Ontario court upholds $1.7B judgment against Iran, ruling in favour of American victims of terrorism

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Ontario’s Court of Appeal upheld a US$1.7-billion judgment against the government of Iran in favour of American victims of terrorism, rejecting the state’s immunity and accusing Tehran of trying to derail Canada’s Justice for Victims of Terrorism Act.

The appeal court’s resounding rejection of Iran’s appeal is another victory for victims of terrorism holding Iran accountable for its support of Hamas and Hezbollah during terror campaigns from the 1980s through to 2002.

“The terrorist attacks out of which the respondents’ U.S. judgments arise are repugnant to civilized society. The fact that a foreign government would engage in the sponsorship of such atrocities is chilling,” wrote Justice Justice C. William Hourigan, on behalf of a panel of concurring judges.

“There is nothing offensive about using peaceful legislative means to combat terrorism,” the judgment says. “To the contrary, awarding damages that may have a deterrent effect is a sensible and measured response to the state sponsorship of terrorism and is entirely consistent with Canadian legal morals.”

The unusual case sees a long list of American victims of terrorism suing Iran in Canada to recover massive U.S. court awards.

The victims — some of whom were personally injured, kidnapped or tortured and others the families of those killed in terror attacks — sued Iran in the United States for arming, training and bankrolling Hamas and Hezbollah.

The list of victims stem from separate terror attacks:

• A suicide bombing of the U.S. Marine Barracks in Beirut, Lebanon, in 1983 by Hezbollah that killed 241 American servicemen;

• Four separate attacks in Lebanon, including the 1984 bombing of the U.S. Embassy in Beirut, by Hezbollah that killed 14 people;

• Various kidnappings in Lebanon in the 1980s by Hezbollah, one that ended with the hanging of a U.S. Lieutenant Colonel and others ending in release after brutal and traumatizing captivity;

• Three bombings in the 1990s by terrorist organizations found to be supported and funded by Iran that took place in Israel, Saudi Arabia and Argentina;

• And the bombing by Hamas of Hebrew University in Jerusalem in 2002 that killed Marla Bennett, a 24-year-old student from California.

The terror victims earlier won their various cases in the United States and were awarded significant financial judgments, including substantial punitive damages that amount to about US$1.7 billion.

With few Iranian government assets remaining in the United States, the victims turned to Canada, where Tehran maintained property and bank accounts.

Canada’s Justice for Victims of Terrorism Act (JVTA), enacted in 2012, allowed victims of terrorism to sue terrorists and foreign states for damages. It is that act that allows the U.S. victims to seek Iran’s money in Canada.

Among the assets sought are a one-storey, backsplit house converted into offices at 290 Sheppard Ave. W. in Toronto, an industrial building at 2 Robinson Ave. in Ottawa and two bank accounts.

Iran did not defend against the original lawsuits but after losing a series of judgments and enforcement orders were issued, last year launched a wide attack on each of the findings in Canada. After losing, Iran appealed, arguing the judge erred on every legal issue before him.

“Indeed, Iran advances several arguments that appear designed solely to frustrate Parliament’s intention and the proper operation of the JVTA,” Hourigan writes. If Iran’s arguments were accepted, the act would become “largely unworkable.”

Iran argued it was immune from prosecution in Canada, that the damage awards from the U.S. far exceeded what is allowable in Canada, and the judgments violate international law.

The appeal court upheld that Iran was not immune as a state under the JVTA and Canada’s State Immunity Act, nor are the properties beyond reach due to diplomatic immunity. The properties do not include Iran’s embassy or ambassador’s residence but buildings Canada did not recognize as diplomatic in nature.

“There is no principled reason why Iran should be immune from a costs award,” Hourigan writes.

“That the American judgments awarded damages greatly in excess of what would likely be awarded in Canada does not offend any public or moral interest in Canada,” the decision says. Further, “the presumption of compliance with international law is rebutted where Parliament expresses a clear intention to default on an international obligation.”

The appeal court also rejected Iran’s contention victims had to prove in a Canadian court that Iran supported the specific terrorist attacks rather than relying on the U.S. findings.

“It would take tremendous financial resources, perhaps beyond any potential financial recovery, to prove a state’s material support of a terrorist organization, and a connection to a particular terrorist act, beyond a reasonable doubt,” the court ruled.

The only success Iran had was in dismissing the victims of terrorism that occurred prior to Jan. 1, 1985, when Canada’s State Immunity Act was passed. Court found Iran’s immunity is only lifted under the JVTA in compliance with the SIA, so anything prior to the SIA are immune from court judgment.

That removes three victims of the earlier attacks from accessing Iranian funds in Canada but makes no difference to the total amount sought in Canada.

Lawyers involved in the case could not be reached for comment.