SUPREME COURT OF CANADA

CITATION: H.M.B. Holdings Ltd. *v.* Antigua and Barbuda, 2021 SCC 44

APPEAL HEARD: April 20, 2021
JUDGMENT RENDERED: November 4, 2021
DOCKET: 39130

BETWEEN:

H.M.B. Holdings Limited
Appellant

and

Attorney General of Antigua and Barbuda
Respondent

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe and Kasirer JJ.

REASONS FOR JUDGMENT: (paras. 1 to 51) Wagner C.J. (Karakatsanis, Rowe and Kasirer JJ. concurring)

CONCURRING REASONS: (paras. 52 to 70) Côté J.

H.M.B. Holdings Limited *Appellant*

v.

Attorney General of Antigua and Barbuda *Respondent*

Indexed as: H.M.B. Holdings Ltd. *v.* Antigua and Barbuda

2021 SCC 44

File No.: 39130.

2021: April 20; 2021: November 4.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Private international law — Foreign judgments — Reciprocal enforcement — Registration — Carrying on business — Foreign judgment awarding compensation to judgment creditor for expropriation of lands by judgment debtor — Judgment creditor successfully obtaining default judgment in British Columbia to enforce foreign judgment — Judgment creditor then applying for registration of default judgment in reciprocating jurisdiction of Ontario — Application dismissed on basis that judgment debtor not carrying on business in British Columbia — Whether judgment creditor is

precluded from having default judgment registered in Ontario — Reciprocal Enforcement of Judgments Act, R.S.O. 1990, c. R.5, s. 3(b).

Antigua and Barbuda ("Antigua"), a country comprised of several islands in the Caribbean, expropriated property owned by H.M.B. Holdings Limited ("HMB"), a private company incorporated in Antigua. Litigation ensued at the Judicial Committee of the Privy Council, and Antigua was ordered to compensate HMB for the expropriation. Years later, HMB brought a common law action in British Columbia to enforce the foreign judgment in that province. Antigua did not defend the action, and as a result, HMB obtained a default judgment. HMB then commenced an application in Ontario to enforce the British Columbia judgment by having it registered under the *Reciprocal Enforcement of Judgments Act* ("*REJA*"). The application judge found that ss. 3(b) and 3(g) of the *REJA* — which prescribe, as conditions of registration, that the judgment debtor be carrying on business within the jurisdiction of the original court and that the judgment debtor have no good defence on the original judgment — barred registration. A majority of the Court of Appeal upheld the application judge's conclusion on the basis of s. 3(b) alone.

Held: The appeal should be dismissed.

Per **Wagner** C.J. and Karakatsanis, Rowe and Kasirer JJ.: Section 3(b) of the *REJA* effectively bars HMB from registering the British Columbia judgment in Ontario. The term "carrying on business" set out in s. 3(b) was given a generous and liberal interpretation by the courts below consistent with the Court's jurisprudence.

There is no error of law in their interpretation of s. 3(b), nor is there any palpable and overriding error in the conclusion that Antigua was not carrying on business in British Columbia. In light of this finding, it is unnecessary to consider whether s. 3(g) also bars HMB from registering the British Columbia judgment under the *REJA*.

The *REJA* allows a person who has obtained a judgment in another jurisdiction (the "judgment creditor") to apply to register the judgment in Ontario and creates a process by which the person against whom the judgment was obtained (the "judgment debtor") can resist its registration. A judgment registered under the *REJA* is treated as if it were a judgment originally issued by an Ontario court. Though not the only route available to applicants, the *REJA* constitutes an easy, economical and expedient mechanism for enforcing foreign judgments. It provides a number of statutory benefits, such as registration without notice to the judgment debtor and a short window, following notice of registration, during which the judgment debtor can seek to set aside the registration. However, this process occurs at a cost: only judgments from reciprocating jurisdictions may be registered under the *REJA*. Moreover, recognition of judgments under the *REJA* is subject to seven defences, set out in s. 3. If any one defence is established, the judgment cannot be registered.

The section 3(b) defence to registration places two burdens on a judgment debtor. First, the judgment debtor must establish that they were not carrying on business or ordinarily resident in the jurisdiction of the original court. Second, the judgment debtor must also show that they did not voluntarily appear or otherwise submit to the

original court's jurisdiction during the proceedings the judgment creditor brought in that court. If the judgment debtor shows the Ontario court that these two conditions are met, then s. 3(b) bars the registration of the judgment.

The *REJA* does not define "carrying on business" for the purposes of s. 3(b), but this concept has a long history at common law. As a matter of statutory interpretation, common law terms and concepts are presumed to retain their common law meaning when used in legislation. At common law, the concept of "carrying on business" forms part of the law on the traditional bases of jurisdiction, which recognize and enforce a foreign judgment only if the defendant in the original action had been present in the foreign jurisdiction or had consented in some way to the foreign court's jurisdiction. Section 3(b) codifies the traditional common law bases of jurisdiction as a prerequisite for registration. The Canadian common law of recognition and enforcement has however developed beyond the traditional bases of jurisdiction to recognize the judgment of a court in one province in another province on the basis of a "real and substantial connection" to the original jurisdiction. Nonetheless, the common law bases of presence and consent remain important, and are critical to understanding s. 3(b) of the *REJA*.

To determine whether a defendant is carrying on business in a jurisdiction, the court must inquire into whether it has some direct or indirect presence in the jurisdiction, accompanied by a degree of business activity that is sustained for a period of time. Whether or not a corporation is carrying on business is a question of fact

assessed in reference to a number of indicia. Some kind of actual presence, whether direct or indirect, is required. A physical presence in the form of maintenance of physical premises will be compelling, but a virtual presence that falls short of an actual presence will not suffice. "Carrying on business" for the purpose of establishing traditional presence-based jurisdiction is a stricter standard than "carrying on business" as a mere presumptive connecting factor for assumed jurisdiction. Despite these differences, the requirements for "carrying on business" under the standard of assumed jurisdiction must also apply for the purposes of traditional presence-based jurisdiction. In both cases, some form of tangible presence in the jurisdiction is required, such as maintaining a physical office.

The *REJA* applies only to a judgment or an order of a court in any civil proceedings whereby any sum of money is payable. It remains an open question whether a derivative judgment — which in itself enforces a judgment of a non-reciprocating jurisdiction — falls within the definition of "judgment" in s. 1(1) of the *REJA* and can therefore be registered under the statute.

Per **Côté** J.: There is agreement with the majority's analysis under s. 3(b) of the *REJA*, and with its disposition of the appeal. However, to the extent that the majority's reasons suggest the *REJA* might not apply to derivative judgments, there is divergence of opinion. A judgment resulting from a common law action that recognizes a foreign judgment, such as the British Columbia judgment in this case, falls squarely

within the broad definition of "judgment" in s. 1(1) of the *REJA*, provided that the recognition judgment was rendered in a reciprocating jurisdiction.

Statutory interpretation entails discerning legislative intent by examining statutory text in its entire context and in its grammatical and ordinary sense, in harmony with the statute's scheme and objects. The *REJA* contains a plain language provision that defines the judgments to which it applies. Under s. 1(1) of the *REJA*, "judgment" means a judgment or an order of a court in any civil proceedings whereby any sum of money is payable. Understood in its grammatical and ordinary sense, the definition undoubtedly encompasses recognition judgments such as the British Columbia judgment. Reading into s. 1(1) an exception applicable to derivative judgments is counter-intuitive and supported neither by the text nor by the ordinary rules of statutory interpretation.

The *REJA*'s overarching purpose is to provide a convenient and inexpensive mechanism to register foreign judgments that saves creditors and courts time and resources. Such advantages promote access to justice and are particularly valuable to judgment creditors who are less familiar with Ontario's legal environment. The main benefit of the *REJA*'s registration mechanism is that it reverses the litigation burden by permitting registration unless the debtor succeeds in an action to set it aside. Comity between reciprocating jurisdictions is crucial to attain this purpose. Relying on the legally non-existent notion of derivative judgments would do little to keep the *REJA*'s mechanism accessible and convenient to judgment creditors.

This interpretation meets the standard of commercial certainty, and accords with the Court's jurisprudence acknowledging that recognition judgments are capable of being registered in other provinces. But there is an important caveat. While the *REJA* permits the registration of recognition judgments, it forbids the registration of a judgment that has itself been registered, as the latter does not make money payable. Allowing registration of judgments that have themselves been registered would unduly expand the list of jurisdictions to which the *REJA* applies by including all of the jurisdictions that are reciprocal to those listed in accordance with the statute.

Cases Cited

By Wagner C.J.

Considered: *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572; *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077; *Adams v. Cape Industries Plc.*, [1990] 1 Ch. 433; **referred to:** *Wilson v. Hull* (1995), 128 D.L.R. (4th) 403; *T.D.I. Hospitality Management Consultants Inc. v. Browne* (1994), 117 D.L.R. (4th) 289; *Impagination Inc. v. Baird* (2001), 202 Nfld. & P.E.I.R. 300; *Owen v. Rocketinfo Inc.*, 2008 BCCA 502, 86 B.C.L.R. (4th) 64; *Strategic Technologies Pte Ltd. v. Procurement Bureau of the Republic of China Ministry of National Defence*, [2020] EWCA Civ 1604, [2021] 2 W.L.R. 448; *Vizcaya Partners Ltd. v. Picard*, [2016] UKPC 5, [2016] 3 All E.R. 181.

By Côté J.

Applied: *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69; **distinguished:** *Owen v. Rocketinfo Inc.*, 2008 BCCA 502, 86 B.C.L.R. (4th) 64; **disapproved:** *Strategic Technologies Pte Ltd. v. Procurement Bureau of the Republic of China Ministry of National Defence*, [2020] EWCA Civ 1604, [2021] 2 W.L.R. 448; **referred to:** *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45; *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27; *MediaQMI inc. v. Kamel*, 2021 SCC 23; *Michel v. Graydon*, 2020 SCC 24; *Solehdin v. Stern Estate*, 2014 BCCA 482, 364 B.C.A.C. 128; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077; *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416; *Girsberger v. Kresz*, [1999] 7 W.W.R. 761, aff'd [2000] 1 W.W.R. 101; *Tracy (Litigation guardian of) v. Iranian Ministry of Information and Security*, 2016 ONSC 3759, 400 D.L.R. (4th) 670, aff'd 2017 ONCA 549, 415 D.L.R. (4th) 314.

Statutes and Regulations Cited

Administration of Justice Act, 1920 (U.K.), 10 & 11 Geo. 5, c. 81, s. 9(2)(b).

Land Acquisition Act (Atg.), 1958, c. 233.

Limitation Act, S.B.C. 2012, c. 13, s. 7.

Limitations Act, 2002, S.O. 2002, c. 24, Sch. B, s. 4.

Reciprocal Enforcement of Judgments Act, R.S.O. 1990, c. R.5, ss. 1(1) "judgment", "judgment creditor", "judgment debtor", "original court", "registering court", 2, 3, 4, 6, 7, 8.

Authors Cited

Conference of Commissioners on Uniformity of Legislation. *Proceedings of the Seventh Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada*, App. G, *The Reciprocal Enforcement of Judgments Act*. Ottawa, 1924.

Pitel, Stephen G. A., and Nicholas S. Rafferty. *Conflict of Laws*, 2nd ed. Toronto: Irwin Law, 2016.

Pitel, Stephen G. A., et al. *Private International Law in Common Law Canada: Cases, Text and Materials*, 4th ed. Toronto: Emond Montgomery, 2016.

Scalia, Antonin, and Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts.* St. Paul: Thomson/West, 2012.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 6th ed. Markham, Ont.: LexisNexis, 2014.

Walker, Janet. *Castel & Walker: Canadian Conflict of Laws*, 6th ed. Toronto: LexisNexis, 2005 (loose-leaf updated August 2021, release 87).

Walker, Janet. *Halsbury's Laws of Canada — Conflict of Laws*, 1st ed. Toronto: LexisNexis, 2020 Reissue.

APPEAL from a judgment of the Ontario Court of Appeal (Simmons, Pardu and Nordheimer JJ.A.), 2020 ONCA 12, 149 O.R. (3d) 440, 442 D.L.R. (4th) 241, 14 L.C.R. (2d) 177, 1 B.L.R. (6th) 232, [2020] O.J. No. 69 (QL), 2020 CarswellOnt 74 (WL Can.), affirming a decision of Perell J., 2019 ONSC 1445, 145 O.R. (3d) 515, 14 L.C.R. (2d) 150, [2019] O.J. No. 1133 (QL), 2019 CarswellOnt 3149 (WL Can.). Appeal dismissed.

Lincoln Caylor and *Nina Butz*, for the appellant.

Steve J. Tenai and *Sanj Sood*, for the respondent.

The judgment of Wagner C.J. and Karakatsanis, Rowe and Kasirer JJ. was delivered by

THE CHIEF JUSTICE —

I. Introduction

[1] In this appeal, H.M.B. Holdings Limited ("H.M.B.") seeks an order pursuant to Ontario's *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5 ("*REJA*"), for the registration of a default judgment it obtained in British Columbia against Antigua and Barbuda ("Antigua") to enforce a judgment granted by the Judicial Committee of the Privy Council awarding compensation for expropriation. The problem is one of statutory interpretation, and in particular, the interpretation and application of ss. 3(b) and 3(g) of the *REJA*. If either of these provisions applies, H.M.B. is barred from registering the default judgment under the *REJA*.

[2] The application judge found that both provisions barred registration under the statute. A majority of the Court of Appeal of Ontario upheld the application judge's conclusion on the basis of s. 3(b) alone. For the reasons that follow, I agree with the Court of Appeal and conclude that this appeal must be dismissed.

II. Facts

[3] In 2007, Antigua, a country comprised of several islands in the Caribbean, expropriated property owned by H.M.B., a private company incorporated in Antigua pursuant to the country's *Land Acquisition Act*, 1958, c. 233. Litigation ensued, and in May 2014, the Judicial Committee of the Privy Council ordered Antigua to compensate H.M.B. for the expropriation (No. 2013/0017 ("Privy Council Judgment")).

[4] Over two years later, in October 2016, H.M.B. brought a common law action in British Columbia to enforce the Privy Council Judgment in that province. H.M.B.'s action was timely under British Columbia's *Limitation Act*, S.B.C. 2012, c. 13, which provides for a ten-year limitation period to enforce a foreign judgment in the province through a common law action (s. 7). However, it is worth noting that had H.M.B. brought a common law action to enforce the Privy Council Judgment in Ontario, it would have been time-barred pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, which provides for a two-year limitation period (s. 4).

[5] Antigua did not defend the action. As a result, in April 2017, H.M.B. obtained a default judgment for the enforcement of the Privy Council Judgment against Antigua in the British Columbia Supreme Court (No. S169831 ("British Columbia Judgment")). One year later, in May 2018, H.M.B. commenced an application in Ontario to enforce the British Columbia Judgment by having it registered under the *REJA*. The *REJA* provides for a six-year limitation period for the registration of judgments, more generous than the two-year limitation period for enforcement by way

of a common law action (s. 2; *Limitations Act, 2002*, s. 4). Antigua opposed the application.

[6] At the time of the British Columbia action, Antigua did not have a physical presence in the province. It did not have a consulate, an office or any premises in that province. Nor did it have any employees or agents in the province or direct any marketing specifically at residents of British Columbia.

[7] However, the Antiguan government did have contracts with four "Authorized Representatives" with businesses, premises and employees in British Columbia for the purposes of its Citizenship by Investment Program ("CIP"). The CIP aims to encourage investments in Antigua's real estate, businesses and National Development Fund by granting citizenship to investors and their families in exchange for such investments.

[8] Antigua engages Authorized Representatives to facilitate introductions to potential investors, in exchange for which they are paid something akin to a finder's fee. However, Authorized Representatives have no authority to review or approve CIP applications. They merely assist prospective investors by providing them with information about the CIP and completing preliminary forms to send to "Authorized Agents" based in Antigua.

[9] Authorized Agents assist applicants in obtaining information about the CIP application process, collect the required fees and send the completed applications to the

Citizenship Investment Unit ("CIU"), the Antiguan government agency that administers the CIP. The CIU makes the ultimate decision on whether to approve or deny an investor's application. Authorized Representatives do not liaise with the CIU or the Antiguan government and are paid their finder's fee through an Authorized Agent if an application is accepted.

[10] As mentioned above, at the time of the British Columbia action, Antigua did not have any physical presence in the province for any purpose related to the CIP; it did not deal or contract with prospective investors or approve applications in the province, nor did it advertise the CIP in the province beyond engaging the Authorized Representatives to disseminate information about the program. All four Authorized Representatives had limited term appointments with the CIP and carried on other businesses that were unrelated to the program in British Columbia and independent of the business of the Antiguan government.

[11] Moreover, the CIP did not specifically target residents of Canada or British Columbia. From its inception in October 2013 to June 30, 2018, only 9 CIP applications were made by persons born in Canada out of a total of 1,547 applications from around the world.

III. Relevant Legislation

[12] The following provisions of the *REJA* are relevant to this appeal:

Definitions
1 (1) In this Act,

"judgment" means a judgment or an order of a court in any civil proceedings whereby any sum of money is payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by a court therein;

"judgment creditor" means the person by whom the judgment was obtained, and includes the executors, administrators, successors and assigns of that person;

"judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given;

"original court", in relation to a judgment, means the court by which the judgment was given;

"registering court", in relation to a judgment, means the court in which the judgment is registered under this Act.

Registration of judgment
2 (1) Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to any court in Ontario having jurisdiction over the subject-matter of the judgment, or, despite the subject-matter, to the Superior Court of Justice at any time within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may, subject to this Act, order the judgment to be registered.

Conditions of registration
3 No judgment shall be ordered to be registered under this Act if it is shown to the registering court that,

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(g) the judgment debtor would have a good defence if an action were brought on the original judgment

IV. Judicial History

A. *Ontario Superior Court of Justice, 2019 ONSC 1445, 145 O.R. (3d) 515 (Perell J.)*

[13] H.M.B. sought to enforce the British Columbia Judgment in Ontario pursuant to the *REJA*. Antigua resisted the application on the basis of both ss. 3(b) and 3(g) of the statute. The application judge accepted Antigua's arguments and dismissed H.M.B.'s application.

[14] First, the application judge found that s. 3(b) of the *REJA* precluded the registration of the British Columbia Judgment because Antigua was not "carrying on business" in British Columbia. According to *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, "carrying on business" in a jurisdiction requires some form of actual, not only virtual, presence in the jurisdiction. Antigua had no physical presence in British Columbia, nor did it carry on any sustained business activity in the province. Moreover, the CIP was not a business activity. It was a government program aimed at recruiting new citizens to start businesses in Antigua. Even if one assumed that the CIP was a business activity, the four Authorized Representatives in British Columbia were not Authorized Agents of the Antiguan government; they were carrying on their own businesses independently.

[15] Second, and in the alternative, the application judge found that the registration of the British Columbia Judgment was precluded by s. 3(g) of the *REJA*,

which bars registration if "the judgment debtor would have a good defence if an action were brought on the original judgment". The application judge's analysis turned on the meaning of "original judgment" in this provision. He concluded that "original judgment" referred to the first-instance Privy Council Judgment on the merits, not the British Columbia Judgment, which was a derivative of a judgment of a non-reciprocating jurisdiction. According to the application judge, interpreting "original judgment" to include a judgment of this nature would circumvent the general policy of the Ontario law about foreign judgments of non-reciprocating jurisdictions. It would allow the registration in Ontario of a judgment granted by a court of another jurisdiction by an indirect method when it is not permitted to be done directly. As a result, the "original judgment" was the Privy Council Judgment, not the British Columbia Judgment, and as Antigua would have a limitations-period defence if H.M.B. brought a direct action to enforce the Privy Council Judgment, s. 3(g) barred registration.

B. *Court of Appeal for Ontario, 2020 ONCA 12, 149 O.R. (3d) 440 (Simmons and Pardu JJ.A., Nordheimer J.A. Dissenting)*

[16] On appeal, H.M.B. challenged the application judge's approach to both ss. 3(b) and 3(g).

[17] A majority of the Court of Appeal for Ontario affirmed the application judge's analysis of "carrying on business" under s. 3(b) of the *REJA* and dismissed the appeal on this basis. It found that the application judge had not erred in summarizing or applying the legal test for what constitutes carrying on a business, and that his factual

finding that Antigua was not carrying on business in British Columbia was entitled to deference. As a result, there was no basis for appellate intervention on this point. As this was sufficient to dismiss the appeal, the majority found it unnecessary to assess the application judge's interpretation of "original judgment" under s. 3(g) of the *REJA*.

[18] Nordheimer J.A., in dissent, would have allowed H.M.B.'s appeal and ordered that the British Columbia Judgment be registered. He held that the application judge had erred in relying on *Van Breda*, which is about jurisdiction at first instance and does not apply to the recognition and enforcement of foreign judgments. Instead, the governing case is *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, which calls for a liberal approach to the recognition and enforcement of foreign judgments. As a result, the requirement of "carrying on business" under s. 3(b) of the *REJA* should be interpreted as setting a very low bar, which was readily satisfied by Antigua's conduct in British Columbia through the CIP. Nordheimer J.A. held that the application judge had committed a palpable and overriding error in finding otherwise.

[19] Turning to the s. 3(g) issue, Nordheimer J.A. found that "original judgment" in this provision referred to the British Columbia Judgment. Section 1(1) of the *REJA* defines "original court" as "the court by which the judgment was given", which in this case, Nordheimer J.A. held, referred to the Supreme Court of British Columbia since the judgment sought to be registered was the British Columbia Judgment. As a matter of statutory interpretation, the presumption of consistent expression suggested that "original judgment" referred to the British Columbia

Judgment as well. There was nothing to rebut the presumption in this case. Indeed, the application judge's inconsistent interpretation of these terms undermined the purpose of the *REJA*, which is to facilitate the enforcement of judgments properly issued by reciprocating jurisdictions. As Antigua had no good defence to the British Columbia Judgment, Nordheimer J.A. held that s. 3(g) did not bar the registration of that judgment and would have ordered that it be registered.

V. Submissions of the Parties

[20] H.M.B. argues that the interpretation of "carrying on business" in s. 3(b) must reflect the "generous and liberal" approach to judgment recognition and enforcement outlined in *Chevron*. Jurisdiction *simpliciter* principles are inapplicable, and the application judge erred in relying on *Van Breda*. Instead, the test in *Wilson v. Hull* (1995), 128 D.L.R. (4th) 403 (Alta. C.A.), applies. On the basis of *Wilson* or any other test for "carrying on business", Antigua's "marketing and selling of Antiguan citizenship" in British Columbia meets the standard of carrying on business (A.F., at para. 27). With respect to s. 3(g), H.M.B. argues that a consistent interpretation of the word "original" throughout the statute compels the conclusion that the "original judgment" is the British Columbia Judgment, to which Antigua has no defence. As a result, neither s. 3(b) nor s. 3(g) of the *REJA* bars the registration of the judgment.

[21] Antigua argues that the application judge applied the correct test for "carrying on business" under s. 3(b), which has its origins in the common law of presence-based jurisdiction *simpliciter*. It also submits that there is no reviewable error

in the application judge's conclusion that Antigua was not carrying on business in British Columbia. In relation to s. 3(g), Antigua argues that the "original judgment" is the Privy Council Judgment, to which it has a limitations-period defence. Moreover, concluding that the derivative British Columbia Judgment is the "original judgment" would circumvent Ontario's statutory limitation period for the registration of foreign judgments, permitting H.M.B. to do indirectly what it cannot do directly. As a result, ss. 3(b) and 3(g) of the *REJA* both bar the registration of the British Columbia Judgment under the *REJA*.

VI. Issues on Appeal

(a) Is H.M.B. precluded by s. 3(b) of the *REJA* from having the British Columbia Judgment registered in Ontario because Antigua was not "carrying on business" in British Columbia at the time of the action brought in that province?

(b) If not, is H.M.B. precluded by s. 3(g) of the *REJA* from having the British Columbia Judgment registered in Ontario on account of Antigua having a good defence on the original judgment?

VII. Analysis

[22] H.M.B. seeks to enforce the Privy Council Judgment by bringing an application to register the British Columbia Judgment under the *REJA*. The statute

allows a person who has obtained a judgment in another jurisdiction (the "judgment creditor") to apply to register the judgment in Ontario and creates a process by which the person against whom the judgment was obtained (the "judgment debtor") can resist its registration. A judgment registered under the *REJA* is treated as if it were a judgment originally issued by an Ontario court (s. 4).

[23] The *REJA* is not the only route by which H.M.B. could try to enforce the Privy Council Judgment in Ontario. H.M.B. could also commence a separate common law action for enforcement.[1] However, the *REJA* provides an easy, economical and expedient route for enforcing foreign judgments (*T.D.I. Hospitality Management Consultants Inc. v. Browne* (1994), 117 D.L.R. (4th) 289 (Man. C.A.), at p. 295; *Wilson*, at pp. 412-13; *Impagination Inc. v. Baird* (2001), 202 Nfld. & P.E.I.R. 300 (Nfld. S.C.T.D.), at paras. 26-27; S. G. A. Pitel and N. S. Rafferty, *Conflict of Laws* (2nd ed. 2016), at pp. 201 and 203-4; S. G. A. Pitel et al., *Private International Law in Common Law Canada: Cases, Text and Materials* (4th ed. 2016), at p. 481). It provides a number of statutory benefits: six years to register the judgment from the date of issue (s. 2(1)), registration order made without notice to the judgment debtor (s. 2(2)), and a short window, one month, following notice of the registration during which the judgment debtor can seek to have the registration set aside (s. 6). But these statutory benefits come at a cost. Only judgments from reciprocating jurisdictions may be registered under the *REJA*. British Columbia is a reciprocating jurisdiction under *REJA*,

[1] In fact, H.M.B. did also commence a common law action to enforce the British Columbia Judgment, but those proceedings are not at issue in this Court (*H.M.B. Holdings Ltd. v. Attorney General of Antigua and Barbuda*, 2021 ONSC 2307).

but Antigua is not. Moreover, recognition of judgments under *REJA* is subject to seven defences set out in s. 3. If any one defence is established, the judgment cannot be registered. At issue in this appeal are two of the defences (ss. 3(b) and 3(g)).

A. *Preliminary Issue*

[24] As a preliminary matter, the *REJA* applies only to "a judgment or an order of a court in any civil proceedings whereby any sum of money is payable" (ss. 1(1) "judgment" and 2(1)). If the judgment in issue does not meet the statutory definition of "judgment" in s. 1(1), it cannot be registered pursuant to the *REJA* and there is no need to consider the s. 3 defences to registration.

[25] It is an open question whether the derivative British Columbia Judgment — a judgment that itself enforces a judgment of a non-reciprocating jurisdiction — falls within the definition of "judgment" in the *REJA* and is capable of being registered under the statute. On the one hand, there is support for the view that the definition of "judgment" excludes derivative judgments because they are not judgments whereby any sum of money is payable, and because their inclusion would be contrary to the purpose of reciprocal enforcement statutes and the principle of reciprocity (see, for example, *Owen v. Rocketinfo Inc.*, 2008 BCCA 502, 86 B.C.L.R. (4th) 64, at paras. 20-21; *Strategic Technologies Pte Ltd. v. Procurement Bureau of the Republic of China Ministry of National Defence*, [2020] EWCA Civ 1604, [2021] 2 W.L.R. 448, at paras. 54-61). On the other hand, there is also support for the view that the definition of "judgment" in the *REJA* includes derivative judgments, namely this Court's *obiter*

statement in *Chevron* that "under provincial legislation, a recognition and enforcement judgment issued in one province may be capable of being 'registered' in another province" (para. 49).

[26] In this appeal, both parties accept, as the courts below did, that the British Columbia Judgment is a "judgment" falling within the scope of the *REJA*, and the Court is without the benefit of full argument on this issue. Moreover, as my analysis below demonstrates, if the British Columbia Judgment is assumed to fall within the definition of "judgment" in the *REJA*, the application judge's finding that s. 3(b) bars registration of the British Columbia Judgment must be affirmed. It is therefore unnecessary for me to decide whether derivative judgments can be registered under the *REJA*, because this appeal must be dismissed in any event. As such, these reasons proceed on the assumption that the British Columbia Judgment falls within the *REJA*'s scope, without deciding the issue. I leave for another day the question of whether derivative judgments are, in fact, contemplated by the definition of "judgment" in the *REJA*.

B. *Was Antigua "Carrying on Business" in British Columbia Within the Meaning of Section 3(b) of the REJA?*

[27] Section 3(b) of the *REJA* provides:

> **3** No judgment shall be ordered to be registered under this Act if it is shown to the registering court that,
>
> . . .

> (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; . . .

[28] Section 3(b) places two burdens on a judgment debtor seeking to raise this defence. First, the judgment debtor must establish that they were not carrying on business or ordinarily resident in the jurisdiction of the original court. Second, the judgment debtor must also show that they did not voluntarily appear or otherwise submit to the original court's jurisdiction during the proceedings the judgment creditor brought in that court. If the judgment debtor shows the Ontario court that these two conditions are met, then s. 3(b) bars the registration of the judgment.

[29] In the present appeal, the parties agree that Antigua is not ordinarily resident in British Columbia and did not voluntarily appear or otherwise submit to the jurisdiction of the Supreme Court of British Columbia during the proceedings H.M.B. commenced in that province. As a result, the only issue in the application of s. 3(b) in this case is whether Antigua was "carrying on business" in British Columbia.

(1) Interpretation of "Carrying on Business"

[30] The *REJA* does not define "carrying on business", but this concept has a long history at common law. As a matter of statutory interpretation, common law terms and concepts are presumed to retain their common law meaning when used in

legislation (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at § 17.14).

[31] At common law, the concept of "carrying on business" forms part of the law on the traditional bases of jurisdiction. As this Court explained in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, under the traditional bases of jurisdiction at common law, a foreign judgment could be recognized and enforced in Canada only if the defendant in the original action had been *present* in the foreign jurisdiction at the time of the action there or had *consented* in some way to the foreign court's jurisdiction (p. 1092; see also *Chevron*, at para. 29; Pitel and Rafferty, at pp. 164 and 168). In this context, a corporation is said to be "present" in a jurisdiction if it is established that the corporation was "carrying on business" in that jurisdiction at the time of the action (*Chevron*, at para. 85; Pitel and Rafferty, at p. 170; J. Walker, *Castel & Walker: Canadian Conflict of Laws* (6th ed. (loose-leaf)), at p. 14-24).

[32] The Canadian common law of recognition and enforcement has developed beyond the traditional bases of jurisdiction. Notably, in *Morguard* itself, the Court held that the judgment of a court in one province could be recognized in another province on the basis of a "real and substantial connection" to the original jurisdiction rather than the traditional bases of jurisdiction. Nonetheless, the common law bases of presence and consent remain important, and in this case are critical to understanding s. 3(b) of the *REJA*.

[33] The *REJA* was first enacted in 1929. It is based on a model statute approved by the Conference of Commissioners on Uniformity of Legislation in Canada in 1924, which in turn was based on the United Kingdom's *Administration of Justice Act, 1920*, 10 & 11 Geo. 5, c. 81 (see *Proceedings of the Seventh Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada*, App. G, *The Reciprocal Enforcement of Judgments Act* (1924)). Section 3(b), which has not changed since 1929, is nearly identical to s. 9(2)(b) of the United Kingdom's statute.

[34] Section 3(b) codified the traditional common law bases of jurisdiction as a prerequisite for registration. In *Morguard*, the Court recognized the connection between the traditional bases of jurisdiction and British Columbia's equivalent to s. 3(b) (p. 1111). Academic commentators also accept the connection between the traditional bases of jurisdiction and s. 3(b) (Pitel et al., at p. 481). Likewise, English jurisprudence recognizes that the *Administration of Justice Act, 1920*, is "based on the common law and fall[s] to be interpreted in accordance with the common law" and that the provision equivalent to s. 3(b) reflects common law principles of jurisdiction (*Vizcaya Partners Ltd. v. Picard*, [2016] UKPC 5, [2016] 3 All E.R. 181, at paras. 5 and 8). Moreover, the codification of the traditional common law bases of jurisdiction in s. 3(b) is reflected in the language of the provision. Section 3(b) plainly addresses presence-based jurisdiction in its references to carrying on business and residence, and consent-based jurisdiction in its reference to voluntary appearance or submission to the court's jurisdiction.

[35] As a result, contrary to the appellant's assertion, jurisdiction *simpliciter* principles are helpful in interpreting s. 3(b) of the *REJA*. In particular, the jurisprudence governing the traditional bases of jurisdiction codified in s. 3(b) is directly applicable to assist in the interpretation and application of this provision. *Chevron* is helpful in this case to the extent that it clarifies the traditional grounds of jurisdiction. I turn now to that jurisprudence and the meaning of "carrying on business".

[36] Before *Chevron*, courts generally relied on English cases, and in particular the English Court of Appeal's decision in *Adams v. Cape Industries Plc.*, [1990] 1 Ch. 433, to interpret the meaning of "carrying on business". In *Adams*, Lord Justice Slade, writing for a unanimous court, held that English courts will be likely to treat a foreign corporation as present within the jurisdiction of the courts of another country only if either: (1) it has established and maintained at its own expense, whether as owner or lessee, a fixed place of business of its own in the other country and for more than a minimal period of time has carried on its own business at or from such premises by its servants or agents; or (2) a representative of the foreign corporation has for more than a minimal period of time been carrying on the corporation's business in the other country at or from some fixed place of business (p. 530). In both of these two cases, the foreign corporation's presence can be established only if it can be said that its business has been transacted at or from the fixed place of business.

[37] In cases involving a representative, the question of whether the representative has been carrying on the foreign corporation's business or has been

doing no more than carry on their own business will necessitate an investigation of the functions they have been performing and all aspects of the relationship between them and the foreign corporation (p. 530). In particular, the following questions are relevant to the assessment of whether the representative has been carrying on the foreign corporation's business:

(a) whether or not the fixed place of business from which the representative operates was originally acquired for the purpose of enabling them to act on behalf of the foreign corporation;

(b) whether the foreign corporation has directly reimbursed the representative for the cost of their accommodation at the fixed place of business and the cost of their staff;

(c) what other contributions, if any, the foreign corporation makes to the financing of the business carried on by the representative;

(d) whether the representative is remunerated by reference to transactions (e.g., by commission), by fixed regular payments or in some other way;

(e) what degree of control the foreign corporation exercises over the running of the business conducted by the representative;

(f) whether the representative reserves part of their accommodation and part of their staff for conducting business related to the foreign corporation;

(g) whether the representative displays the foreign corporation's name at their premises or on their stationery, and if so, whether the representative does so in a way as to indicate that they are a representative of the foreign corporation;

(h) what business, if any, the representative transacts as principal exclusively on their own behalf;

(i) whether the representative makes contracts with customers or other third parties in the name of the foreign corporation or otherwise in such manner as to bind it; and

(j) if so, whether the representative requires specific authority in advance before binding the foreign corporation to contractual obligations (pp. 530-31).

Lord Justice Slade further held that even this list of questions is not exhaustive and that the answer to any of them is not necessarily conclusive as to whether a representative has been carrying on a foreign corporation's business in a certain jurisdiction (p. 531).

[38] In *Chevron*, this Court followed the *Adams* approach and explained how the term "carrying on business", *as part of traditional presence-based jurisdiction at common law*, should be interpreted in Canada. Gascon J., writing for the Court, stated the following:

> To establish traditional, presence-based jurisdiction over an out-of-province corporate defendant, it must be shown that the defendant was carrying on business in the forum at the time of the action. Whether a corporation is "carrying on business" in the province is a question of fact. In *Wilson*, in the context of statutory registration of a foreign judgment, the Alberta Court of Appeal was asked to assess whether a company was carrying on business in the jurisdiction. It held that to make this determination, the court must inquire into whether the company has "some direct or indirect presence in the state asserting jurisdiction, accompanied by a degree of business activity which is sustained for a period of time". These factors are and always have been compelling indicia of corporate presence; as the cases cited in *Adams v. Cape Industries Plc.*, [1990] 1 Ch. 433 [Ch. Div.], at pp. 467-68, per Scott J., demonstrate, the common law has consistently found the maintenance of physical business premises to be a compelling jurisdictional factor. LeBel J. accepted this in *Van Breda* when he held that "carrying on business requires some form of actual, not only virtual, presence in the jurisdiction, such as maintaining an office there". [Emphasis added; citations omitted; para. 85.]

[39] It should be noted that the term "carrying on business" appeared in *Van Breda* as a presumptive connecting factor in the tort context for the purposes of *assumed* jurisdiction. Although this Court in *Chevron* cited *Van Breda* for the meaning of that term in the context of *traditional presence-based* jurisdiction, it is important to remember that traditional presence-based jurisdiction is an independently sufficient ground of jurisdiction that operates alongside the assumed jurisdiction of *Van Breda* (para. 79). If the term "carrying on business" held the same meaning in both contexts, this would create overlap between the two tests (see Pitel and Rafferty, at p. 94). If a

corporate defendant were carrying on business in a jurisdiction such that a plaintiff could simply serve that defendant *in juris* and establish traditional presence-based jurisdiction, it is not clear why that plaintiff would ever try to establish "carrying on business" as a mere presumptive connecting factor going to assumed jurisdiction. This suggests that "carrying on business" as it appears in *Van Breda*, as a mere presumptive connecting factor for assumed jurisdiction, may be a less onerous standard than "carrying on business" for the purpose of establishing traditional presence-based jurisdiction.

[40] I need not decide here whether the term "carrying on business" as it appears in *Van Breda* carries the same meaning as in the case law on traditional presence-based jurisdiction. However, it is safe to say that if the *Van Breda* standard is different, it is lower. In any event, the *Van Breda* requirements for "carrying on business" must also apply for the purposes of traditional presence-based jurisdiction. In *Chevron*, this Court recognized as much by quoting LeBel J.'s remark that "carrying on business requires some form of actual, not only virtual, presence in the jurisdiction, such as maintaining an office there", in describing what it means to "carry on business" for the purposes of presence-based jurisdiction.

[41] *Chevron* thus provided a clear definition of "carrying on business" as part of traditional presence-based jurisdiction at common law. For the reasons given above, this informs the interpretation of s. 3(b) of the *REJA*. In sum, to determine whether a defendant is carrying on business in a jurisdiction, the court must inquire into whether

it has some direct or indirect presence in the jurisdiction, accompanied by a degree of business activity that is sustained for a period of time. Whether or not a corporation is "carrying on business" is a question of fact, and in order to determine whether this definition is met, the court should consider the 10 *Adams* indicia listed above. And some kind of actual presence, whether direct or indirect, is required. A physical presence in the form of maintenance of physical premises will be compelling, and a virtual presence that falls short of an actual presence will not suffice.

[42] I am therefore unpersuaded by H.M.B.'s argument that the courts below erred in failing to interpret "carrying on business" in a "generous and liberal" manner in accordance with *Chevron*. *Chevron* itself affirms the test for carrying on business for the purposes of traditional presence-based jurisdiction. Section 3(b) of the *REJA* refers to the meaning of the term for those same purposes. As a result, the "generous and liberal" approach from *Chevron* does not modify the test for "carrying on business" in s. 3(b), as it is set out in *Chevron* itself.

[43] I will now consider the application judge's reasons in light of this definition of "carrying on business" in s. 3(b) of the *REJA*.

(2) Application

[44] In my view, there is no error of law in the application judge's interpretation of s. 3(b) of the *REJA*, nor is there any palpable and overriding error in his assessment of whether Antigua was carrying on business in British Columbia.

[45] On the law, the application judge correctly stated the test for "carrying on business" under the *REJA* that this Court detailed in *Chevron*. He held that whether a party is carrying on business in a province is a question of fact. In order for a party to be carrying on business in a province, "he or she must have a meaningful presence in the province and that presence must be accompanied by a degree of business activity over a sustained period of time" (para. 50). Moreover, in order to be carrying on business in a jurisdiction, a party must have "some form of actual, not only virtual presence in the jurisdiction" (para. 51). Both of these statements accurately reflect the test this Court set out in *Chevron*. Although the application judge referred to this Court's decision in *Van Breda*, he referred to the part of *Van Breda* that was cited with approval by this Court in *Chevron* with respect to the test for carrying on business for the purposes of traditional presence-based jurisdiction. As discussed above, if the "carrying on business" standard from *Van Breda* for assumed jurisdiction is different from the "carrying on business" standard from *Chevron* for presence-based jurisdiction, the *Van Breda* standard is *less onerous*. It was therefore no error for the application judge to understand the requirements from *Van Breda* as requirements for "carrying on business" under s. 3(b) of the *REJA*.

[46] H.M.B. argues that the application judge erred in failing to apply the "broader" test from *Wilson*. But the application judge correctly referred to *Chevron*, and in *Chevron* this Court cited *Wilson* in expounding on the meaning of "carrying on business" for the purposes of presence-based jurisdiction. I therefore see no meaningful difference between the test the application judge applied and the test H.M.B. says he

should have applied. Moreover, I note that in *Wilson*, the Court of Appeal of Alberta concluded that purchasing trailers in Idaho for resale in Alberta did *not* constitute carrying on business in Idaho because the judgment debtor: (1) had "no physical presence in Idaho, that is he had no office, factory or other business premises there"; (2) "did not employ salesmen, agents or other representatives or employees in Idaho"; (3) "had no commercial relationships with other residents of Idaho"; and (4) "did not advertise his products or seek to sell them in Idaho" (pp. 407-8). In my view, this is not a meaningfully different or more lenient standard than the test the application judge articulated and applied in the present case. I therefore see no error of law in the application's judge statement of the legal test for "carrying on business".

[47] On the application of the law, the application judge's factual conclusion that Antigua was not carrying on business in British Columbia is deserving of deference and can be interfered with only if there is a palpable and overriding error. I see no palpable and overriding error in the application judge's assessment of whether Antigua was carrying on business in that province.

[48] In concluding that Antigua was not carrying on business in British Columbia, the application judge made the following five main findings of fact: (1) Antigua had no physical presence in British Columbia; (2) Antigua did not carry on any sustained business activity in British Columbia; (3) the four Authorized Representatives were not agents or Authorized Agents of Antigua; (4) the four Authorized Representatives were carrying on their own businesses that were

independent of the businesses of the Antiguan government; and (5) the CIP had no particular focus on British Columbia or Canada; since its inception, there had been 1,547 applications for the program but only 9 of them had been from persons born in Canada (paras. 52 and 54).

[49] All five of these findings of fact are supported by the evidentiary record and are without error. They are considerations that the trial judge weighed in coming to his conclusion that Antigua was not carrying on business in British Columbia. As the majority of the Court of Appeal held, the application judge clearly considered a number of factual circumstances before arriving at his conclusion, and in the absence of any palpable and overriding error, that conclusion is owed deference. I would uphold the application judge's conclusion on this basis, without deciding the issue of whether offering citizenship in exchange for investment amounts to a "business" activity at all. Given the application judge's other findings of fact in this case, it is unnecessary to consider this issue and I would decline to do so.

[50] In the result, s. 3(b) of the *REJA* bars H.M.B. from registering the British Columbia Judgment in Ontario under the statute. In light of this finding, it is unnecessary to consider whether s. 3(g) also bars H.M.B. from registering the British Columbia Judgment under the *REJA*, and I would decline to do so.

VIII. Disposition

[51] Accordingly, this appeal is dismissed with costs.

The following are the reasons delivered by

CÔTÉ J. —

[52] I agree with the Chief Justice's analysis under s. 3(b) of the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5 ("*REJA*"), and his disposition of this appeal. I also agree that it is unnecessary to ascertain the meaning of "original judgment" in s. 3(g). However, I part ways with my colleague to the extent that his reasons suggest the *REJA* might not apply to what he calls "derivative judgments". In my view, a judgment resulting from a common law action that recognizes a foreign judgment ("recognition judgment"), such as the British Columbia Judgment in this case (S.C., No. S169831, April 7, 2017 ("B.C. Judgment")), falls squarely within the broad definition of "judgment" in s. 1(1) of the *REJA*, provided that the recognition judgment was rendered in a reciprocating jurisdiction.

[53] In my colleague's view, this is an open question which should be left for another day because the Court "is without the benefit of full argument on this issue" (para. 26). I respectfully disagree with this position. Written and oral submissions were made regarding the possibility of registering a "derivative judgment", although this was argued mostly under s. 3(g) of the *REJA* rather than as a preliminary issue. In fact, the expressions "derivative judgments" and "ricochet judgments" (as Antigua calls them) have been employed in this case as a rhetorical device whose sole purpose is to convey the idea that such judgments circumvent the scheme of the *REJA*. In sum, whether or

not “derivative judgments” can be registered under the *REJA* has always been a live issue throughout these proceedings.

[54] But it should come as no surprise that the parties did not “fully argue” this point as a distinct, preliminary issue, given that our Court has expressly affirmed the possibility of registering a recognition judgment. Indeed, only six years ago, a seven-judge panel of this Court unanimously “acknowledge[d] that, under provincial legislation, a recognition and enforcement judgment issued in one province may be capable of being ‘registered’ in another province, thus offering some advantage to plaintiffs who have already successfully obtained a recognition and enforcement judgment” (*Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, at para. 49). Departing from this clear statement would create significant and unnecessary uncertainty in the law.

[55] In recent years, our Court has repeatedly emphasized the importance of removing barriers that impede access to justice (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 1; *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, at para. 170; *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27, at para. 126). Access to justice begins when respect is shown for the “reader’s right to rely on the letter of the law interpreted in its context” (*MediaQMI inc. v. Kamel*, 2021 SCC 23, at para. 38, quoting P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at p. 468). This prevents unnecessary litigation, promotes settlements, and ensures that justice does not

become a matter of divination. While the law may not always be clear, we should not be looking for ways to make it even less so by throwing text and meaning in opposite directions.

[56] This case, for instance, concerns a statute designed to assist creditors who have obtained a judgment in a province or territory other than Ontario in collecting their debt in Ontario, without having to litigate the issue all over again. The *REJA* provides a convenient and inexpensive mechanism to register foreign judgments that saves creditors and courts time and resources. Such advantages are particularly valuable to judgment creditors who are less familiar with Ontario's legal environment. The *REJA* contains a plain language provision that defines the judgments to which it applies. Reading into s. 1(1) an exception applicable to "derivative" or "ricochet" judgments is counter-intuitive and supported neither by the text nor by the ordinary rules of statutory interpretation. Relying on the legally non-existent notion of "derivative" or "ricochet" judgments thus does little to keep the *REJA*'s accessible and convenient mechanism within the reach of judgment creditors.

[57] Whether or not the *REJA* applies to "derivative judgments" is a pure matter of statutory interpretation. As our Court has held, "statutory interpretation entails discerning legislative intent by examining statutory text in its entire context and in its grammatical and ordinary sense, in harmony with the statute's scheme and objects" (*Michel v. Graydon*, 2020 SCC 24, at para. 21; *MediaQMI*, at para. 37). The crux of the matter turns on the broad definition of "judgment" set out in s. 1(1):

> In this Act,
>
> "judgment" means a judgment or an order of a court in any civil proceedings whereby any sum of money is payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by a court therein;

[58] If a recognition judgment, such as the B.C. Judgment, falls within the definition of "judgment", then registration under the *REJA* is available, assuming that all statutory requirements are met (which, as I said, is not the case here). Understood in its grammatical and ordinary sense, the definition of "judgment" undoubtedly encompasses the B.C. Judgment. First, it is "a judgment or an order of a court", namely the Supreme Court of British Columbia. Second, H.M.B. Holdings Limited's common law action to recognize and enforce the Privy Council Judgment, No. 2013/0017, May 27, 2014, constituted "civil proceedings". Third, Antigua was ordered to pay a "sum of money". Incidentally, I note that in *Solehdin v. Stern Estate*, 2014 BCCA 482, 364 B.C.A.C. 128, it was similarly held that a recognition judgment resulting from a common law action can be characterized as a "judgment . . . or order made in a civil proceeding by a court . . . that requires a person to pay money" (paras. 13 and 27, quoting *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29, s. 1(1) "Canadian judgment"). A simple reading of the B.C. Judgment makes this plain and obvious:

> THIS COURT ORDERS AND DIRECTS THAT:

> 1. The Plaintiff be and is hereby granted judgment against the Defendant, The Attorney General of Antigua and Barbuda, in the amount of CDN$28,765,975.41, representing the principal amount outstanding;
>
> 2. The Plaintiff be and is hereby granted judgment against the Defendant, The Attorney General of Antigua and Barbuda, in the amount of CDN$1,475,337.19, representing interest on the principal amount outstanding at an annual rate of 4% from December 24, 2015 to April 6, 2017 pursuant to the Order of the Privy Council granted on May 27, 2014.
>
> 3. The Plaintiff is entitled to post-judgment interest pursuant to the British Columbia *Court Order Interest Act* on the principal amount outstanding from April 7, 2017 to the date of payment in full.
>
> (A.R., vol. II, at pp. 54-55)

[59] Nothing in the statutory context disturbs this finding. On the contrary, I note that the *REJA* consistently uses the term "judgment" in accordance with the definition set out in s. 1(1). There is, however, a single occurrence of the term "original judgment" — in s. 3(g). According to the presumption of consistent expression, this terminological variation suggests a corresponding semantic variation (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 81). At best, the addition of the word "original" in s. 3(g) implies that an intermediate judgment such as a recognition judgment qualifies as a "judgment" under the *REJA*. At worst, the variation is insignificant. In any event, s. 3(g) can only bolster my interpretation, not weaken it. Moreover, I observe that s. 8 expressly contemplates the right of a judgment creditor to bring a common law action in recognition and enforcement of a foreign judgment. Since the legislature was alive to this possibility, it could have excluded the resulting judgment from the broad scope of its definition. It

did not. In sum, nothing in the statutory context casts doubt as to whether the *REJA* can apply to the B.C. Judgment and other recognition judgments.

[60] But there is an important caveat. While the *REJA* permits the registration of a recognition judgment, it forbids the registration of a judgment that has itself been registered. This is so because the latter does not make money payable (*Owen v. Rocketinfo Inc.*, 2008 BCCA 502, 86 B.C.L.R. (4th) 64, at paras. 13-14; see also *Solehdin*, at para. 20). Under the *REJA*, the registering court merely converts a foreign money judgment into a local judgment by ordering its registration (ss. 2 and 4). An order for registration is merely that — an order for registration; it is not an order making a sum of money payable. In contrast, a recognition judgment does not convert a foreign money judgment into a local one. The enforcing court considers the foreign money judgment to be evidence of a debt, ensures that a debt is owed and then issues a judgment that makes money payable (*Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612, at para. 11; *Chevron*, at para. 43).

[61] Moreover, this distinction I draw between a judgment that has itself been registered and a recognition judgment is consistent with the *REJA*'s scheme. Allowing registration of judgments that have themselves been registered would deprive the Lieutenant Governor of the authority to direct that the *REJA* applies to a reciprocating province or territory under s. 7. It would create a loophole and defeat the principle of reciprocity underlying this provision. If judgment creditors could move from one jurisdiction to another and chain registrations through reciprocal enforcement statutes,

they would be registering judgments issued in non-reciprocal jurisdictions through an indirect method when this cannot be done directly (*Owen*, at para. 21). Put simply, it would expand the list of jurisdictions to which the *REJA* applies by including all of the jurisdictions that are reciprocal to those listed by the Lieutenant Governor (e.g., all jurisdictions declared reciprocal by British Columbia would become indirectly reciprocal to Ontario).

[62] In comparison, the Lieutenant Governor is not deprived of this authority when a creditor registers a recognition judgment issued in a reciprocating jurisdiction. Although such a judgment does not involve adjudication on the merits, this is immaterial in light of the *REJA*'s broad scope. It is nonetheless the result of the vetting process of a court in a province or territory that the Lieutenant Governor already considers reciprocal, and its registration therefore entails no expansion of the list. Furthermore, allowing the registration of a recognition judgment does not preclude the requirements set out in s. 3 from playing a meaningful role. I am therefore satisfied that the definition of "judgment" can be read harmoniously with the statute's scheme as encompassing recognition judgments.

[63] Registration of recognition judgments furthers the *REJA*'s purpose of providing judgment creditors with a mechanism that makes the enforcement of their judgments from other provinces and territories quicker and more convenient compared to common law recognition and enforcement proceedings (*Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, at p. 1111; *Chevron*, at para. 71; J. Walker,

Halsbury's Laws of Canada — Conflict of Laws (1st ed. 2020 Reissue), at HCF-96; S. G. A. Pitel and N. S. Rafferty, *Conflict of Laws* (2nd ed. 2016), at p. 201). The main advantage of this mechanism is that it reverses the litigation burden by permitting registration unless the debtor succeeds in an action to set it aside (J. Walker, *Castel & Walker: Canadian Conflict of Laws* (6th ed. (loose-leaf)), at § 14.24; Pitel and Rafferty, at p. 202). Comity between reciprocating jurisdictions is crucial to attain this purpose. Indeed, most statutes equivalent to the *REJA* enacted in other provinces and territories are based on the same model drafted by the Uniform Law Conference of Canada, and most common law provinces and territories consider each other reciprocal (*Proceedings of the Seventh Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada*, App. G, *The Reciprocal Enforcement of Judgments Act* (1924)). The *REJA* could not function as intended without such deference and respect to the legitimate judicial acts of these other jurisdictions. Lack of comity would impede the flow of wealth and people across boundaries and frustrate the common interest (see *Morguard*, at pp. 1095-96; *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, at paras. 20-21; *Chevron*, at para. 52).

[64] In my view, the objects pursued by the *REJA* are in no way undermined where the registering court defers to a reciprocating court's decision to recognize the existence of a debt. I can think of no sound legal or policy reason to require the enforcing forum to reassess the work done in the reciprocating jurisdiction. On the contrary, deference promotes both convenience and commercial certainty. Once a recognition judgment is issued in a reciprocating jurisdiction, the judgment creditor is

relieved from having to bring multiple common law actions in the different jurisdictions where the debtor's assets "could be found or may end up being located" (*Chevron*, at para. 68). This saves judicial resources throughout the country, avoids the risk of contradictory recognition judgments in different provinces or territories, and ensures maximum enforceability for the debt.

[65] Having examined the definition of "judgment" in its entire context and in harmony with the scheme and objects of the *REJA*, I conclude that a recognition judgment issued in a reciprocating jurisdiction can be registered under the *REJA*, provided that all statutory requirements are met. My interpretation meets the standard of commercial certainty mandated in *Chevron*, which requires that "rules for the recognition and enforcement of foreign judgments" be "clear, liberal and simple" (para. 68). Further, it accords with our Court's recent acknowledgement in *Chevron* that recognition judgments may be capable of being registered in other provinces (para. 49).

[66] My colleague the Chief Justice relies on *Owen* and *Strategic Technologies Pte Ltd. v. Procurement Bureau of the Republic of China Ministry of National Defence*, [2020] EWCA Civ 1604, [2021] 2 W.L.R. 448, to question the validity of the statement made in *Chevron*. *Owen* can be distinguished from the case at bar as it pertains to a judgment that has itself been registered and not to a recognition judgment. Although *Strategic Technologies* is more on point, I find its reasoning uncompelling.

[67] First, *Strategic Technologies* improperly relies on *Owen* without considering the relevant Canadian case law. The same court that decided *Owen* distinguished its precedent in *Solehdin* and confined it to judgments that have themselves already been registered through filing mechanisms (paras. 18-21). The statement made in *Chevron*, at para. 49, is also conspicuous by its absence. *Strategic Technologies* also ignores other Canadian decisions in which a recognition judgment was registered (e.g., *Girsberger v. Kresz*, [1999] 7 W.W.R. 761 (Man. Q.B.), aff'd [2000] 1 W.W.R. 101 (C.A.); *Tracy (Litigation guardian of) v. Iranian Ministry of Information and Security*, 2016 ONSC 3759, 400 D.L.R. (4th) 670, at para. 177, aff'd 2017 ONCA 549, 415 D.L.R. (4th) 314, at paras. 121-29).

[68] Second, *Strategic Technologies* does not comply with Canadian principles of statutory interpretation. Instead of seeking harmony between text, scheme and purpose, the court in *Strategic Technologies* brushed aside the broad definition of "judgment" in the relevant statute and unduly focused on whether the statutory requirements analogous to those set out in s. 3 of the *REJA* make more sense when applied to a first instance judgment or to "a judgment on a judgment" (paras. 58-59). The court acknowledged that the statute could support an interpretation involving an intermediate recognition forum but swiftly rejected this interpretation on the basis that "Parliament is unlikely to have had the possibility of enforcement of a judgment on a judgment in mind" (para. 58). With respect, speculating about a past legislature's opinion regarding a case it might not have considered is not statutory interpretation but rather an attempt at "telepathic time-travel[ing] and collaborative lawmak[ing]"

(A. Scalia and B. A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012), at p. 350). And as our Court recently said, [TRANSLATION] "[t]he Constitution contemplates only one system for making laws" (*MediaQMI*, at para. 20, quoting G. Fauteux, *Le livre du magistrat* (1980), at p. 125).

[69] In sum, I conclude that the text of s. 1(1) of the *REJA* speaks for itself. Nothing justifies departing from the tradition of calling things what they are. A recognition judgment such as the B.C. Judgment can be registered because it is a "judgment". If the legislature thinks otherwise, it is free to change its statute. In the meantime, principles of statutory interpretation make this conclusion inescapable.

[70] Notwithstanding this conclusion, for the reasons expressed by my colleague, s. 3(b) of the *REJA* bars the registration of the British Columbia Judgment in Ontario in the circumstances of this case. I would therefore dismiss the appeal with costs.

Appeal dismissed with costs.

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