

# Piercing Corporate Veil Wasn't Necessary to Name Directors in Environmental Order



Individuals often create a corporation to shield themselves from personal liability relating to the corporation's operations, such as liability for violations of OHS and environmental law or for compliance orders. The idea is that *the company* is responsible for such violations and orders, not the corporate officers and directors. But running a business as a legal corporation may provide only limited protection from personal liability. In some circumstances, courts will 'pierce the corporate veil' and go after corporate officers directly. However, piercing the corporate veil isn't always necessary for personal liability, especially if officers were directly involved in the conduct in question. A court in Nova Scotia recently ruled that the two directors of a small company were properly named in an environmental order due to their direct involvement in the company's daily operations. Here's a look at this case.

## THE CASE

**What Happened:** For eight years, a company operated a construction and debris recycling facility on a piece of property. The two sole directors/owners were very involved in the day-to-day operation of the business. Rainwater flowing through non-recyclable materials stored on the property and into the ground (called 'leachate') contributed to elevated levels of chemicals in the groundwater, both on-site and off-site. So the Minister of Environment (MOE) and the company agreed to a Remedial Action Plan, which included the building a containment cell. The company later sold the business, but retained ownership of the land and responsibility for the containment cell. The MOE issued an order to the company and the two directors regarding the containment cell and any leachate emitting from it. The order required the engaging of professionals; groundwater monitoring; surface water management; and reporting. The directors appealed the order on the grounds that they shouldn't have been named personally in the order.

**What the Court Decided:** The Supreme Court of Nova Scotia ruled that the directors were properly named in the environmental order.

**The Court's Reasoning:** The directors argued that because the company is the entity that owned the property and entered into agreements, naming them personally 'lifted the corporate veil' inappropriately. The court explained that

the MOE had named in the order the company itself, which would imply that she considered the order enforceable against it. She decided to go further and also name the directors. The issue is whether doing so was reasonable.

Environmental law gave the MOE the power to issue an order to a 'person' where she believes, on reasonable and probable grounds, that that 'person' has violated the law, such as by releasing substances in amounts that cause (or may cause) adverse effects. Although it's true that the company owned the property (and operated the recycling facility there), it's clear from the evidence that both directors were 'actively and intimately involved' in the facility's day-to-day operations:

- They were the only directors of this small facility;
- Both worked on-site;
- They collected (or allowed the collection of) non-recyclable materials in large amounts;
- They both dealt with the MOE on a repeated and continuous basis; and
- They negotiated the Remedial Action Plan.

So the court concluded that there was ample evidence for the MOE to conclude that the directors' on their own merits and separate from the company' qualified as 'persons' who'd violated environmental law and thus were properly included as individuals in the environmental order [*Brown v. Nova Scotia (Environment)*, [2016] NSSC 319 (CanLII), Nov. 22, 2016].

### ANALYSIS

The court in *Brown* found that this situation wasn't an example of piercing the corporate veil, which is, in fact, specifically permitted under Nova Scotia environmental law (and in other jurisdictions' environmental law as well). The distinction turns on whether the directors committed environmental violations themselves, or simply authorized, directed or acquiesced in such violations by the company through its employees. Here, the company was very small and the directors had a hands-on role in the daily operations and thus the conduct or omissions that led to the violations. *The lesson*: The more directly involved in company operations the officers and directors are, the more likely that they could face personal liability for any environmental violations related to those operations, irrespective of the company's liability.