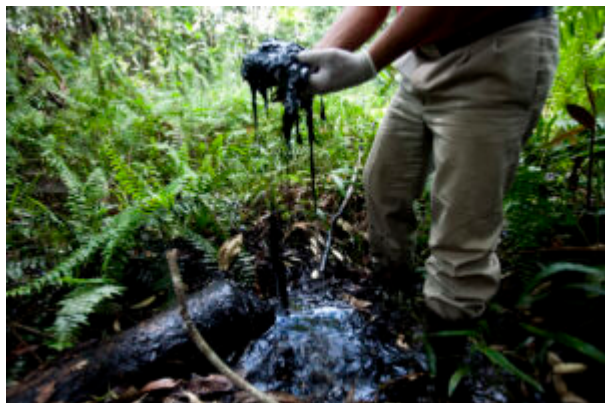


ON Court Dismisses Case to Enforce Ecuadorian Judgement Against Chevron Canada



Companies that are responsible for contaminating the environment in Canada can be held liable under Canadian environmental law. And if a Canadian company contaminates the environment in another country, it may be liable under that country's environmental law. But what if an international company is successfully sued under one country's environmental law and the winning parties seek to collect the damages from that company's Canadian subsidiary through the Canadian courts? In a case involving a judgment against Chevron by a court in Ecuador regarding environmental damage to the Amazon, an Ontario court recently dismissed a lawsuit that attempted to collect that judgment from Chevron's Canadian subsidiary. Here's a look at the reasoning for its decision.

THE CASE

What Happened: People in Ecuador sued Texaco for polluting a region of the Amazon. Chevron, a US corporation, bought Texaco in 2001. In 2011, the plaintiffs won and an Ecuadoran court ordered Chevron to pay them approximately \$9.51 billion (USD) in damages. When Chevron refused to pay, the plaintiffs sued it and Chevron Canada in an Ontario court for recognition and enforcement of the Ecuadorian judgment. The Supreme Court of Canada ruled that the Ontario courts had jurisdiction to enforce the Ecuadoran judgment. Chevron Canada and Chevron then asked the Ontario court to dismiss the lawsuit.

What the Court Decided: The Ontario Superior Court of Justice dismissed the lawsuit.

The Court's Reasoning: The Ecuadorian judgment was against Chevron, the parent company. To enforce that judgment against Chevron Canada, a seventh-level indirect subsidiary, would require what's called 'piercing the corporate veil.' The court refused to pierce the corporate veil to hold the subsidiary liable for the parent company's debt, explaining that the corporate veil can't be pierced because the subsidiary wasn't a 'puppet' of the parent company. Instead, the court found that Chevron and Chevron Canada have 'a typical parent/subsidiary relationship.' That is, Chevron doesn't exercise complete dominance or control over the affairs of Chevron Canada. Other factors the court relied on in

reaching its decision include:

- The two companies 'are separate legal entities with separate rights and obligations';
- Piercing the corporate veil based on 'fraud or improper conduct' was inappropriate because there was no evidence of 'wrongdoing akin to fraud in the corporate structure between Chevron and Chevron Canada,' such as the recent creation of the subsidiary to blunt the effect of the Ecuadorean judgment (Chevron Canada has existed since 1966);
- There's no 'just and equitable' exception to the principle of corporate separateness that would justify piercing Chevron's corporate veil in this case; and
- Chevron Canada's major business activities involve petroleum and natural gas exploration in Canada. It has never carried on business in Ecuador and played no role in the events leading up to the Ecuadorian judgment [*Yaiguaje v. Chevron Corp.*, [2017] ONSC 135 (CanLII), Jan. 20, 2017].

ANALYSIS

The lesson from the various Canadian decisions in the *Chevron* case is that although Canadian courts may have jurisdiction to enforce foreign judgments in Canada relating to environmental harm, those courts may nonetheless decline to enforce such judgments. The problem for the plaintiffs in this case is that they're trying to enforce a judgment imposed on Chevron against a Canadian subsidiary that didn't commit any wrongdoing, didn't operate at all in Ecuador and had limited, indirect ties to the parent company. The Ontario court ultimately rejected the plaintiffs' argument that declaring that the shares and assets of Chevron Canada are unavailable to satisfy the legitimate judgment debt of Chevron 'would be an injustice to the 30,000 indigenous people whose way of life has been ruined by Chevron's polluting activities.'

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