

Supreme Court Rules for Jurisdiction over Ecuadorian Judgement Against Chevron



Canadian companies naturally must comply with Canadian environmental, OHS and other laws. And international companies must comply with the laws of those jurisdictions in which they operate. If a company violates a foreign law or is successfully sued in a foreign court, that court may fine it or order it to pay damages. But suppose the company refuses to pay the foreign judgment. Could a court in Canada have jurisdiction over the enforcement of that judgment and compel the company to pay? The Supreme Court of Canada recently ruled on this issue as it applies to a judgment by a court in Ecuador regarding environmental damage to the Amazon caused by a company owned by Chevron. Here's a look at its decision.

THE CASE

What Happened: People in Ecuador sued Texaco for polluting a region of the Amazon by four decades of oil extraction activities. 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 Ontario Court of Appeal ruled that the Ecuadorian judgment against Chevron passed the 'real and substantial connection test.' In

addition, Ontario courts had jurisdiction over Chevron Canada (the subsidiary) because of its physical presence in the province and the fact it was carrying on business there. And there was an 'economically significant relationship' between Chevron Canada and Chevron, its parent company. So an Ontario court had jurisdiction to determine on the merits whether the judgment against Chevron may be recognized and enforced in Ontario. Chevron appealed.

What the Court Decided: The Supreme Court of Canada ruled that the Ontario courts *did* have jurisdiction to enforce the Ecuadoran judgment.

The Court's Reasoning: The Court explained that Canadian courts have adopted a generous and liberal approach to the recognition and enforcement of foreign judgments. To recognize and enforce such a judgment, the only requirement is that the *foreign court* that issued the judgment had a 'real and substantial connection' with the parties or with the subject matter of the dispute. There's no need to demonstrate a real and substantial connection between the dispute or the defendant and the *enforcing court*. That's because the only purpose of an action for recognition and enforcement of a foreign judgment is to allow a pre-existing obligation to be fulfilled. In addition, enforcement is limited to measures that can be taken only within the confines of the enforcing jurisdiction and in accordance with its rules, and to assets found within its territory. *Bottom line:* Legitimate judicial orders should be respected and enforced, not sidetracked or ignored, said the Court.

As to Chevron, there was a real and substantial connection between the Ecuadorian court and the dispute, i.e., the alleged pollution within that country. Thus, the Ontario courts have jurisdiction to recognize and enforce its foreign judgment against Chevron, concluded the Court. As to Chevron Canada, jurisdiction exists over it based on traditional, presence-based jurisdiction, which is established by showing

that the subsidiary was carrying on business in the province when the enforcement action was filed. Chevron Canada has a physical office in Ontario, where it was served. Its business activities at this office are sustained and it has representatives who provide services to customers in the province. So the Court found that the Ontario courts also have jurisdiction over the subsidiary [[Chevron Corp. v. Yaiguaje](#), [2015] SCC 42 (CanLII), Sept. 4, 2015].

ANALYSIS

The *Chevron* case is important, especially to Canadian companies that operate in other countries, because it confirms that Canadian courts have jurisdiction to enforce foreign judgments in Canada and clarifies the limits of the 'real and substantial connection' requirement. The decision is largely a procedural one, however. That is, the establishment of the Ontario courts' jurisdiction over the Ecuadorian judgment doesn't mean that the plaintiffs will necessarily succeed in getting those courts to recognize and enforce that judgment. This decision merely gives the plaintiffs the opportunity to seek recognition and enforcement of the Ecuadorian judgment in an Ontario court, nothing more. (We'll track this case and let you know when a judgment is reached by an Ontario court on the merits of the enforcement action.)