Court of Appeal File No. CA 43295

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

Adolfo Agustín García, Luis Fernando García Monroy, Erick Fernando Castillo Pérez, Artemio Humberto Castillo Herrera, Wilmer Francisco Pérez Martínez, Noé Aguilar Castillo, and Misael Eberto Martínez Sasvín

Appellant
(Plaintiff)

AND:

Tahoe Resources Inc.

Respondent
(Defendant)

AND:

Amnesty International Canada

Intervenor

INTERVENOR'S FACTUM

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OPENING STATEMENT

Amnesty submits that in applying the doctrine of *forum non conveniens* as codified in s. 11 of the *Court Jurisdiction and Proceedings Transfer Act*[1] (CJPTA), the Courts can and must consider as a contextual factor international law and norms that emphasize the importance of access to an effective remedy for transnational tort and human rights claims. AI accordingly submits that, when jurisdiction is properly asserted, this Court should require corporate defendants to show that BC is "clearly an inappropriate forum." This approach is consistent with international practice and precedent and appropriately responds to the distinct features of this type of claim, including in particular the power imbalances inherent to cases involving marginalised plaintiffs and financially and politically powerful transnational companies.

PART 1 - STATEMENT OF FACTS

1. On 27 April 2013, private security personnel allegedly shot the Appellants who were protesting outside of the Escobal mine in San Rafael Las Flores, Guatemala.[2] The appellants subsequently launched a civil action against Tahoe. They alleged to have been seriously wounded as a result of the shootings and sought damages from Tahoe.

2. The appellants alleged that Alberto Rotondo, Tahoe's Guatemala Security Manger, planned, ordered and directed the shooting.[3] The appellants further alleged that Tahoe expressly or implicitly authorized the security personnel's excessive use of force or negligently failed to prevent its use.[4] As alternative submissions, the appellants alleged

[1] SBC 2003, c. 28 [Intervenor's Book of Authorities ("IBA"), Tab 1].

[2] Notice of Civil Claim (S-144726), para 3.

[3] Notice of Civil Claim (S-144726), para 4.

[4] Notice of Civil Claim (S-144726), para 7.

that MSR expressly or implicitly authorized the excessive use of force and that Tahoe, as the parent company, is vicariously liable for MSR's faults[5].

3. In Guatemala, Mr. Rotondo was charged with assault, aggravated assault, and obstruction of justice.[6] Neither MSR nor Tahoe are charged. Six of the appellants became parties in the criminal proceedings to seek compensation from Mr. Rotondo.[7]

4. The respondent applied to the BCSC for an order staying proceedings on the basis that the Court should decline to exercise its jurisdiction under the doctrine of FNC as codified at s. 11 of the CJPTA.[8] The respondent argued in part that it would face inconvenience and expense in defending the claim in BC, the appellants could seek compensation in Guatemala, and that proceeding would impair fair and efficient working of the justice system.[9] In elaborating on the last factor, the respondent alleged the Guatemalan judiciary to be functional, and that allowing the claims to proceed would be inconsistent with the principle of comity and open the floodgates to a host of lawsuits in BC courts.[10]

5. In submitting that the BCSC should exercise its lawful jurisdiction, the appellants argued that they "cannot be assured a fair and impartial trial in Guatemala" and that a number of systemic problems in the Guatemalan judiciary support this conclusion.[11] In general, the appellants' submissions relied in large part on evidence they allege suggests

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[5] Notice of Civil Claim(S-144726), para 8.

[6] *Garcia v Tahoe Resources Inc.*, 2015 BCSC 2045 at para 25.

[7] *Garcia v Tahoe Resources Inc.*, 2015 BCSC 2045 at para 26.

[8] Submission of the Defendant, Tahoe Resources (S-144726), paras 3 & 10.

[9] Submission of the Defendant, Tahoe Resources (S-144726), paras 100, 112, 133, 136, 142, 144 and 146.

[10] Submission of the Defendant, Tahoe Resources (S-144726), paras 146-154.

[11] Plaintiff's Submissions (S-144726), paras 149-150.

widespread impunity and lack of independence in the Guatemalan justice system, allegations that Tahoe denied in a reply submission.[12]

Judgment of the Supreme Court of British Columbia

6. The motion judge ruled that the action should be stayed on the basis of *forum non conveniens*. The motion judge reasoned that proceeding in BC would result in "considerably greater inconvenience and expenses for the parties and dozens of witnesses."[13] Although recognizing that the Guatemalan justice system "may be imperfect", the motion judge nonetheless found that it "functions in a meaningful way."[14] The motion judge also held that "the fair and efficient workings of the Canadian legal system" favoured declining jurisdiction, relying on *inter alia* the practical difficulties in proceeding in BC and that extreme caution must be shown before finding a foreign jurisdiction is unable to provide justice.[15]

7. The appellants argue in this Court that the motion judge erred by 1) applying the incorrect legal standard to assessing the risk of an unfair trial in a foreign court, 2) applying the incorrect legal standard for assessing if Guatemala was the more appropriate forum, and 3) giving improper weight to factors enumerated in s. 11(2) of the CJPTA.[16]

8. On July 15, 2016, Amnesty was granted leave to intervene to make submissions regarding foreign and international legal norms and standards applicable to the *forum non conveniens* analysis.

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[12] Reply Submissions of the Defendant Tahoe Resources, Inc. (S-144726), para 1.

[13] *Garcia v Tahoe Resources Inc.*, 2015 BCSC 2045 at para 43.

[14] *Garcia v Tahoe Resources Inc.*, 2015 BCSC 2045 at para 66.

[15] *Garcia v Tahoe Resources Inc.*, 2015 BCSC 2045 at para 84-105.

[16] Appellants Factum (CA43295) at para 39.

PART 2 - ERRORS IN JUDGMENT

9. The motion judge erred in its application of the FNC doctrine by failing to take into account the proper transnational context of this case and the ends of justice, including access to an effective remedy for human rights abuses involving transnational corporations, an emergent issue under international law.

PART 3 – ARGUMENT

A. International law is relevant to interpreting *forum non conveniens*

10. The relevance of international law to interpreting statutes is well established in Canadian jurisprudence. The Supreme Court of Canada has affirmed the principle that legislation is to be construed to comply with Canada's international obligations and with relevant customary and conventional international norms. The presumption of conformity can only be rebutted in the case of unambiguous legislative provisions demonstrating an explicit intent to default on international obligations.[17]

11. Section 11 of the CJPTA provides that, in determining a question of *forum non conveniens*, the court must consider all relevant circumstances. The use of the word "including" before the factors enumerated at s. 11(2) of the CJPTA invites courts to consider other relevant factors, a conclusion confirmed by this Court's repeated emphasis that the factors listed at s 11 are "not exhaustive."[18] Furthermore, the Supreme Court of Canada has emphasized that the factors to be considered will vary depending on the context.[19]

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[17] *R v Hape,* 2007 SCC 26, [2007] 2 SCR 292 at para 53 [IBA, Tab 5].

[18] *Douez v Facebook,* Inc., 2015 BCCA 279 at para 15 [IBA, Tab 3]; *Laxton v Anstalt*, 2011 BCCA 212 at para 44 [IBA, Tab 6]; *The Original Cakerie Ltd. v Renaud*, 2013 BCSC 755 at para 52 [IBA, Tab 10].

[19] *Club Resorts Ltd v Van Breda*, 2012 SCC 17, [2012] 1 SCR 572 at para 110 [IBA, Tab 2].

12. AI submits that, in accordance with the CJPTA, courts considering claims involving allegations of serious human rights abuses committed abroad by Canadian corporations, must consider the context of the risks to human rights created by transnational corporate activity, as recognized by international law and emerging legal norms and standards. Indeed, s. 11(1) of the CJPTA requires BC courts to consider the "ends of justice" in addition to the "interests of the parties", a command that necessarily entails taking into account salient international legal norms in the pursuit of justice.[20]

13. International legal norms and standards are particularly relevant in cases concerning the human rights implications of transnational corporate activity. The human rights implications of transnational corporate activity has been a subject of global concern for the past few decades,[21] and a range of voluntary codes of conduct and international soft law standards have been developed over the years with the full participation of corporations to address risks. They include the *Voluntary Principles on Security and Human Rights*,[22] the *OECD Guidelines for Multinational Enterprises*,[23] the United Nations'

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[20] *Universal Declaration of Human Rights*, GA Res. 217 A (111), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71, Preamble ("...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world") [IBA, Tab 33].

[21] John G. Ruggie, "Business and Human Rights: The Evolving International Agenda", 101 Am. J. Int'l L. 819 (2007) at 819-820 [IBA, Tab 19].

[22] *The Voluntary Principles on Security and Human Rights* <http://www.voluntaryprinciples.org> The Voluntary Principles were first adopted in December 2000 [IBA, Tab 21].

[23] The Organization for Economic Development and Co-operation (OECD) responded to early concerns in 1976 by developing the first version of its *Guidelines for Multinational Enterprises*, an international corporate code of conduct that referred to the *Universal Declaration of Human Rights* and other international human rights standards. The most recent iteration was issued in May 2011 and contains a chapter on human rights due diligence: OECD 2011, *OECD Guidelines for Multinational Enterprises*, Part I, Chapter IV, pp. 31-34 [IBA, Tab 17].

Protect, Respect and Remedy: Framework for Business and Human Rights[24] and the *United Nations Guiding Principles on Business and Human Rights*.[25] (the "*UN Guiding Principles*"). Even the International Standards Organization (ISO) now has a chapter aligned with corporate responsibility to respect human rights.[26]

B. International law requires facilitating access to a remedy

14. The right of victims of human rights abuses to an effective remedy is expressly protected under international human rights law. Canada is a party to the *International Covenant on Civil and Political Rights* (the "ICCPR"), a foundational human rights treaty under which Canada undertakes to ensure that individuals who claim their human rights have been violated will have access to an effective remedy, which includes having their rights thereto determined by a competent judicial or administrative authority.[27] As an essential means of validating other rights, the right to a remedy also appears under different formulations in other human rights instruments applicable to Canada, including

[24] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other Business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/8/5 (April 7, 2008) [IBA, Tab 31].

[25] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights*, UN Doc A/HRC/17/31 (March 21, 2011) [IBA, Tab 32].

[26] See discussion at para. 24 of the United Nations Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Doc A/HRC/20/29 (April 10, 2012) [IBA, Tab 29].

[27] *International Covenant on Civil and Political Rights,* 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976, Can TS 1976 No. 47), art. 2(3) [IBA, Tab 30].

the *Universal Declaration of Human Rights*[28] and the *American Declaration on the Rights and Duties of Man.*[29]

15. The right to an effective remedy under the ICCPR and other international human rights instruments implies an obligation to ensure a remedy to victims of human rights abuses involving companies domiciled in Canada. Multiple UN treaty bodies, including the Human Rights Committee, have concluded that international human rights conventions require states to take steps to ensure victims' access to remedies for extraterritorial abuses by corporations domiciled within their territory.[30] Recently the UN Human Rights Committee expressed concern that Canada may not be meeting its

[28] GA Res. 217(111), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71, art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law") [IBA, Tab 33].

[29] OAS Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in OEA/Ser.L.V./II 82 doc.6 rev.1 at 17 (1992), Art. 18 ("Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights") [IBA, Tab 16].

[30] See e.g., United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Germany*, (CCPR/C/DEU/CO/6) 12 November 2012 at para 16 [IBA, Tab 27]; United Nations Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the sixth periodic report of Finland* (E/C.12/FIN/CO/6) 17 December, 2014, para 10 [IBA, Tab 26]; and United Nations Committee on Economic, Social, and Cultural Rights, *Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights* (UN Doc E/C.12/2011/1) 12 July 2011, at para 5 [IBA, Tab 22].

obligations to ensure an effective remedy for victims who allege human rights abuses by Canadian companies operating abroad.[31]

16. The *UN Guiding Principles*, which have swiftly become the authoritative global standard for business and human rights, further confirm the requirement to ensure access to an effective remedy in cases where transnational corporations are implicated in human rights abuses.[32] The *UN Guiding Principles* were prepared by Professor John G. Ruggie, the Special Representative on the issue of human rights and transnational corporations and other business enterprises, appointed by the UN Secretary General to study the issue in 2005. The Special Representative relied heavily on consultations, surveys and submissions with and from states, corporations, business associations, and civil society organizations.[33] Importantly, the Special Representative's mandate was not to create or set new norms or standards, but rather to elaborate and clarify widely accepted *existing* standards. The *UN Guiding Principles* emphasize that access to an effective remedy,

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[31] United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada* (CCPR/C/CAN/CO/6) 13 August 2015, para 6 [IBA, Tab 25]. Also see comments by other United Nations bodies concerning Canada's obligations concerning human rights and corporations acting abroad: United Nations Committee on the Elimination of Racism, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada* (UN Doc CERD/C/CAN/CO/19-20) 4 April 2012, para. 14 [IBA, Tab 23]; and United Nations Committee on the Rights of the Child, *Concluding Observations on on the combined third and fourth periodic report of Canada* (UN Doc CRC/C/CAN/CO/3-4) 6 December 2012, para 29 [IBA, Tab 24].

[32] Also, the *OECD Guidelines on Multinational Enterprises* were revised in 2011 and now reiterate the principles set out in the *UN Guiding Principles*. All OECD countries are required to promote the Guidelines to their corporate nationals.

[33] See Ruggie, Am.J. Int'l L, *supra*, at 821, 827 on "restating" standards, and 835-836 [IBA, Tab 19]; and Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights*, UN Doc A/HRC/17/31 (21 March 2011) at para 14 [IBA, Tab 32].

particularly through judicial mechanisms, is an essential pillar in a transnational system aimed at preventing and redressing business-related human rights abuses.[34] The *UN Guiding Principles* were unanimously adopted by the UN Human Rights Council in June 2011.[35]

C. *Forum non conveniens* should be interpreted narrowly in transnational tort cases involving alleged human rights abuses

17. In emphasizing access to an effective remedy, the *UN Guiding Principles* note that domestic legal systems can sometimes create legal and non-legal barriers that prevent legitimate cases from being brought before the court and heard on their merits. The *UN Guiding Principles* highlight that "[m]any of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise."[36] Devoid of adequate human rights considerations, FNC can represent a significant legal barrier that leads to many cases of alleged human rights abuses not being adjudicated on their merits.

18. A justice-oriented approach to FNC is one that takes into account the unique features of transnational tort and human rights cases involving corporate defendants and

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[34] United Nations, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights* (A/HRC/17/31) 21 March 2011, pp 3-4 [IBA, Tab 32].

[35] Human Rights Council, Human Rights and Transnational Corporations and other Business Enterprises, Resolution 17/4, UN Doc A/HRC/RES/17/4, 6 July 2011 [IBA, Tab 28].

[36] United Nations, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights* (A/HRC/17/31) 21 March 2011, pp. 23-24, 24 for quote [IBA, Tab 32].

the governance problems that this class of litigation seeks to address.[37] These cases tend to pit individual plaintiffs of modest means against powerful multinational corporations that are able to deploy considerable resources in order to parry, extend, delay or displace proceedings, without ever having to offer a proper defence on the merits. Tort law plays an important role not only in regulating the conduct of Canadian corporations, but also in providing access to justice for victims of torts and business-related human rights violations.

19. Moreover, the torts and human rights violations at issue often occur in countries that are conflict-affected areas or weak governance zones where many barriers to justice exist.[38] Faced with such unfavourable legal risks, the foreign plaintiffs turn to the courts of the corporate defendant's home state for redress, hoping that they might be held accountable in their place of domicile. In short, transnational tort and human rights claims call out for a different approach to the CJPTA and to FNC.

20. AI submits that the imbalance of power between victims of human rights abuses and transnational business enterprises is a significant contextual factor that must be considered in a justice-oriented approach to FNC.[39] Consistent with this approach, courts should only exceptionally decline to exercise jurisdiction over a claim of human rights abuse made by a plaintiff against a corporation domiciled in that forum. In *Club Resorts Ltd v Van Breda* ("*Van Breda*"), the Supreme Court of Canada emphasised that "the

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[37] Penelope Simons & Audrey Macklin, *The Governance Gap: Extractive Industries, Human Rights and the Home State Advantage* (Routledge 2014), chapter 4 [IBA, Tab 20].

[38] United Nations, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights* (A/HRC/17/31) 21 March 2011, pp. 11-12, 21 and 23 [IBA, Tab 32].

[39] *Club Resorts Ltd v Van Breda*, 2012 SCC 17, [2012] 1 SCR 572 at para 110 [IBA, Tab 2], where the Court emphasizes that "the factors that a court may consider in deciding whether to apply *forum non conveniens* may vary depending on the context."

normal state of affairs is that jurisdiction should be exercised once it is properly assumed."[40] Thus, a court should only decline to exercise jurisdiction "exceptionally" and where the other forum is "clearly more appropriate."[41]

D. The interpretation of FNC should be guided by the Australian approach

21. In adopting an approach to FNC consistent with Canada's international obligations and the context of the power imbalances in most transnational tort and human rights claims, AI respectfully submits that this Court should pay ample regard to the approach adopted in other jurisdictions. AI further submits that adopting the Australian approach to FNC in such cases would help further the ends of justice, consistent with statutory requirements of the CJPTA and Canada's international obligations.

22. The common law origins of FNC confirm the direct relevance of comparative jurisprudence to interpreting the doctrine's scope. In *Teck Comico Metals*, the Supreme Court of Canada held that section 11 of the CJPTA is a codification of the common law test for *forum non conveniens*.[42] The CJPTA should therefore not be rigidly construed: a conclusion confirmed by this Court's emphasis that the factors listed at s 11 are "not exhaustive"[43] and BC courts' repeated examinations of the jurisprudence of other courts (both Canadian and foreign) when considering the origins, scope and purpose of FNC under the CJPTA.[44]

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[40] *Club Resorts Ltd v Van Breda*, 2012 SCC 17, [2012] 1 SCR 572 at paras 106 and 109, 109 for quote [IBA, Tab 2].

[41] *Ibid.* at para 109 [IBA, Tab 2].

[42] *Teck Cominco Metals Ltd v Lloyd's Underwriters*, 2009 SCC 11, [2009] 1 SCR 321 at paras 21-22 [IBA, Tab 9].

[43] *Douez v Facebook,* Inc., 2015 BCCA 279 at para 15 [IBA, Tab 3]; *Laxton v Anstalt*, 2011 BCCA 212 at para 44 [IBA, Tab 6]; *The Original Cakerie Ltd. v Renaud*, 2013 BCSC 755 at para 52 [IBA, Tab 10].

[44] *Douez v Facebook,* Inc., 2015 BCCA 279 at para 38 (discussing House of Lords and Privy Council cases to illustrate circumstances in which a stay of proceedings would not

23. AI respectfully submits that, consistent with international legal norms and standards identified above, BC courts should consider the Australian approach to FNC when interpreting s. 11 of the CJPTA in transnational tort and human rights proceedings. Under this approach, rather than requiring the defendant to identify another forum that is "more appropriate"[45] to hear the action, the corporate defendant would bear the burden of showing that BC is "clearly an inappropriate forum" to hear the plaintiff's claim.[46] This approach focuses the FNC analysis on the plaintiff's choice of forum and on "the advantages and disadvantages arising from the continuation of the proceedings in the selected forum rather than on the need to make a comparative judgement between two forums."[47]

24. Such an approach to s. 11 of the CJPTA is founded on a recognition that individual plaintiffs are systematically disadvantaged in transnational tort and human rights claims against multinational and transnational corporations that are very well resourced and operate across many jurisdictions. Given the governance gaps pointed above and fundamental power imbalance involved, the most appropriate forum is presumptively the one the plaintiff chooses – as long as substantial justice can be done in that forum. In cases such as the one on appeal, the most appropriate forum is not the forum possessing the highest number of territorial connecting factors to the claim. Indeed, such a

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likely be granted) [IBA, Tab 3]; *Huang v Silvercorp Metals Inc*, 2015 BCSC 549 at para 33 (discussing the factors that are typically considered by Quebec courts in FNC motions brought under article 3135 of the *Quebec Civil Code*, SQ 1991, c 64) [IBA, Tab 4]; *Lloyd's Underwriters v Cominco Ltd*., 2007 BCCA 249 at 56-58 (discussing the CJPTA's jurisprudential origins in UK case law) [IBA, Tab 7].

[45] CJPTA, s 11(1) [IBA, Tab 1].

[46] *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) [1988] 79 ALR 9, 165 CLR 197(HCA) at pp 45-46 [IBA, Tab 12]; *Voth v Manildra Flour Mills Pty Litd* (1990) 97 ALR 124 (HCA) at 124-125 [IBA, Tab 14]. See also Peter Prince, "Bhopal, Bougainville and OK Tedi: Why Australia's Forum Non Conveniens Approach is Better" (1998) 47 ICLQ 573 [IBA, Tab 18].

[47] *Voth v Manildra Flour Mills Pty Litd* (1990) 97 ALR 124 (HCA) at 136 [IBA, Tab 14].

mechanical approach to FNC would frustrate the doctrine's purpose of ensuring fairness between the parties. Accordingly, where jurisdiction over a corporate defendant is properly asserted in its forum of domicile, the presumption in favour of the plaintiffs' choice of forum should not be disturbed absent exceptional prejudice to the defendant.

25. This approach is consistent with the Supreme Court of Canada's guidance on underlying principles of FNC. In *Spar Aerospace Ltd v American Mobile Satellite Corp*, the Supreme Court directed that the doctrine of FNC be applied exceptionally, noting that "[t]he starting point should be the principle that the plaintiff's choice of forum should only be declined exceptionally, *when the defendant would be exposed to great injustice as a result*."[48]

26. Canadian society has a strong interest in ensuring that Canadian corporations respect human rights, in their global and domestic activities and that such businesses are held accountable in situations in which they do not. This is important for preserving Canada's own reputation as a proponent and law-abiding subject of international human rights law, and it reflects the interest all Canadians share in ensuring that victims of human rights abuses have effective and meaningful access to Canadian courts in order to seek justice and accountability. This is particularly the case where the victims belong to vulnerable or marginalized groups, and live in conflict-affected areas or weak governance zones where access to justice is difficult or impossible.

27. AI's proposed approach is consistent with Canada's international and constitutional obligations to ensure access to justice through its civil courts.[49] As Sir Thomas Bingham MR (as he then was) stated in *Connelly,* in considering a plea of FNC

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[48] *Spar Aerospace Ltd. v American Mobile Satellite Corp*., 2002 SCC 78, [2002] 4 SCR 205 at para 79 (emphasis added) [IBA, Tab 8].

[49] *International Covenant on Civil and Political Rights,* 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976, Can TS 1976 No. 47), art. 2(3) [IBA, Tab 30]. See also United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada* (CCPR/C/CAN/CO/6) 13 August 2015, para 6, p 2 [IBA, Tab 25].

"it seems to me right to bear the international obligations of the United Kingdom in mind when the court is invited to make an order which would have the practical effect of preventing a plaintiff from pursuing his rights anywhere."[50] This sound policy also applies to British Columbia.

PART 4 - NATURE OF ORDER SOUGHT

28. AI seeks an Order:

    (a) That it be granted leave to make oral submissions; and

    (b) as AI is intervening in this matter in the public interest, in order to assist this Court with the foreign and international legal norms concerning *forum non conveniens*, that no costs be awarded to or against it.

29. All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this 16th day of August, 2016.

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[50] *Connelly v RTZ Corporation Plc,* (1996) Times, 12 July at p 2 (CA) [IBA, Tab 11]. The House of Lords expressed no disagreement with this approach.

APPENDIX: ENACTMENT

COURT JURISDICTION AND PROCEEDINGS TRANSFER ACT

[SBC 2003] CHAPTER 28

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,

(b) the law to be applied to issues in the proceeding,

(c) the desirability of avoiding multiplicity of legal proceedings,

(d) the desirability of avoiding conflicting decisions in different courts,

(e) the enforcement of an eventual judgment, and

(f) the fair and efficient working of the Canadian legal system as a whole.

LIST OF AUTHORITIES

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