Court File No. CV-12-9808-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

DANIEL CARLOS LUSITANDE YAIGUAJE, et al.

Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON FINANCE LIMITED

Defendants

PUBLIC FACTUM OF CHEVRON CORPORATION
(MOTIONS FOR SUMMARY JUDGMENT
RETURNABLE SEPTEMBER 12-16, 2016)

July 22, 2016

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Note

A Protective Order is in place for these proceedings whereby evidence has been designated as confidential. Certain information has been redacted in this publicly filed factum due to that Protective Order. References in the footnotes herein to portions of the record which are subject to the Protective Order do not waive confidentiality or the terms of that Protective Order.

PART I - OVERVIEW

1. The plaintiffs ask this Court to recognize and enforce in Ontario a foreign judgment that they fraudulently procured from an Ecuadorian court against a single defendant, Chevron Corporation ("Chevron Corp.").

2. The parties' respective corporate separateness summary judgment motions present a straightforward question: Even aside from the fact that the judgment is not legitimate, is it capable of being executed against a non-party to the Ecuadorian proceedings, Chevron Canada Limited ("Chevron Canada")?[1]

3. Under long-settled Canadian law, both at common law and by statute, the answer to this question is also straightforward: No, the judgment cannot be executed against Chevron Canada, which was not a party to the Ecuadorian legal proceedings, and is not a judgment debtor.

4. Accordingly, Chevron Corp. requests that this Court grant summary judgment dismissing the claims in respect of those paragraphs in the plaintiffs' claim which ask the Court to ignore the corporate separateness of Chevron Canada – on the basis that those paragraphs cannot form part of a claim against Chevron Corp. if the action against Chevron Canada is dismissed.[2]

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[1] This factum supplements the arguments of Chevron Canada. As such, Chevron Corp. suggests that the Court review the Factum of Chevron Canada first.

[2] Specifically, Chevron Corp. seeks an order dismissing the claims in paragraphs 1(c), 1(d), 18-20 and 23-26 in the Amended Amended Statement of Claim filed September 8, 2015 ("AASOC"): *Joint Motion Record of the Defendants (Summary Judgment)* dated January 19, 2016 ("*JMR*"), Vol. 1, Tab 3, p. 16. Chevron Canada's motion asks that the entire claim against it be dismissed. If Chevron Corp. and Chevron Canada are successful in these summary judgment motions, Chevron Corp. will move for a stay on the basis that it has no assets in Canada. See Notice of Motion for Summary Judgment of Chevron Corp. dated October 2, 2015, para. (a): *JMR*, Vol. 1, Tab 2, p. 10.

5. Chevron Corp. is the only named defendant to the judgment handed down in Ecuador (the "Ecuadorian Judgment").[3] Chevron Corp. is a separate legal entity from its public shareholders and from its direct and indirect subsidiaries, such as Chevron Canada.

6. Chevron Canada is a seventh-level indirect subsidiary of Chevron Corp. and is governed by the *Canada Business Corporations Act* ("CBCA"). Chevron Canada is a separate legal entity from its immediate shareholder, Chevron Canada Capital Company. There are six intervening subsidiaries between Chevron Canada and Chevron Corp. (see chart in Tab 10 at p. 98 of the Joint Motion Record of the Defendants). All of these intervening subsidiaries have existed for years, and most for decades, prior to the Ecuadorian legal proceedings.

7. Chevron Corp. and Chevron Canada are separate legal entities, with complete immunity from each other's debts or obligations.

8. Chevron Corp., as indirect shareholder of Chevron Canada, has no legally cognizable interest in the shares or assets of Chevron Canada.

9. This fundamental principle of corporate separateness is a bedrock principle and a statutory right based on well-settled, uncontroversial law. The principle has been the law for more than 100 years since *Salomon v. Salomon & Co.* was decided. It is codified in the CBCA (and many other corporate statutes). It plays an integral role in the Western economy.

10. Chevron Corp. and Chevron Canada do not have to satisfy this Court that the principle of corporate separateness applies to them. Canadian law is clear that it does – Chevron Corp. and

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[3] The Ecuadorian Judgment consists of: (1) the judgment of reporting Judge Nicolas Zambrano Lozada of the Provincial Court of Justice of Sucumbíos dated February 14, 2011 (clarified by order dated March 4, 2011), (2) as ratified by a three judge appellate panel of the Provincial Court of Justice of Sucumbíos dated January 3, 2012 (clarified by order dated January 13, 2012) ("Sucumbíos Appeal Decision"), (3) which appeal decision was partially varied by the decision of the National Court of Justice of Ecuador, Civil and Commercial Division dated November 12, 2013 (as restated in the one page order of the National Court of Justice) ("Cassation Appeal Decision"). The Ecuadorian Judgment was originally for approximately USD$ 18 billion, and was subsequently reduced to approximately USD$ 9 billion.

Chevron Canada are separate legal entities both at common law and by statute. Only in extremely narrow circumstances can the courts disregard this principle, placing a heavy burden on the plaintiffs to prove those circumstances, including abuse of the corporate form ("conduct akin to fraud"), by means of compelling evidence. They cannot do so.

11. Indeed, in this Action, there has already been a finding by Justice Brown, as he then was, that there is "no basis in fact or law" for piercing the corporate veils between Chevron Corp. and Chevron Canada.[4] This finding, made in the context of an earlier motion regarding the jurisdiction of the Ontario courts in this matter, was never overruled. Both the Court of Appeal and the Supreme Court of Canada held that the issue of corporate separateness was not relevant to the issue of jurisdiction, which they ruled was the only issue before them. The Supreme Court of Canada expressly stated that Chevron Corp. and Chevron Canada could bring a motion to determine corporate separateness at this stage of the proceeding.[5]

12. The plaintiffs urge this Court to reverse-pierce multiple corporate veils and treat the Ecuadorian Judgment against Chevron Corp. as somehow being also a judgment to be executed against Chevron Canada. This argument is legally and factually unsustainable because: (a) Chevron Canada is not a mere "sham" or "puppet" completely dominated or controlled by Chevron Corp., nor do the plaintiffs even allege that it is being used as a shield for improper conduct or conduct akin to fraud; (b) Canadian law does not recognize "enterprise" or "group" liability; and (c) the plaintiffs' misplaced reliance on the "interests of justice" provide no legal or factual basis for disregarding corporate separateness either generally or in this case.

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4 Reasons for Decision of Brown J. of the Superior Court of Justice [Commercial List], in court file no. CV-12-9808-00CL, dated May 1, 2013, reported as *Yaiguaje v. Chevron Corporation*, 2013 ONSC 2527 ("SCJ Jurisdiction Decision"), paras. 109-111: *Joint Book of Authorities of the Defendants* ("*JBOA*"), Tab 16.

5 Judgment of the Court of Appeal for Ontario dated December 17, 2013, reported as *Yaiguaje v. Chevron Corporation*, 2013 ONCA 758, para. 39: *JBOA*, Tab 16; Judgment of the Supreme Court of Canada dated September 4, 2015, reported as *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 ("SCC Jurisdiction Decision"), para. 95: *JBOA*, Tab 16.

13. In their pleadings, the plaintiffs cherry-pick discrete aspects of normal and prudent governance by Chevron Corp. in an ill-conceived attempt to misrepresent factual reality and bypass well-settled law. Contrary to what the plaintiffs allege, certain policies or aspects of Chevron Corp's reporting structure are not evidence of a lack of separate corporate personality, but rather are either mandated by law, implemented to facilitate compliance with law, and/or designed to allow Chevron Corp. (like any other parent company) to comply with modern standards of governance and sound management of investments.

14. For example, Chevron Corp.'s governance is designed to ensure compliance with United States securities laws, including the *Sarbanes-Oxley Act of 2002*. Thus Chevron Corp. reports the financial results of its direct and indirect subsidiaries on a consolidated basis. As well, Chevron Corp. has in place an operating segment reporting structure built upon functional, business lines, whereby subsidiaries report on significant matters in accordance with policies adopted by Chevron Corp. Such reporting is typical and proper in any parent-subsidiary relationship, even in the absence of such regulatory requirements.

15. Contrary to the plaintiffs' asserted theory, complying with generally applicable regulatory obligations and with principles of good governance and financial accountability does not – and cannot – cause Chevron Corp. or its subsidiaries to lose their separate corporate personalities conferred on them under corporate law. Nor does it demonstrate complete domination or control by Chevron Corp.

16. In fact, Chevron Corp.'s "philosophy of decentralized decision-making and accountability" expressly adopted in Chevron Corp.'s policies, and exemplified in their implementation, is the antithesis of "complete domination and control". Indeed, even after multiple rounds of searching inquiries made by the plaintiffs into the records of Chevron Corp. and Chevron Canada, the

plaintiffs do not have any evidence to support a claim of complete domination and control by Chevron Corp. Indeed, the plaintiffs cannot identify a single example where a business proposal, budget proposal or notification of expenditure by Chevron Canada was rejected by Chevron Corp.

17. The plaintiffs seek to evade the bedrock principle of corporate separateness in Ontario in an effort to apply pressure to Chevron Corp. and to avoid bringing their proceeding to enforce the Ecuadorian Judgment in the U.S. – where Chevron Corp. is incorporated, has its headquarters, and has sufficient assets or credit to satisfy the Ecuadorian Judgment. When the plaintiffs commenced this proceeding, litigation was already underway in the U.S. to preclude them from enforcing the Ecuadorian Judgment by reason of their fraud, extortion, and other misconduct. As a result of this U.S. litigation, the plaintiffs now need to avoid the U.S. – Judge Kaplan from the Southern District of New York already found, in a nearly 500 page opinion (plus 89 pages of appendices), that the Ecuadorian Judgment was obtained by fraud and bribery. There is no basis or reason for this Court to overturn over a century of settled law to assist the plaintiffs in this misconceived effort.

18. The plaintiffs have had ample opportunity to put their "best foot forward" in these motions. They have made use of affidavits from both Chevron Corp. and Chevron Canada, several opportunities to cross-examine each affiant and extensive documentary productions. They adduce no affirmative evidence of their own. There is no genuine issue requiring a trial, and summary judgment is an appropriate, efficient means to resolve it.

PART II - SUMMARY OF FACTS

19. Chevron Corp. agrees with the facts as set out in the Factum of Chevron Canada on these summary judgment motions and relies on the following additional facts.

A. The Corrupt Ecuadorian Judgment

20. The Ecuadorian Judgment was found by Judge Lewis Kaplan of the United States District Court for the Southern District of New York to have been obtained by corrupt and fraudulent acts.[6] He found the plaintiffs and their agents manipulated the judicial process, intimidated and bribed experts and judges, and "ghostwrote" expert reports. He also found that the plaintiffs' lawyers and agents "ghostwrote" the Ecuadorian Judgment itself:[7] "ultimately, the [plaintiff] team wrote the Lago Agrio court's Judgment themselves and promised $500,000 to the Ecuadorian judge to rule in their favor and sign their judgment."[8] Subsequent appeals to Ecuadorian appellate courts did not rule on these criminal acts, as the appellate judges claimed not to have the jurisdiction to do so.[9]

21. Numerous courts and authorities around the world have also found that the plaintiffs committed fraud in connection with the Ecuadorian Judgment.[10]

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6 Opinion of Judge Lewis A. Kaplan of the United States District Court for the Southern District of New York, in court file number 11 Civ. 0691 (LAK), dated March 4, 2014, reported as *Chevron Corporation v. Steven Donziger, et al.*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014) ("SDNY RICO Decision"): *JBOA*, Tab 17. The appeal was argued in the United States Court of Appeals for the Second Circuit on April 20, 2015 and is currently under reserve (court file number 14-832-cv). The appellants (including the plaintiffs here) do not challenge in that appeal the sufficiency of the evidence underlying Judge Kaplan's factual findings of corruption and fraud.

7 SDNY RICO Decision, pp. 232-233: *JBOA*, Tab 17.

8 Following an extensive discovery process and a seven week trial, the SDNY issued a nearly 500 page opinion on March 4, 2014. Judge Kaplan held: "[Steven Donziger, the plaintiffs' U.S. lawyer] and the Ecuadorian lawyers he led corrupted the Lago Agrio case. They submitted fraudulent evidence. They coerced one judge, first to use a court-appointed, supposedly impartial, 'global expert' to make an overall damages assessment and, then, to appoint to that important role a man whom Donziger hand-picked and paid to 'totally play ball' with the [plaintiffs]. They then paid a Colorado consulting firm secretly to write all or most of the global expert's report, falsely presented the report as the work of the court-appointed and supposedly impartial expert, and told half-truths or worse to U.S. courts in attempts to prevent exposure of that and other wrongdoing. Ultimately, the [plaintiff] team wrote the Lago Agrio court's Judgment themselves and promised $500,000 to the Ecuadorian judge to rule in their favor and sign their judgment. If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it.": SDNY RICO Decision, p. 23: *JBOA*, Tab 17.

9 Sucumbíos Appeal Decision, p. 18, 166; Clarification and Amplification Decision of the Provincial Court of Justice of Sucumbíos in Proceeding No. 2011-0106 dated January 13, 2012, p. 18, 523; Cassation Appeal Decision, pp. 120-121.

10 For example, in January of this year, the District Court of The Hague found "serious indications" of fraud tainting the Ecuadorian Judgment, and in a May 13, 2015 opinion, the Deputy Attorney General of Brazil recommended that the Superior Court of Justice in Brazil not recognize or give effect to the Ecuadorian judgment in view of fraud and "deplorable acts of corruption." *Aguinda Salazar, et al. v. Chevron Corp.*, Superior Court of Justice, No. 8,542/EC at e-STJ p. 22, 193 (Opinion No. 2811/2015). See also, *Chevron Corp. v. Champ*, Nos. 1:10-mc-27, 1:10-mc-28, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010); *In re Chevron Corp.*, Nos. 10-MC-21, 10-MC-22 JH/LFG (D.N.M. Sept. 2, 2010), at *1; *Chevron Corp. v. Page*, 768 F. 3d 332, 341 n.12 (4th Cir. 2014); *Chevron Corp. v. Deleon and*

22. The Ecuadorian Judgment is purportedly premised on allegations that Chevron Corp. polluted an area in Ecuador where the plaintiffs reside. However, Judge Kaplan found that even before the Ecuadorian lawsuit began, the Republic of Ecuador approved the remediation effort and released the corporate entity operating in Ecuador from any future liability.[11] Indeed, when independent scientific testing in Ecuador did not support the plaintiffs' pollution claims, the plaintiffs' lawyers admitted privately that they made a "bargain with the devil" and went "over to the dark side" in response.[12]

23. The plaintiffs do not allege that Chevron Canada had anything to do with the underlying events in Ecuador, pleading that they "do not allege any wrongdoing against Chevron Canada."[13]

24. While Chevron Corp. strongly maintains that the established defences to the recognition and enforcement of foreign judgments – *e.g.*, fraud, bribery, intimidation and the denial of natural justice – apply to defeat the plaintiffs' action,[14] these defences are not in play in these summary judgment motions.[15] These motions are based on a separate fatal flaw with the Plaintiffs' case – namely, that Chevron Canada is not a judgment debtor and its shares or assets are not available to satisfy the Ecuadorian Judgment even if it were legitimate, rather than corrupt.

Torvia Limited, Superior Court of Gibraltar, No. 2012-C-232 (Mar. 14, 2014), p. 37, para. 48 (xx) and p. 29, para. 48(iv) (each of these decisions finds at least a *prima facie* case of fraud).

11 SDNY RICO Decision, p. 25: *JBOA*, Tab 17. In an international arbitration between Chevron Corp. and the Republic of Ecuador over these events, the arbitral panel found that the release extended to Chevron Corp. under the definition of "Releasees" and therefore Chevron Corp. can invoke its contractual rights under the release: First Partial Award on Track 1, PCA Case No. 2009-23 (17 September 2013), p. 45.

12 SDNY RICO Decision, pp. 55-59: *JBOA*, Tab 17.

13 AASOC, para. 24: *JMR*, Vol. 1, Tab 3, p. 23.

14 *Beals v. Saldanha*, 2003 3 SCC 72: *JBOA*, Tab 11; Statement of Defence of Chevron Corporation dated October 2, 2015, paras. 3, 81-85: *JMR*, Vol. 1, Tab 5, pp. 40, 59-60.

15 The plaintiffs' motion to strike all of Chevron Corp.'s defences to recognition and enforcement of the Ecuadorian Judgment under Rule 21.01(1)(b) is to be heard after these summary judgment motions regarding corporate separateness.

B. Chevron Corp.

25. Chevron Corp. is a U.S. corporation incorporated in Delaware in 1926[16] with its head office and principal place of business in San Ramon, California.[17] It is a publicly-traded company whose shares are listed and traded on the New York Stock Exchange.[18]

26. Chevron Corp. does not itself engage in exploring, producing, refining or marketing petroleum products. These activities are carried on by its indirect subsidiary corporations, as detailed in the public disclosure contained in Chevron Corp.'s Form 10-K.

27. Chevron Corp. manages its investments in its subsidiaries and provides them with administrative, financial, management and technological support. Chevron Corp. advises its subsidiaries on the allocation of corporate resources, provides policy guidelines, reviews financial and performance goals, and monitors their performance.[19] Chevron Corp. has about 630 of its own employees that carry on this business.[20] In comparison, Chevron Corp. and its direct and indirect subsidiaries together employ approximately 64,700 people worldwide to carry out the day to day operations of the business of those companies.[21]

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16 Affidavit of Frank Soler, sworn on August 7, 2012 ("First Soler Affidavit"), para. 3: *JMR*, Vol. 2, Tab 10, p. 89.

17 Transcript of Cross-Examination of Mr. Frank Soler on his Affidavit sworn on August 7, 2012 ("First Soler Cross"), Q. 53: *JMR*, Vol. 3, Tab 14, p. 639.

18 First Soler Cross, Q. 34: *JMR*, Vol. 3, Tab 14, p. 634.

19 First Soler Affidavit, para. 4 and Exhibit "B" (Chevron Corporation 2011 10-K Form): *JMR*, Vol. 2, Tab 10, p. 89 and p. 119; SCJ Jurisdiction Decision, para. 100: *JBOA*, Tab 16.

20 Answers to Undertakings from Soler Cross-Examination of October 17, 2012, Q. 60-61: *JMR*, Vol. 3, Tab 17, p. 716; Affidavit of Frank Soler sworn October 7, 2015 ("Second Soler Affidavit"), para. 17: *JMR*, Vol. 2, Tab 12, p. 482.

21 Second Soler Affidavit, Exhibit "A" (Chevron Corporation 2014 10-K Form): *JMR*, Vol. 2, Tab 12, 488.

C. Chevron Canada is a Seventh-Level Indirect Subsidiary of Chevron Corp.

28. Chevron Canada was incorporated in Canada in 1966[22] and was continued under the CBCA in 1980.[23] It is a seventh-level indirect subsidiary of Chevron Corp.[24] All but one of the intervening six subsidiaries are incorporated in the U.S.[25] Each of the intervening subsidiaries has existed for years, sometimes decades, and all long prior to the Ecuadorian Judgment:

(a) All of the voting shares of Chevron Canada are owned by Chevron Canada Capital Company,[26] which was incorporated in Nova Scotia in 1999. It is an investment company.[27]

(b) All of the voting shares of Chevron Canada Capital Company are owned by Chevron Standard Limited, which was incorporated in Delaware in 1944. In addition to holding the voting shares of Chevron Canada Capital Company, Chevron Standard Limited

(i) was until January 2012 a 50% participant in a joint venture which owned and operated an Edmonton isooctane plant and continued thereafter to maintain an ongoing obligation pursuant to an offtake agreement with the buyer;

(ii) was until 2004 the owner of oil and gas assets operating in Western Canada; and

(iii) continues to hold a one-half interest in Chevron Plaza in Calgary.[28]

(c) All of the voting shares of Chevron Standard Limited are owned by Chevron Global Energy Inc., which was incorporated in Delaware in 1946.[29]

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22 First Soler Affidavit, para. 15: *JMR*, Vol. 2, Tab 12, p. 91; SCJ Jurisdiction Decision, para. 17: *JBOA*, Tab 16.

23 Affidavit of Jeffrey C. Wasko sworn August 8, 2012 ("Wasko Affidavit"), para. 5: *JMR*, Vol. 2, Tab 11, p. 452; SCJ Jurisdiction Decision, para. 17: *JBOA*, Tab 16.

24 First Soler Affidavit, para. 7(b): *JMR*, Vol. 2, Tab 10, p. 90; SCJ Jurisdiction Decision, para. 17: *JBOA*, Tab 16.

25 First Soler Affidavit, paras. 7, 28, 32, 39, 43, 47, 51, 55: *JMR*, Vol. 2, Tab 10, pp. 90, 93-96, 98.

26 First Soler Affidavit, para. 18: *JMR*, Vol. 2, Tab 10, p. 92; SCJ Jurisdiction Decision, para. 17: *JBOA*, Tab 16.

27 First Soler Affidavit, paras. 28 and 29: *JMR*, Vol. 2, Tab 10, p. 93.

28 First Soler Affidavit, para. 34: *JMR*, Vol. 2, Tab 10, p. 94.

29 First Soler Affidavit, paras. 36, 39 and 40: *JMR*, Vol. 2, Tab 10, p. 95.

(d) All of the voting shares of Chevron Global Energy Inc. are owned by Texaco Overseas Holdings Inc. The shares of Texaco Overseas Holdings Inc. are owned by Texaco Inc., the shares of which are owned by Chevron Investments Inc., a direct subsidiary of Chevron Corp. Each of these corporations was incorporated in Delaware decades ago.[30]

29. A corporate organizational chart showing the legal ownership of the corporations between Chevron Corp. and Chevron Canada is attached at Tab 1.

D. The Jurisdiction Motions

30. On May 30, 2012, the plaintiffs commenced this Action for recognition and enforcement of the Ecuadorian Judgment in Ontario against Chevron Corp. and Chevron Canada.[31] In response, Chevron Corp. and Chevron Canada each brought motions under Rule 17 of the Ontario *Civil Rules of Procedure*[32] and section 106 of the *Court of Justice Act*[33] to object to the jurisdiction of the Ontario Court (the "Jurisdiction Motions"). The basis for the objection was that: (1) Chevron Corp. conducts no business and has no assets in Canada, as it is a separate corporation from Chevron Canada; and (2) Chevron Canada is not the judgment debtor.

31. The motion judge was the only judge to rule on the "corporate separateness" issue. After an extensive analysis of the evidence before him and a thorough review of the applicable legal principles, Brown J. found that there was "no basis in fact or law" to pierce the corporate veil between Chevron Corp. and Chevron Canada.[34] Brown J. concluded that Chevron Corp. has no assets in Ontario and has no intention of owning assets in Ontario. He stayed the Action because

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30 First Soler Affidavit, paras. 39-53: *JMR*, Vol. 2, Tab 10, pp. 95-97.

31 The claim named two indirect Canadian subsidiaries of Chevron Corp.: Chevron Canada and Chevron Canada Finance Limited. The action against Chevron Canada Finance Limited was subsequently discontinued. SCJ Jurisdiction Decision, paras. 9-10: *JBOA*, Tab 16.

32 RRO 1990, Reg 194.

33 RSO 1990, c C.43, s. 106.

34 SCJ Jurisdiction Decision, paras. 91-110: *JBOA*, Tab 16.

it would be a waste of Canadian judicial resources to proceed in the absence of any assets against which to execute the Ecuadorian Judgment, finding that the evidence disclosed "nothing in Ontario to fight over."[35]

32. The appeal courts did not address the issue of corporate separateness, concluding that it was not relevant to the issue of jurisdiction. The Supreme Court of Canada expressly preserved the issue of corporate separateness for resolution at a later stage:[36]

> "[The conclusion on jurisdiction] in this case should not be understood to prejudice future arguments with respect to the distinct corporate personalities of Chevron and Chevron Canada. I take no position on whether Chevron Canada can properly be considered a judgment-debtor to the Ecuadorian judgment. Similarly, should the judgment be recognized and enforced against Chevron, it does not automatically follow that Chevron Canada's shares or assets will be available to satisfy Chevron's debt. For instance, shares in a subsidiary belong to the shareholder, not to the subsidiary itself. Only those shares whose ownership is ultimately attributable to the judgment debtor could be the valid target of a recognition and enforcement action. It is not at the early stage of assessing jurisdiction that courts should determine whether the shares or assets of Chevron Canada are available to satisfy Chevron's debt. As such, contrary to the appellants' submissions, this is not a case in which the Court is called upon to alter the fundamental principle of corporate separateness as reiterated in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 (CanLII), SCC 69, [2008] 3 S.C.R. 560, at least not at this juncture. In that regard, the deference allegedly owed to the motion judge's findings concerning the separate corporate personalities of the appellants and the absence of a valid foundation for the Ontario courts' exercise of jurisdiction is misplaced. These findings were reached in the context of the s. 106 stay. As I stated above, the Court of Appeal reversed that stay, and this issue is not on appeal before us.

33. The Supreme Court of Canada also expressly indicated that its conclusions regarding jurisdiction did not foreclose the defendant from arguing, among other things, that the proper use of Ontario judicial resources justifies a stay, that any one of the available defences to recognition and enforcement (i.e. fraud, denial of natural justice, or public policy) should be accepted or that a motion under either Rule 20 (summary judgment) or Rule 21 (determination of an issue before trial) of the Rules should be granted.[37]

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35 SCJ Jurisdiction Decision, para. 111: *JBOA*, Tab 16.

36 SCC Jurisdiction Decision, para. 95: *JBOA*, Tab 16.

37 SCC Jurisdiction Decision, para. 77: *JBOA*, Tab 16.

E. Evidentiary Record in This Proceeding

34. The evidence in the record before this Court is not different in nature or kind than the evidence in the record that was before Brown J. Having lost before Brown J., and despite having expressly indicated to the Supreme Court that the previous record was sufficient to determine the corporate separateness issue, the plaintiffs made numerous additional document requests from the defendants in these summary judgment motions, with which Chevron Corp. and Chevron Canada complied (where relevant and proportionate). As a result, the plaintiffs have now received thousands of additional pages of documents. The plaintiffs have also conducted further cross-examinations of the affiants for Chevron Corp. and Chevron Canada, twice for each witness. As they did in the Jurisdiction Motions, the plaintiffs chose not to tender any affirmative evidence.

35. While the volume of the evidence has increased over time, it is largely, if not entirely, "more of the same." Nothing in the new evidence provided has strengthened the plaintiffs' claims which remain legally insufficient and factually unsupported. Accordingly, the relevant factual picture is essentially unchanged and leads to the same conclusions arrived at by Brown J.

F. Chevron Canada Operates and Funds a Separate and Distinct Business From Chevron Corp.

36. The submissions of Chevron Canada demonstrate that Chevron Canada is a multi-billion dollar corporation that independently develops and operates major projects in Canada, subject only to high-level oversight and strategic input from Chevron Corp., its indirect parent.

37. Notably, Chevron Corp. and Chevron Canada have separate and distinct boards of directors.[38] None of the Chevron Corp. directors or executive officers serve on the board or are

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[38] SCJ Jurisdiction Decision, paras. 17 and 99: *JBOA*, Tab 16; First Soler Affidavit, para. 13: *JMR*, Vol. 2, Tab 10, p. 91; Second Soler Affidavit, para. 7: *JMR*, Vol. 2, Tab 12, p. 480; Affidavit of Beverley Keyes, sworn October 9, 2015

involved in managing the operations of Chevron Canada or of its immediate parent. Chevron Canada has its own leadership team that is responsible for all day to day operations and management, without direction from Chevron Corp. or any other Chevron entity.[39]

38. Chevron Canada plans and initiates all of its transactions and expenditures and is responsible for their execution. Chevron Canada funds its own operations without financial contributions from Chevron Corp. or any other Chevron entity.[40]

G. Chevron's Reporting Structure and Consolidated Financial Statements Demonstrate Good Governance and Regulatory Compliance

39. Chevron Corp. oversees its investments and fulfills its regulatory obligations by means of a philosophy of decentralized decision-making and accountability in relation to its global subsidiaries.[41] It utilizes a "functional reporting system", which follows operational lines.[42]

40. Subsidiaries report along operational business lines, which allows the subsidiaries to run their day-to-day business, subject only to prudent oversight by Chevron Corp. in accordance with its requirement to comply with applicable laws and regulations.

41. This reporting structure enables Chevron Corp. – like all U.S. public corporations – to comply with U.S. laws and reporting obligations. Among these, Chevron Corp. must be aware of and disclose material information to the public about: (a) the global business activities and investments of Chevron Corp.; and (b) all of its operating subsidiaries. This is achieved in an

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("Keyes Affidavit"), para. 8: *JMR*, Vol. 2, Tab 13, p. 610; First Soler Affidavit, paras. 11, 18, 37, 41, 45, 49 and 54: *JMR*, Vol. 2, Tab 10, pp. 90, 92, 95-97; Second Soler Affidavit, paras. 10 to 13: *JMR*, Vol. 2, Tab 12, p. 481.

39 Wasko Affidavit, para. 16: *JMR*, Vol. 2, Tab 11, p. 455.

40 Wasko Affidavit, para. 19: *JMR*, Vol. 2, Tab 11, p. 455; SCJ Jurisdiction Decision, para. 100: *JBOA*, Tab 16; Keyes Affidavit, para. 11: *JMR*, Vol. 2, Tab 13, p. 610.

41 First Soler Cross, Q. 113 and Q. 123: *JMR*, Vol. 3, Tab 14, pp. 658 and 662.

42 First Soler Cross, Q. 113: *JMR*, Vol. 3, Tab 14, p. 658.

efficient manner by including in the disclosures the results of segregated "operating segments" reflecting the different categories of business conducted.[43]

42. As with other public companies in the U.S., Chevron Corp. must adhere to the reporting and other requirements set by the Financial Accounting Standards Board ("FASB").[44] FASB requirements are adopted and enforced by the United States Securities Exchange Commission ("SEC").[45] FASB's standards are recognized by the SEC and the American Institute of Certified Public Accountants as the "primary level of generally accepted accounting principles, or GAAP, which is the framework for accounting."[46]

43. FASB requires that Chevron Corp., like other public companies, use an operating-segment reporting structure, and select a Chief Operating Decision Maker ("CODM").

44. Chevron Corp.'s reporting structure is based on two operating segments: the Upstream business and the Downstream business.[47] Each of these operating segments has a Reporting

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[43] See Chevron Corp.'s public disclosure in its 2011 10-K Form: First Soler Affidavit, Exhibit "B" (Chevron Corporation 2011 10-K Form): *JMR*, Vol. 2, Tab 10, pp. 246-249; First Soler Cross, Q. 105: *JMR*, Vol. 3, Tab 14, p. 656.

[44] See FASB *Accounting Standard Codification Topic 280, Segment Reporting* ("ASC 280"): *JBOA*, Tab 52. Note that the International Financial Reporting Standards ("IFRS") also require a reporting structure with operating segments and a CODM. See *IFRS Standard 8*: *JBOA*, Tab 55.

[45] The FASB is the private body designated by the SEC to set financial accounting and reporting standards for public companies: see U.S. Securities and Exchange Commission, *Policy Statement: Reaffirming the Status of FASB as a Designated Private-Sector Standard Setter* (April 25, 2003), accessed at https://www.sec.gov/rules/policy/33-8221.htm: *JBOA*, Tab 58.

[46] U.S. Securities & Exchange Commission, *Testimony Concerning the Roles of the SEC and the FASB in Establishing GAAP* by Robert K. Herdman, Chief Accountant, Before the House Sub-Committee on Capital Markets, Insurance and Government Sponsored Enterprises, Committee on Financial Services (May 14, 2002), accessed at https://www.sec.gov/news/testimony/051402tsrkh.htm: *JBOA*, Tab 59.

[47] The Upstream operations consist primarily of exploring for, developing and producing crude oil and natural gas; processing, liquefaction, transportation and regasification associated with liquefied natural gas; transporting crude oil by major international oil export pipelines; transporting, storage and marketing of natural gas; and a gas-to-liquids project. The Downstream operations consist primarily of refining crude oil into petroleum products; marketing of crude oil and refined products; transporting crude oil and refined products; and manufacturing and marketing of commodity petrochemicals, plastics for industrial uses and fuel and lubricant additives. See First Soler Affidavit, Exhibit "B" (Chevron Corporation Form 10 K for Year Ended December 31, 2011): *JMR*, Vol. 2, Tab 10, p. 119.

Officer responsible for reporting, as required, to the CODM, which in Chevron Corp.'s case is its Executive Committee ("Excom").[48]

45. The reporting structure generally operates as follows:

(a) Business plans and budgets originate from each operating company or business unit (e.g. Chevron Canada's Upstream and Downstream business units) and are reported up functionally through a Reporting Unit.[49] Chevron North America Exploration and Production ("CNAEP") is the Reporting Unit for the Canada Upstream business. CNAEP is not a direct or indirect subsidiary of Chevron Corp. It is a functional body that consists of a management group of personnel responsible for overseeing exploration and production activities in North America.[50]

(b) In certain circumstances, the Reporting Unit (CNAEP) is required to communicate specified long-term or threshold financial commitments to the Reporting Officer,[51] who, in certain circumstances, is then required to obtain concurrence from Chevron Corp.'s CODM – which, as noted above, is Excom. Excom is comprised of senior officers of Chevron Corp., including its Chief Executive Officer.[52]

(c) Depending on the financial threshold level, under very limited circumstances, Excom may be required to report to Chevron Corp.'s Board of Directors.[53] Chevron Corp.'s Board of Directors may also be required to approve matters above certain thresholds (e.g. disposition of major assets) or that implicate Chevron Corp. directly (e.g. guarantees to be given by Chevron Corp.).[54]

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48 First Soler Cross, Q. 107: *JMR*, Vol. 3, Tab 14, p. 657.

49 First Soler Cross, Q. 123: *JMR*, Vol. 3, Tab 14, p. 662; Transcript of Cross-Examination of Mr. Frank Soler on his Affidavit sworn on October 7, 2015 ("Second Soler Cross"), p. 14, lines 20-23.

50 Second Soler Cross, p. 12, line 22; p. 13, line 40.

51 Second Soler Cross, p. 14, lines 20-23; Affidavit of Frank Soler, sworn June 13, 2014 ("Third Soler Affidavit"), para. 4.

52 Second Soler Cross, p. 40, lines 2- 5.

53 Third Soler Affidavit, para. 4.

54 The operating segment reporting structure, with ultimate reporting to the CODM, facilitates compliance with corporate disclosure requirements. It provides a mechanism by which operating results can be reviewed by Operating Segment. As the FASB standards provide, a characteristic of an operating segment is that "its operating results are regularly reviewed by the public entity's CODM, who decides about resources to be allocated to the segment and assesses its

46. Chevron Corp. also has in place governance policies, including Policy 190 and Policy 190C, together with certain Table of Commitment Authority ("TOCA") Tables that govern its operating segment reporting structure, and that ensure good corporate governance practices and rigorous financial controls, assist with regulatory compliance, and provide certain advice and support.[55]

47. Within the reporting structure, and as set forth in these policies, Reporting Units have unlimited authority to commit to and perform activities within approved business plans, subject only to specific limitations and reporting or approval requirements once particular monetary thresholds and other requirements are triggered. They are, in turn, expected to further delegate their authorities to operating companies or business units like Chevron Canada "…consistent with the philosophy of decentralized decision making and accountability with a minimum of procedural detail."[56]

48. The monetary thresholds established by the applicable policies that trigger a reporting requirement are substantial. Where certain matters meet the prescribed economic threshold, concurrence may be required from the officer or body to whom the report is made.[57] Many upstream activities do not require concurrence of a Reporting Officer unless the financial commitment exceeds $[redacted] million. Nor, for financial commitments, is reporting to Excom required

performance." All issuers are entitled to choose their CODM. For example, see Third Soler Affidavit, Exhibit "A" (Policy 190C), p. 18, s. 7(a).

55 Third Soler Affidavit, para. 5.

56 First Soler Cross Exhibits, Exhibit 4 (Policy 190C- "Table of Commitment Authority" and "Basic CPDEP Road Map"): *JMR*, Vol. 6, Tab 26, pp. 2961-2974, 2997. "CPDEP" denotes "Chevron Project Development and Execution Process".). Third Soler Affidavit, Exhibit "B" (Chevron Project Development and Execution Process Road Map).

57 First Soler Cross Exhibits, Exhibit 4 (Policy 190C- "Table of Commitment Authority"): *JMR*, Vol. 6, Tab 26, pp. 2961-2974. As indicated below, "concurrence" is not equivalent to "approval".

unless the commitment exceeds $[redacted] million or the cumulative commitments on a project exceed $[redacted] million.[58]

49. These policies are carefully designed to comply with Chevron Corp.'s governance responsibilities and regulatory requirements.[59] Under U.S. securities laws and as a matter of accounting convention, Chevron Corp. reports the financial results of its subsidiaries on a consolidated basis.[60]

PART III - LAW & AUTHORITIES

A. The Test for Granting Summary Judgment

50. Chevron Corp. adopts the articulation of the applicable test for summary judgment set out in the Factum of Chevron Canada. The plaintiffs have expressly acknowledged that this case is appropriate for summary judgment by bringing their own motion for summary judgment on this issue.[61]

51. In the leading Ontario case on corporate separateness, *Transamerica Life*, this Court granted the defendant summary judgment on the basis that there was no genuine issue for trial in relation to the plaintiff's attempt to disregard the separate corporate personality between a corporate parent and its subsidiary. In that case, like this one, the parties had ample opportunity to adduce the relevant evidence on this issue.[62]

52. As noted above, Chevron Corp. and Chevron Canada produced approximately 7,400 pages of materials in response to the plaintiffs' document requests, in addition to the volumes of

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58 First Soler Cross Exhibits, Exhibit 4 (Policy 190C- "Table of Commitment Authority"): *JMR*, Vol. 6, Tab 26, pp. 2961.

59 Second Soler Affidavit, para. 15: *JMR*, Vol. 2, Tab 12, p. 482; Third Soler Affidavit, paras. 4-5.

60 First Soler Affidavit, para. 9: *JMR*, Vol. 2, Tab 10, p. 90; SCJ Jurisdiction Decision, paras. 17 and 102: *JBOA*, Tab 16.

61 Notice of Motion for Summary Judgment dated October 23, 2015.

62 *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, [1996] O.J. No. 1568 (Gen. Div.) ("*Transamerica Life*"), aff'd [1997] O.J. No. 3754 (C.A.): JBOA, Tab 45.

documents that were already produced in the parties' earlier Jurisdiction Motions – on the basis of which counsel for the plaintiffs advised the Supreme Court of Canada that the record was even then sufficient to determine the issue of corporate separateness.[63] Both Chevron Corp. and Chevron Canada have also filed affidavits in support of their motions for summary judgment on the issue of corporate separateness and their affiants have been cross-examined by the plaintiffs' counsel on two occasions each.

53. The plaintiffs have declined to tender their own affirmative evidence, and have had full opportunity to put their "best foot forward" on these summary judgment motions.

B. Chevron Corp. and Chevron Canada Have Separate Corporate Personality

(a) Corporate Separateness is a Bedrock Legal Principle

54. Chevron Corp. and Chevron Canada are, at law, separate legal entities with separate personalities, rights and obligations. There can be no controversy about this well-settled principle. It is codified in Chevron Canada's incorporating statute, the CBCA.[64]

55. The principle of corporate separateness has been recognized and affirmed on countless occasions since the seminal decision of *Salomon v. Salomon & Co.*[65]

56. The "corporate separateness" principle means that shareholders are, at law, not liable for the acts, defaults or obligations of the corporation.[66]

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63 Transcript of the hearing before the Supreme Court of Canada in *Chevron Corp. v. Yaiguaje*, December 11, 2014, File No. 35682, Submissions of Alan Lenczner, Q.C., p. 62, lines 2-12.

64 See section 15(1) of the CBCA, which provides that a CBCA corporation has the capacity, as well as the rights, powers and privileges of a natural person. *Delaware General Corporation Law* similarly codifies corporate separateness. See *Delaware General Corporation Law*, Del. Code. Ann. Tit. 8 § 102, 106, 122: *JBOA*, Tab 50.

65 [1897] AC 22 (H.L.): *JBOA*, Tab 40. The many cases that affirm this principle are referred to in detail in the Factum of Chevron Canada in its motion for summary judgment.

66 CBCA, s. 45(1).

57. It also means that the assets of the corporation are owned exclusively by the incorporated legal entity. Consequently, shareholders such as Chevron Corp. do not have any legal or equitable interest in the assets of the corporation in which they hold shares.[67] This is true even in the case of a direct shareholder of a wholly-owned subsidiary.[68] *A fortiori*, it applies to an indirect shareholder.

58. In other words, Chevron Corp. has no legal or equitable interest in the assets of even its direct subsidiary, Chevron Investments Inc., let alone in the assets or shares of Chevron Canada, its seventh-level indirect subsidiary.

59. Strong public policy considerations designed to encourage economic activity and investment underlie the principle of corporate separateness. The limited liability offered by corporate separateness is an integral feature of the business landscape, facilitating entrepreneurship and the raising of capital to initiate or expand business operations.[69] Economic decisions are made and investments are planned on the strength of separate corporate personality.[70]

60. Multiple third party stakeholders[71] in Canada and abroad rely every day upon the principle of corporate separateness in their dealings with subsidiary corporations. It would be contrary to the expectations of these stakeholders if the income and assets upon which they depend for

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67 K.P. McGuinness, *Canadian Business Corporations Law*, 2d Ed. (Markham: LexisNexis, 2007) ("McGuinness"), para. 2.12: *JBOA*, Tab 56. *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560, paras. 34 – 35: *JBOA*, Tab 10. See also *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. 2 at pp. 12 – 13: *JBOA*, Tab 31, holding that Mr. Kosmopoulos, as the sole direct shareholder of the corporation, had no legal or equitable interest in its assets. As the Supreme Court of Canada stated in the SCC Jurisdiction Decision, para. 95 "it does not automatically follow that Chevron Canada's shares or assets will be available to satisfy Chevron's debt. For instance, shares in a subsidiary belong to the shareholder, not to the subsidiary itself. Only those shares whose ownership is ultimately attributable to the judgment debtor could be the valid target of a recognition and enforcement action."

68 *Belokon et al. v. The Kyrgyz Republic*, 2016 ONSC 4506 ("*Belokon*"), paras. 61-67: *JBOA*, Tab 12.

69 J. Anthony VanDuzer, *The Law of Partnerships & Corporations*, 3d Ed. (Toronto: Irwin Law Inc., 2009) at 116, 118-119: *JBOA*, Tab 60; See also *Clarkson Co. Ltd. v Zhelka et al.*, [1967] 2 O.R. 565, para. 77: *JBOA*, Tab 18.

70 McGuinness, above, paras. 2.74 to 2.75: *JBOA*, Tab 56. As the Alberta Court of Appeal stated in *Hogarth v. Rocky Mountain Slate Inc.*, 2013 ABCA 57 ("*Hogarth*"), para. 68: *JBOA*, Tab 25: "[Corporate separateness] is not a loophole, a technicality, or a mischievous stratagem; it is an essential tool of social and economic policy."

71 Such as shareholders, bond rating agencies, regulators, insurers and banks.

performance of the subsidiary's obligations provided no such security, and if their due diligence need henceforth extend to the ultimate parent company and all of its worldwide subsidiaries.

(b) Corporate Separateness Applies to Affiliated Corporate Groups

61. "Corporate separateness" is not just a technicality that can be ignored at will.[72] It applies as a matter of law, even where there are close or "significant" economic relationships between corporations, including between affiliated corporations that carry on the same or related businesses.[73]

62. The plaintiffs appear to be taking the position that the fact that Chevron Corp. has structured its business to operate through subsidiaries with which it has a "significant economic relationship" is somehow sufficient to destroy its separate corporate identity.[74] This is not the law. Parties are entitled to avail themselves of the corporate form and of the resulting limited liability in structuring their affairs, whether for operational, tax planning or other business purposes.[75]

63. All parent corporations exercise some degree of control over their direct subsidiary corporations by virtue of holding shares in those corporations and by virtue of the economic relationship existing with these subsidiaries. Oversight and control by the parent is inherent in the parent-subsidiary relationship.[76] As the English Court of Appeal stated in its extensive analysis of

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72 *Hogarth*, above, paras. 67 and 68: *JBOA*, Tab 25.

73 See *Cunningham v. Hamilton*, [1995] A.J. No. 476 (C.A.) ("*Cunningham*"), para. 4: *JBOA*, Tab 20, citing *Adams v. Cape Industries PLC*, [1990] 1 Ch. 433 (C.A.) ("*Adams*"): *JBOA*, Tab 3, for the proposition that mere economic integration does not lead to disregarding separate corporate personality as a matter of law. See also *Fairview Donut Inc. v. TDL Group Corp.*, 2012 ONSC 1252, paras. 653-654, 657-658 ("*Fairview Donut*"), aff'd 2012 ONCA 867, leave to appeal ref'd [2013] S.C.C.A. No. 47: *JBOA*, Tab 22.

74 Reply to Chevron Corporation, paras. 60 to 65.

75 *Adams*, above at p. 537: *JBOA*, Tab 3: "If a company chooses to arrange the affairs of its group in such a way that the business carried on in a particular foreign country is the business of its subsidiary and not its own, it is, in our judgment entitled to do so. Neither in this class of case nor in any other class of case is it open to this court to disregard the principle of [*Salomon v. Salomon & Co.*] merely because it considers it just to do so."

76 Note that a degree of control by a majority shareholder of a corporation is contemplated and permitted under the CBCA: see ss. 2(3) and 2(5). Even under these provisions, Chevron Corp. does not "control" Chevron Canada. See also ss. 2(3) and 2(4) of the Nova Scotia *Companies Act*, which applies to Chevron Canada's immediate parent, Chevron Canada Capital Company.

corporate separateness in *Adams*, "it is the very nature of a parent company-subsidiary relationship that the parent company is in a position, if it wishes, to exercise overall control over the general policy of the subsidiary."[77]

64. Although Chevron Corp. does not have legal control over Chevron Canada through share ownership, it exercises a measure of oversight over and responsibility for Chevron Canada's business activities through Chevron Canada's functional reporting responsibilities and Excom's strategic direction under Chevron Corp's Policy 190 and related policies. It is in this sense that Chevron Corp. "manages its investments in subsidiaries" in the typical fashion of a parent corporation.[78] Brown J. in the Jurisdiction Motions found that the relationship between Chevron Corp. and Chevron Canada was "that of a typical parent and subsidiary."[79]

65. As well, there is nothing exceptional in the fact that Chevron Corp. benefits from dividends obtained indirectly from operating subsidiaries (when such dividends are declared and paid). It is, again, typical of multi-layered parent-subsidiary relationships. Brown J. confirmed that the "distribution of profits from sub to parent via dividends is a standard fact of inter-corporate life."[80] In fact, in the last 10 years, dividends flowing to Chevron Corp. are not traceable to dividends paid by Chevron Canada to its immediate parent company.[81]

66. In Chevron Corp.'s and Chevron Canada's motions for summary judgment, therefore, Chevron Corp. and Chevron Canada do not have to adduce evidence to prove that they <u>are</u> entitled

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77 *Adams*, above at p. 538: *JBOA*, Tab 3. Brown J. adopted *Adams* in the Jurisdiction Motions as an accurate statement of the law in Ontario: SCJ Jurisdiction Decision, para. 95(iv): *JBOA*, Tab 16.

78 First Soler Affidavit, Exhibit "B" (Chevron Corporation 2011 10-K Form): *JMR*, Vol. 2, Tab 10, p. 119.

79 SCJ Jurisdiction Decision, para. 104: *JBOA*, Tab 16.

80 SCJ Jurisdiction Decision, para. 103: *JBOA*, Tab 16.

81 Answers to Undertakings from Soler Cross-Examination of May 17, 2016, Q. 339.

to be treated as separate legal persons with separate identity and separate property. This conclusion arises as a matter of well-accepted corporate law.

67. It is the plaintiffs that are required to prove that Chevron Corp. and Chevron Canada should not be entitled to rely on the immunity from each other's liabilities and obligations conferred on them by corporate law. As the Federal Court recently stated, the separate corporate personality of parent and indirect subsidiary presumptively exists.[82]

68. As submitted in Chevron Canada's Factum in support of its companion motion for summary judgment, the very exceptional bases for a Court to set aside this immunity are well-established in the case law.[83]

69. The legal test for disregarding the separate corporate personalities of Chevron Corp. and Chevron Canada requires a demonstration of both (a) complete domination and control of Chevron Canada by Chevron Corp. such that Chevron Canada is the mere "puppet" of Chevron Corp.; ***and*** (b) conduct akin to fraud in the sense that Chevron Canada is used by Chevron Corp. to shield it from liability or for some other improper purpose.[84] The plaintiffs cannot establish the first element and expressly disavow the second.

70. In their pleadings, the plaintiffs fundamentally mischaracterize the relationship between Chevron Corp. and its subsidiaries. They appear to equate indirect share ownership and typical

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82 *Nevsun Resources Ltd. v. Delizia Ltd.*, 2016 FC 393 ("*Nevsun*"), para. 42: *JBOA*, Tab 38 (appeal to the Federal Court of Appeal filed on April 18, 2016). See also the companion case of *Sunridge Gold Corp. v. Delizia Ltd.*, 2016 FC 392 ("*Sunridge*"), paras. 68: *JBOA*, Tab 43 (appeal to the Federal Court of Appeal filed on April 18, 2016). In the lower court decision in *Adams*, above, Scott J. recognized this presumption, indicating that as the two subsidiaries at issue in this case were, at law, separate legal persons, the onus was on the party seeking to demonstrate otherwise to establish the facts that would justify disregarding this legal principle: *Adams* at p. 549: *JBOA*, Tab 3.

83 See *Transamerica Life*, above, paras. 22-23: *JBOA*, Tab 45, citing *Aluminum Co. of Canada v. Toronto (City)*, [1944] S.C.R. 267 at 271: *JBOA*, Tab 6. See also *Fairview Donut*, above, para. 653: *JBOA*, Tab 22.

84 Factum of Chevron Canada, paras. 48, 58, 63 and 68.

strategic and financial oversight or control by Chevron Corp., as parent, with complete domination of and control over the day to day management of Chevron Canada.[85]

71. Chevron Corp. adopts Chevron Canada's submissions and supplements them with the following.

C. Chevron Corp.'s Compliance with Regulatory Requirements and Good Governance Practices Does Not Undermine the Separate Corporate Personality of Chevron Corp. and Chevron Canada

72. All public companies in the U.S. are subject to a number of regulatory requirements. These may include requirements arising under securities laws, such as the *Sarbanes-Oxley Act of 2002* (the "SOX").[86] The reforms introduced by the SOX represented a "sea change in federal regulatory philosophy … from a market-oriented approach to a strongly prescriptive one." This "sea change" is directed at making management more accountable, increasing required disclosure, strengthening the authority and obligations of corporate gatekeepers and improving accounting standards and the reliability of financial statements.[87]

73. If the procedures and actions needed for complying with requirements imposed by securities regulators to improve corporate disclosure and accountability justify disregarding the separate corporate personality of a public company and its subsidiaries, all public companies with operations involving multiple subsidiaries could be treated as single entities, with no separate identity, no separate ownership of assets, no separate employees or workforces and no separate

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85 Reply to Chevron Canada, para. 16.

86 Pub.L. 107-204, 116 Stat. 745, enacted July 30, 2002: *JBOA*, Tab 51.

87 See Trevino, M. *et al*., *Public Company Deskbook: Sarbanes-Oxley and Federal Governance Requirements*, 2nd Ed. (Practising Law Institute, Nov. 2009) at 1-1 and A-2 ("Public Company Deskbook"): *JBOA*, Tab 57. The SOX has been similarly described by other commentators as a "landmark piece of legislation … [that] establishes a comprehensive framework to modernize and reform the oversight of public company auditing, improve quality and transparency in financial reporting by those companies and strengthen the independence of auditors.": see J. Hamilton & T. Trautmann, *Sarbanes-Oxley Manual: A Handbook for the Act and SEC Rules* (Chicago: CCH Incorporated, 2003) at p. 13: *JBOA*, Tab 54; Transcript of Cross-Examination of Frank Soler on his Affidavit sworn on June 13, 2016 ("Third Soler Cross"), p. 120, Q. 395, lines 2-9.

liabilities. This conclusion would have seismic effects in the U.S., the Canadian and the international economy. Such an extreme deviation from established laws and corporate principles is not justified, nor supported, by the plaintiffs' claims here.

(a) Chevron Corp.'s Reporting Structure Is Not A Basis For Disregarding Separate Corporate Personality

(i) Existence of Reporting Structure is Mandated by Securities Laws

74. The directors of Chevron Corp. owe statutory fiduciary and other obligations to Chevron Corp. and, in this capacity, must obtain the information about Chevron Corp.'s direct and indirect subsidiaries necessary to discharge those duties. These duties have become increasingly onerous and exacting since the enactment of the SOX.

75. Under the SOX, chief executive officers and chief financial officers of publicly-traded companies must personally certify the accuracy of various financial reports. The SOX mandates that certifying officers are responsible for establishing and maintaining a set of internal procedures to ensure accurate financial disclosure. These controls and procedures must ensure that material information relating to the issuer and its consolidated subsidiaries is made known to the certifying officers.[88]

76. In addition to facilitating compliance with U.S. legal requirements which apply to public companies, the reporting structure is evidence of good corporate governance in light of the economic relationship among Chevron Corp. and its subsidiaries.

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[88] SOX, s. 302: *JBOA*, Tab 51; *Code of Federal Regulations*, 17 CFR 229.601(b)(31)(i): *JBOA*, Tab 49; Third Soler Cross, p. 120-121, Q. 398, lines 25-3.

77. Even in the absence of regulatory requirements to do so, reporting among related companies, including from subsidiary to parent, is entirely typical of a parent-subsidiary relationship.[89]

78. As Brown J. concluded in the Jurisdiction Motions, "At a time when legislators are insisting on higher standards of corporate governance for related groups of companies, including the disclosure of material information, efforts to comply with those requirements do not signify that the individual companies have lost their separate legal identities."[90]

79. The mere existence of Chevron Corp.'s reporting structure quite simply cannot be a basis for disregarding separate corporate personality.[91]

(ii) Specific Features of the Reporting Structure Facilitate Regulatory Compliance and Good Governance

80. The manner in which Chevron Corp. has implemented its reporting and governance structure through policies such as Policy 190 and Policy 190C and the TOCA Tables demonstrate the opposite of complete domination and control by Chevron Corp. of its subsidiaries. For example, in accordance with Policy 190C and the TOCA Tables, Chevron Canada runs most of its day-to-day business without reporting on or seeking concurrence with or approval of its activities.

81. Chevron Corp.'s policies were designed to facilitate both internal accountability and regulatory compliance. As Chevron Corp.'s witness stated on cross-examination, "…the function of the policy is to keep [Excom] apprised of what is a significant event in case if they need to, in

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89 *International Trademarks Inc. v. Clearly Canadian Beverage Corp.*, [1999] B.C.J. No. 117 (S.C.), para. 28 ("*International Trademarks*"): *JBOA*, Tab 30. See also Transamerica Life, paras. 20-22: *JBOA*, Tab 45.

90 SCJ Jurisdiction Decision, para. 102: *JBOA*, Tab 16.

91 Brown J. in the Jurisdiction Motions found that Chevron Corp.'s reporting structure did not undermine separate legal personality: SCJ Jurisdiction Decision, para. 100: *JBOA*, Tab 16.

turn, advise the investing public or the appropriate government agencies or any type of function that Chevron Corporation as a publicly traded company is required to carry out."[92]

82. Moreover, requirements for one member of a corporate group to obtain approval for significant financial commitments or expenditures from a corporation at a higher level in the corporate structure are entirely typical of parent-subsidiary relationships.[93] Given that a formal approval requirement does not cause a parent corporation to lose its separate corporate identity in relation to its subsidiaries,[94] it is axiomatic that a requirement for concurrence – which is not a formal approval requirement – would not have this effect.

83. Frank Soler, Chevron Corp.'s witness, testified that while it is "conceivable" that Excom may have comments on a Chevron Canada project such that it may be re-worked by Chevron Canada, he is not aware of any circumstance in which Excom refused to accept a Chevron Canada matter that was reported to Excom.[95] This demonstrates the opposite of complete domination and control.

84. With thousands of pages of evidence, policies, reports and days of cross-examinations, the plaintiffs cannot point to one instance where Chevron Corp. disagreed with or disallowed a proposed action of Chevron Canada. For each of the eight Chevron Canada projects in the documentary productions requested by the plaintiffs, the particular project is noted as simply having been "successfully reported" to Excom." [96]

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92 Second Soler Cross, p. 73, Q. 272, lines 12 to 18; See also Third Soler Cross, p. 122, Q. 404, lines 8-10.

93 *Fletcher v. Atex, Inc*., 68 F.3d 1451, 1456 (2d Cir. 1995) ("*Fletcher*"), 1459–60: *JBOA*, Tab 23; see also *Adams*, above at p. 538: *JBOA*, Tab 3.

94 *Fletcher*, above, at 1459–60: *JBOA*, Tab 23.

95 Second Soler Cross, p. 73, Q. 272, lines 6-18, Q. 273, lines 19-25; p. 108, Q. 372, lines 11-13, Q. 373, lines 15 to 19.

96 See CVX-CCL-0000784; CVX-CCL-0001823; CVX-CCL-0001417; CVX-CCL-0001 078; CVX-CCL-0001042; CVX-CCL-0001020; CVX-CCL-0000887; CVX-CCL-0001417; CVX-CCL-0001249; CVX-CCL-0001305; CVX-

85. The evidence is uncontroverted that all eight projects are "made in Canada" undertakings that were developed and entirely funded by Chevron Canada. The format used to seek concurrence and reporting in relation to Chevron Canada's funding consists of appropriation requests from Chevron Canada indicating that Chevron Canada's own moneys previously budgeted and approved are being spent.[97]

86. Even in those limited circumstances where Excom or the Chevron Corp. Board of Directors has the power or the obligation to approve very significant financial commitments,[98] this fact alone has no legal effect on the separate corporate personalities of Chevron Canada and Chevron Corp. It does not indicate complete domination or control of Chevron Canada by Chevron Corp. Instead, it is entirely typical of a parent-subsidiary relationship and not a recognized legal basis for disregarding separate corporate personality.

87. Requirements for reporting or approval do not affect corporate separateness even where a single shareholder holds 100% of the shares of a direct subsidiary.[99] A requirement for reporting or approval by an indirect, publicly-traded shareholder in the interest of good governance, internal accountability and regulatory compliance clearly cannot affect corporate separateness.

(b) Chevron Corp.'s Consolidation of its Financial Statements Is Not a Basis for Disregarding Separate Corporate Personality

88. Issuance of consolidated financial statements is mandated by FASB. FASB requires a parent corporation to consolidate, for the purposes of its financial reporting, all subsidiaries in

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CCL-0001250; CVX-CCL-0001251; CVX-CCL-0002642; CVX-CCL-0000630; CVX-CCL-0000568; CVX-CCL-0000476; CVX-CCL-0000568; CVX-CCL-0002535; CVX-CCL-0002534; CVX-CCL-0000785; CVX-CCL-0000784.

97 Answers to Undertakings given at the cross-examination of Beverly Keyes, No. #1 and #33, p. 7 and p. 63 Q. 190; See, for example, CVX-CCL-0003103, CVX-CCL-0002109, CVX-CCL-0003257, CVX-CCL-0003357.

98 First Soler Cross Exhibits, Exhibit 4 (Policy 190C- "Table of Commitment Authority"): *JMR*, Vol. 6, Tab 26, pp. 2961-2974.

99 See *International Trademarks*, above, para. 28: *JBOA*, Tab 30.

which it has a controlling financial interest through direct or indirect ownership of a majority voting interest.[100] This policy has been adopted by the SEC and codified in a regulation.[101] It applies to all public companies in the U.S.

89. As authoritative case law in both Canada and the U.S. establishes, reporting by a parent corporation of its subsidiaries' financial results on a consolidated basis does not cause the parent and those subsidiaries to merge or to become one person at law.[102] As this Court has stated, "Every corporation has a separate legal personality. Even with consolidated financial statements, what is being consolidated is the financial circumstances of separate legal entities. The entities themselves do not merge."[103]

90. If anything, the statutory requirement to report financial results on a consolidated basis recognizes that related companies are separate legal entities that would otherwise report their financial results on an individual basis.

91. In the Jurisdiction Motions, Brown J. therefore correctly concluded that the fact "that Chevron files a consolidated set of financial statements simply reflects the legal reporting requirements of its home jurisdiction, in particular the *Sarbanes-Oxley Act of 2002* and the

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100 ARB 51: Consolidated Financial Statements (August 1959), paras. 2-3: JBOA, Tab 53.

101 *Code of Federal Regulations*, 17 CFR 210.3A-02 – Consolidated financial statements of the registrant and its subsidiaries: *JBOA*, Tab 48.

102 Canada: *Transamerica Life*, above. See also *Meditrust Healthcare Inc. v. Shoppers Drug Mart*, [2001] O.J. No. 2790, para. 19, rev'd on other grounds [2002] O.J. No. 3891 (C.A.): *JBOA*, Tab 36; SCJ Jurisdiction Decision, para. 102: *JBOA*, Tab 16. United States: *American Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586 (9th Cir. 1996), 591 (noting that filing of consolidated tax returns "hardly demonstrates domination"): *JBOA*, Tab 8; see also *Alberto v. Diversified Group, Inc*., 55 F.3d 201 (5th Circ. 1995), 207: *JBOA*, Tab 5; *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp*, 751 F.2d 117 (2d Cir. 1984), 121 n. 3: *JBOA*, Tab 47; *McAnaney v. Astoria Fin. Corp*., 665 F. Supp. 2d 132 (E.D.N.Y. 2009), 145, n. 12: *JBOA*, Tab 34; *Upjohn Co. v. Syntro Corp*., Civ. No. 89-107, 1990 U.S. Dist. LEXIS 11512., (D. Del. Mar. 27, 1990), 6: *JBOA*, Tab 46.

103 *Amaranth LLC v. Counsel Corp.*, 84 O.R. (3d) 361 (SCJ), para. 13: *JBOA*, Tab 7.

Securities and Exchange Act of 1934; it is not an indicia of the complete domination and control of the subsidiary by the parent."[104]

D. Corporate Separateness Applies to the Execution of Judgments

92. The principle of corporate separateness applies to the execution of judgments. This was affirmed in the very recent Federal Court decision in *Nevsun*. In that case, the Court confirmed that the well-established principle of corporate separateness applies where a judgment creditor is seeking to collect on a foreign arbitral award. The Federal Court refused to conclude that a parent corporation was subject to a garnishment order in relation to debts owing by its indirect subsidiary in order to satisfy the award. This result could only be achieved by satisfying the very high threshold for piercing the corporate veil between the parent and its three intervening subsidiaries, which the creditor could not do.[105]

93. Nor is there any lower threshold for disregarding separate corporate personality where the liability at issue is a judgment awarded against parent or subsidiary – even a very large judgment. In fact, in *Adams*, one of the leading English cases that has been frequently cited in Canada,[106] the Court declined to disregard the separate corporate personality of a parent and its indirect subsidiaries for the purpose of enforcing a default judgment in a personal injury case involving exposure of multiple individuals to asbestos.[107]

94. The plaintiffs plead that the *Execution Act* makes Chevron Canada's shares and assets exigible to satisfy the Ecuadorian Judgment. However, the *Execution Act* is not a source of

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104 SCJ Jurisdiction Decision, para. 102: *JBOA*, Tab 16.

105 *Nevsun*, above, paras. 42 to 60: *JBOA*, Tab 38; *Sunridge*, above, paras. 68 to 85: *JBOA*, Tab 43; and *Belokon*, paras. 61-67: *JBOA*, Tab 12.

106 *Cunningham*, above, para. 4: *JBOA*, Tab 20; *Nevsun*, above, para. 50: *JBOA*, Tab 38; *Sunridge*, above, para. 77: *JBOA*, Tab 43; SCJ Jurisdiction Decision, para. 95: *JBOA*, Tab 16; *Transamerica Life*, above, para. 19: *JBOA*, Tab 45.

107 *Adams*, above, pp. 543-544: *JBOA*, Tab 3.

substantive rights. It provides procedural mechanisms for seizing assets belonging to a judgment debtor in satisfaction of a judgment.[108] It does not create property interests that do not otherwise exist at law, nor does it permit a judgment creditor to seize assets belonging entirely to another person.

95. Chevron Corp., as indirect parent of Chevron Canada, has no legally cognizable interest in either the assets or shares of Chevron Canada unless this Court determines to disregard the well-settled principle of corporate separateness and pierce the seven corporate veils between Chevron Corp. and Chevron Canada. As outlined above, there is no basis in fact or in law for this Court to do so. The *Execution Act* therefore provides no assistance to the plaintiffs.

PART IV - ORDER SOUGHT

96. Chevron Corp. requests an Order dismissing the plaintiffs' claims in paragraphs 1(c), 1(d), 18-20 and 23-26 in the Amended Amended Statement of Claim that ask the Court to ignore corporate separateness, and that the costs of this motion be awarded to Chevron Corp.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July, 2016.

Larry P. Lowenstein

Clarke Hunter per

Clarke Hunter, Q.C.

[108] *Belokon*, above, paras. 31-32: *JBOA*, Tab 12.

SCHEDULE "A": LIST OF AUTHORITIES

Cases

1. *Adams v. Cape Industries Plc,* [1990] 1 Ch. 433 (Eng. C.A.)
2. *Alberto v. Diversified Group, Inc.*, 55 F.3d 201 (5th Circ. 1995)
3. *Aluminum Company of Canada Ltd. v. City of Toronto,* [1944] S.C.R. 267
4. *Amaranth LLC v. Counsel Corp*., 84 O.R. (3d) 361 (S.C.J.)
5. *American Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586 (9th Cir. 1996)
6. *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560
7. *Beals v. Saldanha*, 2003 SCC 72
8. *Belokon et. al. v. The Kyrgyz Republic*, 2016 ONSC 4506
9. *Yaiguaje v. Chevron Corporation*, 2013 ONSC 2527 (S.C.J.), rev'd 2013 ONCA 758, aff'd 2015 SCC 42
10. *Chevron Corporation v. Steven Donziger, et al.*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014)
11. *Clarkson Co. Ltd. v Zhelka et al.*, [1967] 2 O.R. 565 (H.C.)
12. *Cunningham v. Hamilton*, [1995] A.J. No. 476 (C.A.)
13. *Fairview Donut Inc. v. TDL Group Corp.*, 2012 ONSC 1252, aff'd 2012 ONCA 867, leave to appeal ref'd [2013] S.C.C.A. No. 47
14. *Fletcher v. Atex, Inc*., 68 F.3d 1451, 1456 (2d Cir. 1995)
15. *Hogarth v. Rocky Mountain Slate Inc.*, 2013 ABCA 57
16. *International Trademarks Inc. v. Clearly Canadian Beverage Corp.*, [1999] B.C.J. No. 117 (S.C.)
17. *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. 2
18. *McAnaney v. Astoria Fin. Corp.*, 665 F. Supp. 2d 132 (E.D.N.Y. 2009)
19. *Meditrust Healthcare Inc. v. Shoppers Drug Mart*, [2001] O.J. No. 2790, rev'd on other grounds [2002] O.J. No. 3891 (C.A.)
20. *Nevsun Resources Ltd. v. Delizia Ltd.*, 2016 FC 393
21. *Salomon v. Salomon & Co.*, [1897] AC 22 (H.L.)
22. *Sunridge Gold Corp. v. Delizia Ltd.*, 2016 FC 392

23. *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, [1996] O.J. No. 1568 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.)

24. *Upjohn Co. v. Syntro Corp.*, Civ. No. 89-107, 1990 U.S. Dist. LEXIS 11512

25. *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp*, 751 F.2d 117 (2d Cir. 1984)

SCHEDULE "B": TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44

Control

2. (3) For the purposes of this Act, a body corporate is controlled by a person or by two or more bodies corporate if

(a) securities of the body corporate to which are attached more than fifty per cent of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those bodies corporate; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

* * *

Subsidiary body corporate

2. (5) A body corporate is a subsidiary of another body corporate if

(a) it is controlled by

(i) that other body corporate,

(ii) that other body corporate and one or more bodies corporate each of which is controlled by that other body corporate, or

(iii) two or more bodies corporate each of which is controlled by that other body corporate; or

(b) it is a subsidiary of a body corporate that is a subsidiary of that other body corporate.

* * *

Capacity of a corporation

15. (1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

* * *

Shareholder immunity

45. (1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection 38(4), 118(4) or (5), 146(5) or 226(4) or (5).

2. *Courts of Justice Act*, RSO 1990, c. C.43

Stay of proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

3. *Companies Act*, R.S.N.S. 1989, c. 81

2.(3) A body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if

(a) voting securities of the first-mentioned body corporate carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or by or for the benefit of the other bodies corporate; and

(b) the votes carried by such securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned body corporate.

2. (4) A body corporate shall be deemed to be a subsidiary of another body corporate if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more bodies corporate each of which is controlled by that other, or

(iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

4. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Definition

17.01 In rules 17.02 to 17.06, "originating process" includes a counter-claim against only parties to the main action, and a crossclaim.

Service Outside Ontario Without Leave

17.02 A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

* * *

Judgment of Court Outside Ontario

(m) Judgment of Court Outside Ontario

…
(o) [Repealed O. Reg. 43/14, s. 6.]

Service Outside Ontario With Leave

17.03(1) In any case to which rule 17.02 does not apply, the court may grant leave to serve an originating process or notice of a reference outside Ontario.

(2) A motion for leave to serve a party outside Ontario may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country the person is or probably may be found, and the grounds on which the motion is made.

Additional Requirements for Service Outside Ontario

17.04(1) An originating process served outside Ontario without leave shall disclose the facts and specifically refer to the provision of rule 17.02 relied on in support of such service.

(2) Where an originating process is served outside Ontario with leave of the court, the originating process shall be served together with the order granting leave and any affidavit or other evidence used to obtain the order.

Motion to Set Aside Service Outside Ontario

17.06(1) A party who has been served with an originating process outside Ontario may move, before delivering a defence, notice of intent to defend or notice of appearance,

(a) for an order setting aside the service and any order that authorized the service; or

(b) for an order staying the proceeding.

(2) The court may make an order under subrule (1) or such other order as is just where it is satisfied that,

(a) service outside Ontario is not authorized by these rules;

(b) an order granting leave to serve outside Ontario should be set aside; or

(c) Ontario is not a convenient forum for the hearing of the proceeding.

(3) Where on a motion under subrule (1) the court concludes that service outside Ontario is not authorized by these rules, but the case is one in which it would have been appropriate to grant leave to serve outside Ontario under rule 17.03, the court may make an order validating the service.

The making of a motion under subrule (1) is not in itself a submission to the jurisdiction of the court over the moving party.

DANIEL CARLOS LUSITANDE YAIGUAJE ET AL. Plaintiffs	and	**CHEVRON CORPORATION ET AL.** Defendants

Court File No: CV-12-9808-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

PUBLIC FACTUM OF CHEVRON CORPORATION (MOTIONS FOR SUMMARY JUDGMENT RETURNABLE SEPTEMBER 12-16, 2016)

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