

**IN THE SUPREME COURT OF CANADA**

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

**H.M.B. HOLDINGS LIMITED**

Applicant

- and -

**THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA**

Respondent

---

**REPLY OF THE APPLICANT,  
H.M.B. HOLDINGS LIMITED**

(Pursuant to Section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended,  
and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

---

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

**Lincoln Caylor**  
**Ranjan Agarwal**  
**Nina Butz**

Telephone: 416.863.1200  
Facsimile: 416.863.1716  
Email: [caylorl@bennettjones.com](mailto:caylorl@bennettjones.com)  
[agarwalr@bennettjones.com](mailto:agarwalr@bennettjones.com)  
[butzn@bennettjones.com](mailto:butzn@bennettjones.com)

**Counsel for the Applicant**

ORIGINAL TO:

**THE REGISTRAR OF THE SUPREME COURT OF CANADA**

Supreme Court of Canada  
301 Wellington Street  
Ottawa, Ontario K1A 0J1

COPIES TO:

**AIRD & BERLIS LLP**

Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steve J. Tenai**

**Sanj Sood**

Telephone: 416.863.1500

Facsimile: 416.863.1515

Email: [stenai@airdberlis.com](mailto:stenai@airdberlis.com)  
[ssood@airdberlis.com](mailto:ssood@airdberlis.com)

**Counsel for the Respondent**

## REPLY

1. The proposed appeal is about whether the principles discussed in *Chevron Corp. v Yaiguaje*<sup>1</sup> relating to common law recognition and enforcement of foreign judgments apply to provincial enforcement statutes, and whether their provisions should be interpreted with a “generous and liberal” approach that favours enforcement. In its Memorandum of Argument, Antigua largely side-steps this question, preferring instead to present arguments that are irrelevant to this question and whether leave to appeal should be granted.

### ***Jurisdiction Simpliciter Case-Law is Irrelevant to an Analysis under the REJA***

2. Antigua relies on two cases in support of its argument that retaining the commercial services of a business within a jurisdiction does not amount to carrying on business in that province, nor is advertising within a jurisdiction carrying on business: *Sgromo v Scott*<sup>2</sup> and *Yemec and Rapp v Atlantic Lottery Corporation*<sup>3,4</sup> Both these cases concern motions to stay or dismiss an action for want of jurisdiction. They rely on the test for *jurisdiction simpliciter* from *Van Breda v Village Resorts Ltd.*<sup>5</sup> (***Van Breda***), which HMB argues is irrelevant to an analysis on the recognition and enforcement of foreign judgments.

3. The standard for “carrying on business” as outlined in *Van Breda* applies only to two of the three categories of private international law, *jurisdiction simpliciter*, and *forum non conveniens*, and is much more restrictive than the standard in *Chevron*, which applies to the third

---

<sup>1</sup> 2015 SCC 42 [***Chevron***].

<sup>2</sup> 2018 ONCA 5, affirming *Sgromo v Imperial Toy, LLC*, 2017 ONSC 3978.

<sup>3</sup> 2012 ONSC 4207.

<sup>4</sup> Response to the Application for Leave to Appeal of the Respondent, The Attorney General of Antigua and Barbuda (**Response**), para 28.

<sup>5</sup> 2012 SCC 17.

category, the recognition and enforcement of foreign judgments.<sup>6</sup> Case law about *jurisdiction simpliciter* and *forum non conveniens* is irrelevant to an analysis under the *Reciprocal Enforcement of Judgments Act*<sup>7</sup> (the **REJA**), which, as a provincial enforcement statute, falls within the category of the recognition and enforcement of foreign judgments.<sup>8</sup>

### **HMB's Common Law Enforcement Action is Irrelevant to Whether Leave to Appeal Should be Granted**

4. Antigua states that the issue of whether the B.C. Judgment should be enforced in Ontario will be the focus of HMB's common law enforcement proceeding in Ontario.<sup>9</sup> It argues that, because the Ontario Court of Appeal will inevitably determine that issue in due course, leave should not be granted to determine that issue in this case.<sup>10</sup>

5. First, courts have acknowledged that an application for registration under the *REJA* and a common law action for recognition and enforcement of the same judgment can be pursued at the same time.<sup>11</sup> In some cases, both avenues are pursued simultaneously for the precise reason that, if the *REJA* application (with a six-year limitation period) fails, the applicant is then barred from bringing a common law recognition and enforcement action (with a two-year limitation period).<sup>12</sup>

---

<sup>6</sup> *Chevron* at para 39.

<sup>7</sup> R.S.O. 1990, c. R.5.

<sup>8</sup> *Chevron* at para 41.

<sup>9</sup> Response, para 59.

<sup>10</sup> Response, paras 59, 61.

<sup>11</sup> *NEC Corp. v Steintron International Electronics Ltd.*, 1985 CanLII 2217 at para IV.1; *Acme Video Inc. v Hedges*, [1993] OJ No 585, 12 OR (3d) 160 (ONCA); *Independence Plaza 1 Associates, LLC v Figliolini*, 2017 ONCA 44 [**Figliolini**] at para 78, citing *Laasch v Turenne*, 2012 ABCA 32.

<sup>12</sup> *Figliolini* at para 78.

6. Second, the fact that HMB has another ongoing proceeding that may at some point be heard by the Ontario Court of Appeal is irrelevant to whether leave to appeal should be granted in this case. While the result sought by HMB in the two cases is similar, they engage different issues and involve different tests. It is not appropriate to refuse to grant leave here based on the possibility that HMB's common law action will be heard by the Ontario Court of Appeal in the future.

### **HMB is Not Trying to Avoid a Limitation Period**

7. Antigua states that HMB's application to enforce the Privy Council Judgment pursuant to the *REJA* is an attempt "to do an end run around the limitation period defence to the Privy Council Judgment".<sup>13</sup> It is not.

8. HMB first sought to satisfy the debt owed to it pursuant to the Privy Council Judgment in British Columbia. HMB pursued garnishment proceedings against Replay Management Inc. (**Replay**), a company incorporated in British Columbia involved in the business of building beachfront hotels and resorts. In December 2015, Replay bought the Property from Antigua for undervalue. In seeking to satisfy the debt owed to it pursuant to the Privy Council Judgment, HMB commenced proceedings to garnish a portion of the purchase price for the Property not yet paid to Antigua alongside the B.C. Action against Antigua. HMB succeeded in both actions, however the debt was not satisfied in full.

9. HMB sought to expand enforcement across Canada in hopes of satisfying the rest of the debt owed to it. In furtherance of this, HMB decided to seek registration of the B.C. Judgment in

---

<sup>13</sup> Response, para 59.

Ontario under the *REJA*, as well as a common law enforcement action of the B.C. Judgment. HMB is not trying to avoid any limitation period by seeking to register the B.C. Judgment in Ontario.

**CIP Applicants' Place of Birth is Irrelevant to the "Carrying on Business" Analysis**

10. Antigua states that only nine CIP applications have been made by persons born in Canada in support of its argument that the CIP is not directed at residents of British Columbia and thus does not constitute Antigua's "carrying on business" in that province.<sup>14</sup> The place of birth of a CIP applicant is irrelevant to whether Antigua was "carrying on business" in British Columbia, as place of birth is unrelated to where the recruitment took place.

**Error in Memorandum of Argument**

11. HMB recognizes the error in its memorandum of argument at paragraph 14. HMB did not obtain leave to appeal the Application Decision, but had an appeal as of right.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6<sup>th</sup> DAY OF JULY, 2020.



---

**BENNETT JONES LLP**

Lincoln Caylor  
Ranjan Agarwal  
Nina Butz

Counsel for the Applicant

---

<sup>14</sup> Response, para 13.

### TABLE OF AUTHORITIES

<b>Cases</b>	<b>Paragraph Ref.</b>
<i>Acme Video Inc. v Hedges</i> , <a href="#">[1993] OJ No 585</a> , 12 OR (3d) 160 (ONCA)	5
<i>Chevron Corp. v Yaiguaje</i> , <a href="#">2015 SCC 42</a>	1, 3
<i>Independence Plaza 1 Associates, LLC v Figliolini</i> , <a href="#">2017 ONCA 44</a>	5
<i>Laasch v Turenne</i> , <a href="#">2012 ABCA 32</a>	5
<i>NEC Corp. v Steintron International Electronics Ltd.</i> , <a href="#">1985 CanLII 2217</a>	5
<i>Sgromo v Imperial Toy, LLC</i> , <a href="#">2017 ONSC 3978</a>	2
<i>Sgromo v Scott</i> , <a href="#">2018 ONCA 5</a>	2
<i>Van Breda v Village Resorts Ltd.</i> , <a href="#">2012 SCC 17</a>	2
<i>Yemec and Rapp v Atlantic Lottery Corporation</i> , <a href="#">2012 ONSC 4207</a>	2

**STATUTORY PROVISIONS**

<b>Legislation</b>	<b>Paragraph Ref.</b>
<i>Reciprocal Enforcement of Judgments Act, <a href="#">R.S.O. 1990, c. R.5</a></i>	3

25027135