran because the Plaintiffs "... have not taken bribes to give the Revolutionary Court the capacity to be involved and recapture the illegitimate property." Surely, this would be a matter to be determined in Iran, where it is clear, that the government has accused CTI officials of bribing government officials.

¶ 41 Further, while Dr. Hossein-Abadi says there is respect for foreigners' rights in the Iranian legal system, there is a possibility that this would all be ignored, if the Plaintiffs' agreed to have their case, begun in the Ontario judicial system, tried in Iran. The "Principles" may be written in the Iranian constitution, but application is another issue. While he admits that there are religious judges in Iranian courts, he and Mr. Katirai disagree on the power of these individuals in the system, and Dr. Hossein-Abadi says that the case could likely be referred to a branch of the court where the judges who sit there have higher degrees in law or are graduates of a foreign university's legal programme. Dr. Hossein-Abadi also disagrees with Mr. Katirai's position on the legal costs of litigating in Iran and the inadequate legal representation in Iran of foreign litigants. What Dr. Hossein-Abadi does admit, however, is that the civil law system in Iran turns more on "written evidence than oral evidence and lets judges rather than lawyers do the questioning of any witnesses."

¶ 42 Dr. Hossein-Abadi then does a further reply Report of April 2005, in response to certain exhibits that were attached to the Supplementary Affidavit of Olfati. These were an Amnesty International Report and a Report of the International Commission of Jurists. He discounts these reports as primarily dealing with freedom of expression and the rights of the accused in criminal cases. He says that the treatment of human rights and freedom of speech in Iran had "improved markedly" since 1990. While that may be, the freedom to express oral evidence in a court which restricts its use in favour of written evidence, is, in my view, a serious prohibition to the Plaintiffs' being able to fully put their case before the Iranian courts.

¶ 43 On his cross-examination by the Plaintiffs, Dr. Hossein-Abadi did confirm that those connected with CTI could be restricted from leaving Iran in the event that taxes are deemed owing by the corporation and a final assessment has been undertaken and completed with respect to the same.

2. The Report of Mahmoud Katirai

¶ 44 The Plaintiffs' Report is that of Mahmoud Katirai, (the "Katirai Report'). It is dated January 3, 2004, and is in response to the Hossein-Abadi Opinion. Mr. Katirai is a lawyer admitted to the practice of law in both Iran and the District of Columbia, U.S.A. He practiced law in Iran from 1968 to 1980, when he left Iran. He says, however, that he continues to follow the "legal developments" in Iran and has advised on "numerous litigations and arbitrations involving Iranian parties". Mr. Katirai was asked by CTI and its Trustee, to review the legal opinion obtained by the Defendants from Dr. Hossein-Abadi. Mr. Katirai was asked by CTI and its Trustee to answer the following question:

> Whether the Plaintiffs can reasonably expect to receive a fair hearing in an Iranian court with respect to a lawsuit against the Defendants for collection of CTI's claims against the Defendants?

¶ 45 Mr. Katirai's opinion is that the Plaintiffs cannot reasonably expect to receive a fair hearing before the Iranian courts with respect to a lawsuit against the Defendants for collection of CTI's claims. This conclusion is set out in paragraph 73 of the Katirai Report on pp. 39 and 40 of the Report. Mr. Katirai reaches this conclusion for the following reasons set out therein:

1. the prevailing xenophobia and discrimination against foreigners on the part of the judicial authorities.
2. the ambiguity of Iranian laws and unavailability of Iranian regulations.
3. the Iranian Government's influence on the Iranian Courts.
4. the corruption and bribery in the Iranian Courts.
5. the impracticality of pursuing CTI's claims due to excessive legal fees and litigation costs. See: pp. 27 and 28 of the Report.
6. the inadequate legal representation and hearing in Iranian Courts.
7. the lack of discovery in the Iranian legal system.
8. the risk involved generally.
9. the risk involved in sending CTI's executives and directors to Iran, to give evidence.
10. the Plaintiffs' inability in receiving full remedy for CTI's claims due to delay in the Iranian Courts' proceedings, limited reimbursement of excessive litigation costs and the possibility of additional taxation.

¶ 46 Katirai has had considerable experience in the Iranian Court system as counsel to government agencies and entities controlled by the Iranian government. He says he regularly reviews official legal publications of Iran and has prepared legal opinions and has served as an expert on Iranian law issues in numerous federal and state court proceedings in the United States.

¶ 47 Katirai sets out in some detail, in his Report, the back-up evidence to support each of the conclusions he has reached. He says that the Order of our Court in Bankruptcy cannot be recognized in Iran without it first being scrutinized by an Iranian Court. Since CTI's claims are against both NIOC and NIDC, and since there are serious allegations made against CTI by government officials, if they claimed "misuse of government contracting", then the claims may

be moved from the Public Courts to the Revolutionary Courts, which Katirai says could then lead to government confiscation of CTI's wealth. Katirai points out that the entire shares of NIOC are wholly owned and controlled by the Iranian government. All government laws and regulations are not published, which can create problems in trying to plead your case in Iran, if you are unaware of them.

¶ 48 Katirai also points out at p. 21 of his Report that clerics often serve as Judges in Iran and that they are not familiar with the "world of international contracts and transactions." He further says that Iranian Judges lack the necessary judicial independence to provide a neutral hearing. He cites other authorities, who support this position, on p. 23 of this Report and says that another source points to the corruption in judicial affairs in Iran.

3. The Exhibits to the Supplementary Affidavit of Olfati sworn October 4, 2004

¶ 49 As has been mentioned above, Olfati swore a Supplementary Affidavit, to his earlier Affidavit, to which he attached two important neutral Reports, that of Amnesty International and the International Commission of Jurists as well as an United States Department of State Travel warning concerning Iran. The Reports set out at some length the human and legal rights abuses perpetrated by the Government of Iran. While many of the abuses relate to the criminal law system, it cannot then be said with any certainty that the civil law system operates any better or any fairer than the criminal law system.

¶ 50 The Report of International Commission of Jurists notes that the Judiciary in Iran remain heavily under the influence of the executive and religious government authorities. It says that the Islamic Revolutionary Courts severely undermine judicial authority in the country. Finally, it states the Judiciary in Iran is "not free from government influence and that certain rights, which are fundamental in our justice system, are not respected in practice in Iran."

¶ 51 In my view, both of these Reports represent totally neutral opinions in the proceedings before me. Both bodies are highly regarded and respected world-wide for the work they do. I accept the position, as accurately stated by the International Commission of Jurists, that the Judiciary in Iran remain heavily under the influence of the executive and governmental authorities. Without making any judicial finding on whose story is more believable about the movement of the 4 oil rigs out of the hands of CTI, it is obvious and plain from the uncontradicted evidence before me, that the government wanted the four oil rigs in its own hands. It appears that it then had to try to contract to get the parts needed to fix these rigs, as CTI still had control of the parts and inventory, which could not leave Iran without an export permit.

4. Conclusion

¶ 52 On the reading of these experts Reports and Opinion, and on reading the reports of Amnesty International and the International Commission of Jurists, I conclude that the principle of fairness, alone, dictates that Ontario should assume jurisdiction of the Plaintiffs' claims.

Analysis

A. The Forum Selection Clause

¶ 53 The Defendants' position is that parties should be held to their bargain. They rely on the foreign selection clause in the 1990 Contract, which states that the laws of Iran apply and that any disputes regarding the Contract fall within the purview of the Iranian courts. They say that this not only brings that Contract into the Iranian courts, under paragraphs 52 and 53 of the Contract, but it should also apply to the 1996 Contract, which is silent as to jurisdiction. The 1998 Contract states clearly that the jurisdiction of that contract is Ontario but the Defendants say that this contract was terminated so they say there is no jurisdictional issue with respect to it.

¶ 54 The Plaintiffs say that the Ontario Courts must assume jurisdiction by applying the criteria of the "real and substantial test". The lawsuit was started in Ontario, the Bankruptcy took place in Ontario and the Trustee is here. CTI is an Ontario corporation and both NIOC and NIDC were aware that any dealings with respect to the contracts would be viewed in light of the Ontario laws, given that the damages occurred to the Ontario company. The Plaintiffs say that the NIOC has conducted business in Canada through a branch office of one of its subsidiaries and is familiar with our legal system.

¶ 55 The Defendants say that the Plaintiffs agreed, when they signed the 1990 Contract, that Iranian law would apply. They say that the principle of holding parties to their bargain is emphasized in both Canadian and English case law. They refer to Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450 at pp. 462 and 463, which generally adopted the principles in The "Eleftheria", [1969] 2 All E.R. 641 at p. 648. A forum selection clause can only be avoided where the Plaintiff shows "strong cause" for avoiding it. All of the circumstances are taken into account, including the location of the evidence and the effect of that on the relative convenience and expense of trial as between the Canadian and foreign court.

¶ 56 Since the 1990 Contract says the law of Iran applies, our Court must look at whether it differs from Canadian law in any material respect. In that regard, we do know that there is little in the way of discovery under Iranian law and practice, and that the Courts rely heavily on written evidence as opposed to oral evidence and cross-examination of parties and other witnesses. It is quite probable that the Revolutionary Court would take jurisdiction, as opposed to the Provincial Court in Iran, and I am of the view that this could have a profound effect on the fairness of the trial to take place.

¶ 57 The parties are clearly connected to their own jurisdictions, that is the Plaintiffs to Ontario and the Defendants to Iran, so this point is really neutralized in the scheme of what is taking place. I am satisfied that the Defendants truly desire to have their Trial in Iran, even though it was begun in Ontario. On the other hand, the Plaintiffs desire to keep their claims in Ontario to be adjudicated upon by our Court.

¶ 58 The Plaintiffs, on the other hand, in my view, would be prejudiced in having to conduct a Trial in Iran, given that its case is structured under the bankruptcy laws of Ontario. In Ontario, the Plaintiffs could move for security for Costs to protect any Costs award they may receive if they win at Trial. This would not be possible in Iran, since the government owns the shares of NIOC and NIDC is a subsidiary of it. There was no evidence before me as to whether either

entity has assets in Ontario or Canada. If the Plaintiffs were successful, they may have a chance to collect monetarily on any Judgment they received. I have no confidence that the opposite would be the case, if the Trial took place in Iran.

¶ 59 A more difficult question, however, is what were the reasonable expectations of the parties when they signed the contract. The negotiations were protracted and intense and took a long time to settle. CTI entered into the contract in good faith that its terms would be carried out, yet only half the amount contracted for had been paid on the contract when CTI completed its terms of the contract ahead of schedule. CTI's reasonable expectations were that it would be paid the balance of the contract, receive its export permits and leave the country. It suddenly found itself boxed in by allegations of what it says were bribery, threats to the safety of its staff, failure to receive the proper export permits, and the transfer of the 4 rigs under duress, and the imposition of what it says are taxes, which it says it does not owe.

¶ 60 The Plaintiffs' claim that they cannot get a fair trial in Iran. Their two key witnesses fear for their lives, if they return to Iran. They fear they would not be allowed to leave Iran, even if they were not harmed. This would mean that no trial would take place. If that was the Plaintiffs' only reason, one might be suspect of their motives in saying this. This is not the case, however. While I am told that the legal system in Iran has not gone through a fundamental change for the worse since the 1990 Contract was entered into, there is nothing in the materials before me that leads me to believe that it has the same independence from government that the Ontario system has.

¶ 61 I am of the view that the Plaintiffs have shown strong cause to avoid the forum selection clause in the 1990 Contract. Even though the Defendants told me that Iran never agrees to any other selection of forum for trials or arbitrations, it appears to have done so in the 1998 Contract, which encompasses the 1996 Contract. If only the 1990 contract was in issue here, and if the above allegations were not before the Court, then I can see where the principles may apply, as set out in ECS Educational Consulting Services Canada Ltd. v. Al-Nahyan (2000), 44 C.P.C. (4th) 127 (S.C.J.); affirmed at (2000), 3 C.P.C. (5th) 76 (Ont. C.A.). There are, however, three contracts to consider.

¶ 62 While CTI may have taken a chance contracting for work in Iran, they cannot have said to themselves, "we will not be paid fully for our work." Why would they have worked so hard to complete the contract early, and even tried to co-operate after the 4 rigs were transferred to recoup some of the value of the goods remaining in Iran, when the company went bankrupt? They were not even allowed to mitigate some of their losses. Since the bankruptcy occurred in Ontario and CTI is an Ontario company, the lawsuit was begun in Ontario. I am satisfied that the Iranian courts cannot be counted on to adjudicate the claims of CTI, now subsumed by the Plaintiff, Crown Resources and that of Olfati, in a fair manner. The Report of the International Commission of Jurists supports this finding.

¶ 63 There is not only one forum selection clause. There is the competing clause in the 1998 Contract, which encompasses the 1996 Contract. At the very least, these two contracts could form the Ontario lawsuit, if I am wrong in holding that the Plaintiffs have made out a strong cause why all three contracts should be tried together in Ontario. Given the bankruptcy of CTI, in

my view, the last claims relating to the Ontario forum, should be tried first, not last, if there is a split jurisdiction. I can see no unfairness to the Defendants in this procedure.

¶ 64 The Defendants would receive a fair trial in Ontario. They are part of the second largest OPEC producer of oil and very familiar in dealing with foreign entities. All Iranian witnesses would have the benefit of having Farsi interpreters who are recognized court interpreters. The Plaintiffs would have the benefit of having the Ontario discovery system and the parameters of a fair trial with independent judges and lawyers. All litigants would be aware of how the Ontario legal system of Costs applies and how damages are dealt with in our courts.

¶ 65 The Plaintiffs say it matters not whether the case is international in nature. They rely on Beals v. Saldanha, [2003] 3 S.C.R. 416. They also say that there is no evidence of the Iranian Court being willing to recognize any Canadian Court's Judgment against the Iranian government itself, where a foreign litigant has collected on such a Judgment. Given all of these factors as above, the Plaintiffs have made out strong cause why Iran is not the proper jurisdiction for the Trial of the Actions.

B. Forum Non Conveniens

¶ 66 Is there some other forum more convenient and appropriate for the pursuit of the action and for securing justice for the parties, in order for our Court to stay the action as requested by the Defendants? The granting of a stay is a discretionary remedy. See: ECS Educational Consulting Services Canada Ltd. v. United Arab Emirates Armed Forces (2000), 44 C.P.C. (4th) 111 S.C.J.) at para. 46. In assessing the factors, which the Court must look at, neither forum has a majority of the parties. I have already noted in these Reasons why the location of witnesses is not an important factor. There will be no multiplicity of proceedings, as it is clear that neither Olfati nor Katic will return to Iran. If the 3 contracts are to be dealt with separately, then only the 1996 and 1998 will be dealt with in Ontario, and the Plaintiffs would not litigate on the 1990 Contract, for fear of their lives if they return to Iran.

¶ 67 The Court can override a forum selection clause where it is of the view that the Plaintiffs are unlikely to get a fair trial. I am of that view, and since the ordering of a stay is discretionary, I decline to order such stay. I prefer the Report of Mr. Katirai over that of Dr. Hossein-Abadi, in that the Katirai Report gives the realities of what takes place in the judicial system in Iran and in its approach to how it structures its legal system. While the issues of human rights and freedom of speech are separate issues apart from strictly contract law, I do not think that the fears of Olfati and Katic are unfounded.

¶ 68 I therefore hold that Ontario is the most convenient forum for the trial of the actions begun here.

C. Sovereign Immunity

¶ 69 It is the position of the Defendants that the doctrine of sovereign immunity precludes Ontario from assuming jurisdiction over the Plaintiffs' claims regarding the seizure of the 4 rigs by the MOSI, the two rigs seized by Ahwaz for tax purposes and the refusal to export CTI's

property. They say that this doctrine has been developed in the interest of international comity and remains an important part of the international legal order. See: Bouzari v. Islamic Republic of Iran (2004), 71 O.R. (3d) 675 (C.A.) at 688. Although the Plaintiffs have not sued the Republic of Iran, the Defendants say the doctrine extends to the NIOC, as all the shares of it are owned by the Iranian government. In Buttes Gas and Oil Co. v. Hammer, [1982] A.C. 888 (H.L.) at 926, the House of Lords held that the doctrine of sovereign immunity does not apply when there is no attack, direct or indirect, upon any property of the relevant sovereigns, or if any of them are not impleaded directly or indirectly. The Defendants say that sovereign immunity applies because there is an indirect attack on the property of a sovereign, namely Iran, through the NIOC. They also rely on the provisions of the State Immunity Act, R.S.C. 1985, c. S-18, s. 2. (the "SIA") and say that the doctrine of sovereign immunity precludes the Ontario Court from assuming jurisdiction.

¶ 70 In order to qualify, the NOIC and NIDC must fall within the definition of "any legal entity that is an organ of the foreign state but that is separate from the foreign state." It is the position of the Defendants that the word "organ" in the SIA is a broad term that can cover a "private actor who provides government officials with assistance."

¶ 71 The Defendants point out that the doctrine of sovereign immunity is not a doctrine of fairness but one of necessity that has been developed in the interest of international comity. They say that under Section 5 of the SIA, it provides that a foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state. The transaction, act or conduct must be of a commercial character or commercial in nature. In Bouzari v. Islamic Republic of Iran (2004), 71 O.R. (3d) 675 (C.A.), the Court was dealing with the issue of whether a claim could be made in damages by a landed immigrant in Canada, for torture, kidnapping, false imprisonment, assault and death threats in Iran. Although Olfati, one of the Plaintiffs before me, alleges that he was threatened, such threats have nothing to do with the commercial claims that are before our Court.

¶ 72 Under Section 3(1) of the SIA, a foreign state is immune from the jurisdiction of any court in Canada. In Bouzari, supra, the Court said that these words codify the law of sovereign immunity. In Walker v. Bank of New York Inc., (1994), 16 O.R. (3d) 504 (C.A.), the Court found that the term, "foreign state", in the SIA, included "any agency of the foreign state", that is an organ of the foreign state. The Defendants take the position that the NIOC is such an organ of Iran and that it is protected by the doctrine of sovereign immunity. At p. 508, the Court held that Parliament, in the SIA, meant to protect individuals and institutions, which act at the request of a foreign state in situations where that state would enjoy sovereign immunity.

¶ 73 The Court must examine the entire context of the activity involved, say the Defendants. Yet, the government of Iran is not being sued directly. Should the Defendants then be allowed the protection of the doctrine of sovereign immunity because the government owns all of the shares of NIOC. It must be remembered that it is not only the NIOC, which is involved in these proceedings. The municipality of Ahwaz is also involved indirectly, and NIDC is directly involved in one of the contracts. The Defendants also say that the Plaintiffs are involving the conduct of the MOSI and the bribery issue. These entities, in my view, cannot be said to be

"organs" of the NIOC, and indirectly affected by sovereign immunity. Nor can I see that the Ahwaz tax issue and the seizure of the 4 rigs, is indirectly covered by sovereign immunity.

¶ 74 The Plaintiffs' claims concerning the re-export of supplies and machinery owned by CTI, does involve the conduct of an Iranian government authority. If this act, alone, could trigger the doctrine of sovereign immunity, the Plaintiffs could simply amend their Statement of Claim to either re-structure that part of the Claim or delete that aspect of their Claim.

¶ 75 It is the position of the Plaintiffs that sovereign immunity is not absolute and is limited to cases where the foreign state's involvement is of a public nature as an integral part of the exercise of its sovereign governmental functions. They further say that the Defendants have submitted to the jurisdiction of our Court and have therefore waived any immunity they may have had. See: Cargo Ex the Ship "Atra" v. Lorac Transport Ltd. (1986), 9 D.L.R. (4th) 129 (F.C.A.). There the Court held that the nature of the foreign state's involvement should be determined by the nature of the transaction. In that instance, the State of Iran was the owner of the bill of lading and cargo in question. The transactions in question were found to be ordinary, commercial, and private law transactions. The Court held that in that instance, Iran could not claim sovereign immunity. It further found that even the passage of the SIA by the Canadian government in the interval between the time the claim was asserted and heard, did not give Iran the benefit of the doctrine of sovereign immunity. See also: Corriveau v. Cuba (Republic) (1979), 26 O.R. (2d) 674, 15 C.P.C. 177, 103 D.L.R. (3d) 520 (H.C.)

¶ 76 The Plaintiffs say that one cannot just examine the discrete stand-alone contracts, but must look at the full matrix involving the complicated commercial proceedings, which took place over nearly a decade, and which essentially led to the bankruptcy of CTI. They say one must look to see if the entity being sued is really the "alter ego" of the State. This does not appear to be the case before me. The NIOC and NIDC were engaged in ordinary private law commercial dealings with CTI at the beginning, and on the face of the contracts. What followed was not contemplated by CTI.

¶ 77 Under the circumstances of this case, and based on my analysis, above, I hold that the doctrine of sovereign immunity does not protect these Defendants from being sued in this private commercial matter.

D. Act of State

¶ 78 The Defendants also rely on the "act of state doctrine", where a domestic court will refuse to inquire into the propriety of government conduct in a foreign country. They refer to the fact that the expropriation of property precludes a domestic court from inquiring into the validity of the expropriation if it occurs in a foreign country and if the property is located in the foreign country at the time of the expropriation. It is their position that this doctrine applies to the Plaintiffs' claims for conversion with respect to any of the rigs the Defendants purchased from the MOSI or Ahwaz. They rely on the principles as set out in the early English case of Luther v. Sagor, [1921] 3 K.B. 532 (C.A.). They also say that this doctrine applies as much to confiscation by police authority as it does to confiscation by legislation. They rely on the principles set out in Juelle v. Trudeau, [1972] R.J. 870 (Que. C.A.) reversing (1968), 7 D.L.R. (3d) 82.

¶ 79 The Defendants say it would be a "flagrant breach of international law" if the Plaintiffs were allowed to pursue their claims in Ontario, even if the goods and equipment were confiscated. They point to the infamous Helms-Burton Act in the U.S.A., and how it was a radical departure from the norms of international law. The Plaintiffs say that it never came into effect as it was not enacted. They also point to the fact that Canada passed legislation that any judgment given under that law in the United States would not be recognized or enforceable in any manner in Canada.

¶ 80 The English House of Lords case, Kuwait Airways Corporation v. Iraqi Airways Co. (Nos. 4 and 5), [2002] 2 A.C. 883, dealt with sovereign immunity, the exercise of sovereign authority and conversion, respecting Kuwaiti aircraft confiscated by resolution of the Iraqi government after Iraq's invasion of Kuwait in 1990. They held it was tortious conversion for the purpose of English law. The Court held that very narrow limits must be placed on any exception to the act of state rule. In the case before me, however, the Iranian government passed no legislation in relation to the equipment, rigs and supplies in question, nor did the rigs end up in the hands of the government. They went to NIOC. Was the act simply a compulsory acquisition without compensation, or should the Court examine the whole matrix in which the acquisition of the rigs and equipment went into the hands of Iranian corporations?

¶ 81 It is the Plaintiffs' position that neither the NIOC nor the NIDC are alter egos of Iran. They say that these two companies are independent commercial entities, when viewed in the entire context of what took place over this extended period of time.

¶ 82 The Plaintiffs' say that the Defendants' reliance on the act of state doctrine is wholly misplaced. They say that no Canadian Court has ever adopted this doctrine. They point to Laane and Baltser v. The Estonian State Cargo & Passenger Steamship Line, [1949] S.C.R. 530, where the Court declined to invoke the act of state doctrine. They say that this Court should also decline to apply the doctrine.

¶ 83 I agree with the Plaintiffs in this regard. There is an obvious differing among the parties and proposed witnesses who filed Affidavits, in what actually took place in Iran at the time of the alleged confiscation of the rigs and the issue regarding the Ahwaz tax imposition. In my view, one then has to look at what actually took place in the context of modern commercial business dealings, where parties expect that their commercial agreements will be abided by all parties, and not interfered with by any government authorities. The act by NIOC of paying only half of the contracted amount to CTI, surely has nothing to do with the act of state doctrine. Further, CTI was told at the end of the contract, by NIOC that it did not want to purchase the rigs. All other acts followed that, in the business matrix of what took place right up to and including the bankruptcy proceedings, where representatives of the Defendants came to Toronto and other locales to negotiate the newer contracts.

¶ 84 I therefore hold that the act of state doctrine does not apply in the circumstances before me.

Conclusion

¶ 85 The Defendants' Motion for a stay of these proceedings is dismissed by me for the Reasons set out herein. I find that Ontario should assume jurisdiction of the Plaintiffs' cases and that the Actions should continue to proceed in Ontario on the claims made therein. In my view, there is no other forum as convenient as that of Ontario to try the issues between the parties and there is strong cause why this is so. I find that neither the doctrine of sovereign immunity nor the act of state doctrine apply to the circumstances of these cases. The Defendants' Motion is therefore dismissed.

¶ 86 If the parties cannot otherwise agree on Costs, I may be spoken to.

S.E. GREER J.

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