Piercing the Corporate Veil: A Canadian Perspective

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(a) Introduction

Over a century ago, the House of Lords, in the seminal case of *Salomon v. Salomon*, [1897] A.C. 22 (H.L.) recognized the "distinct legal persona" of corporations. The principle enunciated in the venerable *Salomon* decision has, over the years, become a fundamental doctrine of Canadian corporate law.[2] Accordingly, Canadian courts are generally reluctant to pierce the corporate veil and usually adhere to the *Salomon* principle.

However, in exceptional cases, Canadian courts have expressed a willingness to depart from the principle that a corporation enjoys a separate legal existence. Although the instances in which courts have pierced the corporate veil are very fact-specific, and it is often difficult to ascertain a consistent thread running through the various cases,[3] the jurisprudence yields the following categories of cases in which courts have derogated from the *Salomon* principle:[4]

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2 The distinct legal status of a corporation has been referred to by the Supreme Court of Canada as a "general rule": *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. at para. 12.

3 These principles are fluid and are applied in a very case-specific manner. While the relevant "rules" are readily identified in the abstract, their application is far more uncertain. The Canadian courts have recognized the difficulty -- and perhaps the impossibility -- of definitively identifying those situations in which the veil will be pierced:

- In *Kosmopoulos* at 10-11, Wilson J. observed that "[t]he law on...'lifting the corporate veil' and regarding the company as a mere 'agent' or 'puppet' of its controlling shareholder or parent corporation *follows no consistent principle*." [emphasis added]
- Similarly, Justice Sharpe later confirmed that the relevant principles remain in flux: "The cases and authorities...indicate that it will be difficult to define precisely when the corporate veil is to be lifted [given the] lack of a precise test." (See *Transamerica Life Ins. Co. v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.) at 433, aff'd [1997] O.J. No. 3754 (C.A.).)

More recently, in *Sarcee Gravel Products Inc v. Alberta (Worker's Compensation Board)*, [2006] A.J. No. 67 (Q.B.), the court stated that "whether a corporate veil should be lifted is usually quite fact intensive and frequently discretionary."

4 Other categories include cases where there is express statutory authorization for, in effect, piercing the veil, or cases in which integrated corporations have been treated as a single enterprise to ensure the proper working of taxation statutes. There is also a category of cases in which courts have been willing to lift the veil to further the interests of the corporations themselves.

Sometimes the courts loosely state that it is "just and equitable" to pierce the corporate veil. However, the Ontario Court of Appeal recognizes that this is not a distinct ground for lifting the corporate veil but rather is a lax, short-hand way of referring to the presence of other well-recognized and more substantively clear bases for veil-

1. where the corporation is (a) a sham, façade, alter ego, cloak or cover that is (b) used for fraudulent or manifestly improper conduct; and

2. where the corporation is clearly acting as an agent for another entity.[5]

(b) The Alter Ego Theory

In *Transamerica Life Ins. Co. v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.), the plaintiff had sued Company A for breach of contract, breach of fiduciary duty and misrepresentation -- Company A had been the "middleman" in arranging certain bad loans made by the plaintiff to third parties. In its action, the plaintiff also named Company B, the parent and 100% owner of Company A. The two entities were managed and operated independently, and had separate head offices.

Company B moved for summary judgment dismissing the claims made against it. Sharpe J. granted the request, and was affirmed by the Court of Appeal. At pp. 431-435, Justice Sharpe reviewed the classic situations which justify the piercing of the corporate veil so as to permit direct action against a parent corporation or other shareholder. He concluded that the veil will only be lifted where a corporation is so completely dominated by a shareholder/parent that it does not function independently, *and* is then used by the parent/shareholder for some fraudulent or other improper purpose:

> [T]he courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or other improper conduct. The first element, 'complete control', requires more than ownership. It must be shown that there is complete domination and that the subsidiary company does not, in fact, function independently.... The second element relates to the nature of the conduct: is there 'conduct akin to fraud that would otherwise unjustly deprive the claimant of their rights'?

The Court, moreover, rejected the contention that it had a broad discretionary power to lift the veil whenever it was "just and equitable" to do so.

Justice Sharpe's comments echo the statement of the law provided by the Court of Appeal in *Gregorio v. Intrans-Corp* (1994), 18 O.R. (3d) 527 (C.A.). In *Gregorio*, the plaintiff had purchased a truck from a dealer who had acquired the truck from a distributor which was a subsidiary of the U.S. manufacturer. The truck proved to be defective. Even though the distributor had not manufactured

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piercing: please see *Boyd v. Wright Environmental Management Inc.*, 2008 ONCA 779 at paras. 44-45; see also footnote 5.

5 The Ontario Court of Appeal has clarified that when agency law is being applied, the corporate veil is not legally being pierced but rather affirmed. More specifically, in *Dumbrell v. The Regional Group of Companies Inc.* (2007) 85 O.R. (3d) 616 (C.A.), the Court stated (at para. 80):

> The concepts of piercing the corporate veil and holding that a corporation acts as an agent for the individual who controls that corporation achieve the same result in that they both impose personal liability for what appear to be corporate actions. They achieve that result, however, in different ways. The agency relationship assumes that the corporation and the controlling mind are distinct, but that on the relevant facts the former acted as agent for the latter. Piercing the corporate veil ignores the legal persona of the corporation…

This paper will focus on the "alter ego" category of veil-piercing rather than veil-piercing based on the law of agency. However, as illustrated by the cases discussed in this paper, Canadian judges often conflate the two categories and use the term "agency" indiscriminately.

the truck, it was held liable by the trial judge because it was the alter ego of the manufacturer. The Court of Appeal ruled that the trial judge had erred in using the alter ego theory to find the distributor liable for negligent manufacture of the truck, stating (at para. 28):

> Generally, a subsidiary, even a wholly owned subsidiary, will not be found to be the alter ego of its parent unless the subsidiary is under the complete control of the parent and is nothing more than a conduit used by the parent to avoid liability. The alter ego principle is applied to prevent conduct akin to fraud that would otherwise unjustly deprive claimants of their rights.

In *801962 Ont. Inc. v. MacKenzie Trust Co*., [1994] O.J. No. 2105 (Gen. Div.), Justice Spence wrestled with the question of whether he could lift the corporate veil which separated an interrelated group of companies on the basis that they constituted a "single business enterprise" (at paras. 6-9, 25ff). After an exhaustive review of the law on point, he concluded (at para. 37):

> These decisions do not support a claim that the test in *Salomon v. Salomon* has been superseded by a new "business entity" or "single business entity" test. They merely illustrate the principle that, in particular fact situations; where the nature of the legal issue in dispute makes it appropriate to have regard to the larger business entity, the court is not precluded by Salomon from doing so. In a few cases, there are statements that the court will lift the corporate veil "where injustice would otherwise result." I am not able to conclude that such statements are intended to remove the authority of the *Salomon* principle. I think they may be more in the nature of a shorthand formulation reflecting the approach of the courts in the cases discussed above.

As such, in the view of Justice Spence, the corporate veil was only to be lifted in circumstances where the traditional criteria of agency or alter ego, generally combined with deceitful or fraudulent conduct, had been established.

The ruling of Justice Spence has been cited with approval in a number of subsequent cases which confirm that, in the absence of deceit, sham or the requisite degree of agency, an integrated group of companies will not be treated as a single enterprise -- see, *inter alia, Belsat Video Marketing Inc. v. Astral Communications Inc.* (1998), 81 C.P.R. (3d) 1 (Ont. Gen. Div.), per Rosenberg J. at 17, aff'd (1999), 81 C.P.R. (3d) 413 (Ont. C.A.); and *Hughes v. Sunbeam Corp.*, [2000] O.J. No. 4595 (S.C.J.), *per* Cumming J. at paras. 43-49.

More recent pronouncements of the Court of Appeal confirm this view. For example, in *Haskett v. Equifax Canada Inc.* (2003), 224 D.L.R. (4th) 419 (Ont. C.A.) the court stated (at para. 62):

> In order to found liability by a parent corporation for the actions of a subsidiary, there typically must be both complete control so that the subsidiary does not function independently and the subsidiary must have been incorporated for a fraudulent or improper purpose or be used by the parent as a shield for improper activity.

Haskett involved a proposed class action against two Canadian credit reporting agencies and their respective American parent companies for breach of fiduciary duty, invasion of privacy and negligence regarding the manner in which agencies reported information on consumers after their declaration of bankruptcy. The plaintiffs alleged that the policy was mandated by the parent companies. However, the court ruled that the pleadings fell short of suggesting that "the relationship of the respective related respondent corporations is that of a conduit to avoid liability, nor is there an allegation that the parent company controls the subsidiary for an improper purpose" (at para. 63).[6]

Two significant points emerge from these leading cases. First, the control which the parent corporation exercises over the subsidiary must be so overwhelming that the subsidiary is nothing more than a puppet or a sham. Secondly, there must exist some element of fraud or other improper conduct, either in the sense that the subsidiary acts in a fraudulent or improper manner, or alternatively, in the sense that the parent acted in an improper manner in creating or utilizing the subsidiary as a vehicle for escaping liability.

(c) The Agency Cases

In cases more baldly founded simply upon an assertion of agency, even in the context of a very close and dependent subsidiary/parent relationship, Canadian courts have been reluctant to allow the corporate veil to be breached.

The Ontario Court of Appeal in *Canada Life Assurance Co. v. C.I.B.C.* (1974), 3 O.R. (2d) 70 (C.A.), offered the following catalogue of factors to help determine when an agency relationship exists between a parent and subsidiary:[7]

- The capitalization of the subsidiary;
- The degree of observance of corporate formalities;
- The extent of the relationship between the business of parent and subsidiary;
- The nature and extent of the business dealings between parent and subsidiary;
- The corporate histories of both parent and subsidiary;

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6 In *Meditrust Healthcare Inc. v. Shoppers Drug Mart* (2002), 61 O.R. (3d) 786 (C.A.), the Ontario Court of Appeal expressly acknowledged that related corporations can operate as a single economic unit while simultaneously remaining distinct entities at law. More specifically, the court ruled that even though the parent corporation completely controlled its subsidiaries, such control "[did] not clothe the parent with the right to sue [for civil conspiracy] for the subsidiaries." The plaintiff's "single economic entity argument" was therefore rejected, even though the parent's control of the subsidiaries was augmented by a unanimous shareholder's agreement and reflected in the consolidated financial statements.

See also *642947 Ontario Ltd. v. Fleischer et al* (2001), 56 O.R. (3d) 417 (Ont. C.A.) at 439-40, where the court approvingly cited Justice Sharpe's comments in *Transamerica*, supra, and stated that the separate legal personality of the corporation cannot be lightly set aside. However, the court pierced the veil in this case, where an undertaking was given to the court by a company which had no assets. Otherwise, the court reasoned, undertakings would become hollow. An undertaking was tendered to the court, "which they knew was worthless, to gain an advantage. When called on to honour the undertaking, they tried to hide behind a shell company, which they controlled, to escape liability" (at para. 70).

In *Peat Marwick Thorne Inc. v. Booth*, 1999 CarswellOnt 165 (C.A.), the Ontario Court of Appeal rejected the notion that common control is sufficient to pierce the veil, stating at para. 23:

> While it is true that Booth acted as the directing mind of the various corporate entities he controlled, it does not follow that the corporations were, as the trial judge found, mere extensions of himself. If that were the case, the tests which must be met before the corporate veil can be lifted would be rendered meaningless.

7 The issue in *Canada Life* was service of documents.

- The relationship between the boards of directors and upper management personnel of parent and subsidiary; and
- The extent of the ownership of the parent in the subsidiary.

There is parallel English authority[8] which outlines a similar list of factors to consider:

- Are the profits of the subsidiary treated as the profits of the parent?
- Are the persons conducting the business of the subsidiary appointed by the parent?
- Is the parent the "head and brain" of the subsidiary?
- Does the parent govern "the adventure" of the subsidiary, and does it decide what should be done and what capital should be embarked on the venture?
- Does the subsidiary make its profits by its own skill and direction, or by the skill and direction of its parent?
- Is the parent in effectual and constant control of the subsidiary?[9]

In *Sun Sudan Oil Co. v. Methanex Corp. (*1992), 5 Alta L.R. (3d) 292 (Q.B.) the Alberta court refused to pierce the corporate veil where:

- the subsidiary had no employees, its work was exclusively conducted by the parent's employees,
- the subsidiary "had no independent direction,"
- there was "an almost total overlap between the officers and directors of the two corporations," and
- the parent was in constant and effectual control, as all budget decisions were made by the parent.

The court stated that the presence of the *Smith, Stone & Knight* criteria was not determinative. It was only one aspect of the test. The second prong of the test involved answering for what purpose and in what context the subsidiary's separate existence is being challenged. The court noted that the contracting parties had been aware that subsidiaries were being used to enter into the contract in dispute and were sophisticated enough to address any consequent risk, such as by obtaining a "parental guarantee."

Similarly, the decision in *Bank of Montreal v. Canadian Westgrowth Ltd.* (1990), 72 Alta. L.R. (2d) 319 (Q.B.), aff'd (1992) 2 Alta. L.R. (3d) 221 (C.A.) shows how difficult it may be to overcome *Salomon* based on the "agency" exception. The plaintiff Bank in this case had taken as loan security an assignment of the defendant's interest under a guaranteed minimum rental agreement. There was a shortfall in the guaranteed rentals and the Bank sought judgment against the defendant and the parent corporation of the defendant. The court ruled that the degree of agency required to pierce the corporate veil was not satisfied despite the following impressive list of factors:

- the officers and directors of the corporations were the same,

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8 *Smith, Stone & Knight Ltd. v. Birmingham Corp.*, [1939] 4 All. E. R. 116 (K.B.).

9 Please note, however, that not all of the criteria found in either *Smith, Stone & Knight Ltd. v. Birmingham* or in *Canada Life v. CIBC* need be met in order to find the requisite amount of control, nor will the satisfaction of all six criteria necessarily lead to the conclusion that such control exists, as discussed below.

¬ the meetings of their two boards were held simultaneously,

¬ the subsidiary was funded entirely by the parent and the subsidiary's assets were purchased with moneys loaned by the parent, interest free and with no terms for repayment,

¬ most of the correspondence and dealings were with the parent, and

¬ the parent corporation provided management services to the subsidiary without costs.

In refusing to pierce the corporate veil, Mr. Justice Brennan, in the trial decision, stated (at 327) that the facts were ". . . nothing more than one would expect to find in the operation of two associated companies . . .". The decision was affirmed on appeal, where the court stated that "pretty clear – possibly overwhelming – evidence of agency" would be required in order to pierce the veil. Moreover, the appeal court found it significant that the parent's name had deliberately been taken off the contract.

In the *Canada Life* case, the facts were insufficient to justify a finding that there existed "…such an intimate and immediate domination of the motions of the subordinate company that it can be said that the latter has, in the true sense of the expression, no independent functioning of its own:"

¬ company "A" had up to a 96.7% share ownership in company "B",

¬ company "B" held itself out as an "affiliate" of the company "A,"

¬ certain individuals occupied key senior executive positions on both companies,

¬ company "B" provided advice, facilities and personnel to company "A",

¬ there was a significant amount of business transactions between the two companies, and

¬ the prospectus of company "B" stated that it offers customers access to the services of company "A".

Accordingly, the court ruled that company "B" was not the agent or alter ego of company "A" (p. 87).

Similarly, in *Kentucky Fried Chicken Canada v. Scott's Food Services Inc. (*1997), 35 B.L.R. (2d) 21 (Ont. Gen. Div.), reversed on other grounds (1998), 41 B.L.R. (2d) 42 (Ont. C.A.), the court refused to pierce the corporate veil on the basis of agency where a licensor had argued that the parent corporation was bound by the terms of a license agreement because the subsidiary executed the agreement as its alter ego. The court engaged in a factor-by-factor analysis of the test set out in *Smith, Stone & Knight*, *supra*. In particular, the court noted that while the profits of the subsidiary were treated in a consolidated balance sheet as the profits of the subsidiary, there was no evidence that the profits were "automatically siphoned off" by the parent as opposed to being used for the subsidiary's operations.

Moreover, although the subsidiary's president was appointed by the parent, the daily operations were performed by other employees. Although the parent was the "brains" behind the long range strategy and plans of the company, the day to day operations were, once again, not governed by the parent. The fact that the parent made the "major policy and financial decisions" was also not determinative, as this was "normal practice." Despite the fact that major policy, financial and capital spending decisions were made by the parent, the profits of the subsidiary could not be said to be directly traceable to the skill and direction of the parent. The control and strategy of the subsidiary by the parent was stated to be typical of such relationships.

In the same vein, in *Chuck Corothers Building Materials Ltd. v. Royal North Industries Ltd.*, 1997 CarswellNWT 47 (N.T.S.C.), the court refused to lift the corporate veil when the plaintiff attempted to collect from the parent corporation money owed to it by the subsidiary. The subsidiary had defaulted on a line of credit and the plaintiff was unable to enforce a judgment against it. The court held that although the subsidiary was 99% owned by the parent, the plaintiff had not been misled regarding the separate status of the two corporations.

The decision in *Robinson v. Daewoo Canada Ltd.*, 2000 CarswellOnt 3420 (S.C.J.), aff'd 2001 CarswellOnt 2047 (C.A.) arrives at a similar conclusion. In *Daewoo*, the plaintiff's husband's companies had entered into agreements with company "A," which later became insolvent. The defendant company's board then approved an indirect takeover of the insolvent company. Company "A" then terminated its agreements with the husband's companies before it was taken over. The plaintiff, as assignee of the husband's companies' claims, brought an action against the defendant on the basis of alter ego liability. The court ruled that, at the time of the alleged wrong (i.e. the termination of the agreements), there was insufficient evidence "to prove the degree of ownership and domination necessary to support a finding of alter ego liability" (at para. 32). Moreover, the court noted the absence of an underlying cause of action on which a claim for alter ego liability could "latch." The parent had not diverted funds from the subsidiary or sought to conceal its assets. At most, the parent had operated the subsidiary in a way that it would not earn a profit. The element of fraud or conduct akin to fraud that underpins alter ego liability was therefore absent.

On a similar note, in *Noel Developments Ltd. v. Metro-Can Construction (HS) Ltd.* (1999), 50 C.L.R. (2d) 117 (B.C.S.C.), the court considered whether a parent company was a proper defendant in various claims arising from a construction dispute, where the subsidiary was the *prima facie* contracting party. A management agreement was in place between the parent and the subsidiary which demonstrated that "in practically every conceivable way, the subsidiary was run by the parent" (at 122-23). In particular, the parent was responsible for:

- securing the contract (including providing all estimating services);
- contract management from start to completion; and
- lending of the necessary start-up capital.

The parent owned all of the shares of the subsidiary. Moreover, all of the personnel of the subsidiary were officers or employees of the parent.

However, as the defendant knew that the subsidiary was signing the contract and as there was no fraud or misconduct on the part of the parent, the court ruled that the *Salomon* doctrine precluded liability by the parent.

In *Harrington v. Dow Corning Corp.* (1998), 55 B.C.L.R. (3d) 316 (S.C.), in the context of a class proceeding arising from injuries sustained from breast implants, the court rejected the contention that Dow Corning manufactured and distributed the allegedly defective product as agent for Dow Chemical. Although Dow Corning was 50% owned by Dow Chemical, Dow Chemical had a right to appoint one-third of Dow Corning's directors and Dow Corning regularly paid dividends to its parent, the court noted that the two corporations had separate auditors and published audited financial statements separately. Moreover, Dow Corning generated most of its funds internally and from third party lenders. In additional, only 1% of Dow Corning's sales were to its parents. Based on these facts, the court concluded that representative plaintiff's "alter ego" argument was "untenable" (at 318).

The decision in International *Trademarks Inc. v. Clearly Canadian Beverage Corp. (*1999), 47 B.L.R. (2d) 193 (B.C.S.C.) is also relevant. *International Trademarks* involved a breach of contract claim in British Columbia against a foreign wholly-owned subsidiary and its parent B.C. company. The parent corporation sought a stay of the B.C. action on jurisdictional grounds. The court, applying the factors in *Smith, Stone & Knight*, *supra*, concluded that the “stringent” test of agency was not met, and therefore jurisdiction over the parent corporation was not established. Accordingly, the stay was granted.

In particular, the court noted that:

- the profits of the subsidiary were not passed on to the parent (the subsidiary had been mostly profitless);
- “the mind and management” of the subsidiary, for tax purposes, resided in Barbados;
- the subsidiary’s corporate plan was developed by its own corporate officer (although it was placed before the parent’s Board as well);
- the subsidiary’s profit was derived from its international and marketing activities;
- the subsidiary had its own Board of Directors and auditors;
- the subsidiary carried out its own marketing operations; and
- the subsidiary ran its day-to-day business.

These above factors suggesting independence were held to outweigh the following factors suggesting a relationship of agency:

- the parent and subsidiary shared a Vice-President for some time (“the fact that one individual holds a senior position in two companies does not necessarily mean that those two companies are being operated together” (at 197));
- the parent initially “funded” its subsidiary;
- the parent company set long-range policy goals and directed the subsidiary to act according to these policies; and
- the subsidiary periodically reported to its parent.

These principles continue to be applied in Canada. In *Location Citernes Experts Inc. v. G&S Transport*, 2007 CanLII 44349 (Ont. S.C.J.) at para. 46, for instance, the court reaffirmed that “…a subsidiary, even a wholly owned subsidiary, will not be found to be the alter ego of its parent, unless the subsidiary is under the complete control of the parent and is nothing more than a conduit used by the parent to avoid liability. It has been further stated that the alter ego principle is to be applied to prevent conduct akin to fraud that would otherwise unjustly deprive claimants of their rights [citing *Gregorio*, *supra*].”

Canadian courts are also reluctant to pierce the corporate veil where another remedy may be available against related companies, highlighting its status as a remedy of last resort. In *XY, LLC v. Zhu*, 2013 BCCA 352, the creditor of an insolvent corporation, JingJing, unsuccessfully sought to pierce the corporate veil and take recourse as against other entities in the same group of companies. The Court of Appeal declined to take the “extreme step of notionally collapsing the separate identity of the…[group] into one” (at para. 97). However, it remitted the issue back to the Superior Court for trial on the basis that the creditor could claim unjust enrichment against the group of companies instead. The unjust enrichment claim could stand on the assertion that the group had contrived the insolvency of JingJing through notional transactions.

There have been instances where the courts have been prepared to pierce the corporate veil based on an agency relationship between a parent and subsidiary corporation. The decision in *Kristian Equipment Ltd. v. Campbell West Ltd.* [1992] 2 W.W.R. 69 (Sask. Q.B.), aff'd [1993] 4 W.W.R. 600 (Sask. C.A.) provides one such example. In *Kristian Equipment*, the plaintiff brought an action for damages for breach of contract against the subsidiary and the parent, even though the contract was only with the subsidiary. The court ruled that the parent had control of the subsidiary, in which it owned 80% of the shares, at the material time. The only other shareholder had no equity in the subsidiary. Indeed, the subsidiary was only able to operate due to an infusion of funds provided by its parent. The court ruled that the actions of the subsidiary were the actions of the parent in the transaction.

A more recent example from Ontario is the decision in *1005633 Ontario Inc. v. Winchester Arms Ltd.* (2000), 8 B.L.R. (3d) 176 (Ont. S.C.J.), aff'd 2000 CarswellOnt 4748 (C.A.). In *Winchester Arms*, the plaintiff franchisees had entered into a franchise and construction agreement with a corporate franchisor. After difficulties, the plaintiffs sought to terminate the agreements. Pending litigation, the individual defendants made the corporate franchisor and related companies judgment proof. The court ultimately awarded the plaintiffs' damages against all of the corporate defendants, citing the fact that they were closely related -- their funds were co-mingled and the same individual defendants sat on the Boards of the companies. However, the court, knowing that the companies now lacked assets of any substance, went a step further and also found the individual defendants jointly and severally liable. In effect, the corporate veil was pierced twice -- as between the corporate defendants and between the corporate defendants and the individual defendants who used the companies as "puppets." The judgment was affirmed on appeal.

(d) The SCC May Speak

In *Yaiguaje v. Chevron Corporation*, 2013 ONCA 758, the Ontario Court of Appeal permitted a proceeding to enforce a foreign judgment against Chevron Canada, the Canadian subsidiary of Chevron U.S., although the foreign judgment was obtained only against the latter. The judgment in question was a $9.1 billion award from an Ecuadorian court finding Chevron U.S. liable for significant environmental damage to indigenous peoples' lands, waterways, and way of life. The motions court had found that since Chevron Canada is a separate legal entity from Chevron U.S., and the latter owns no assets in Canada, there was no practical reason to continue with the enforcement action in Ontario against Chevron Canada. It stayed the enforcement action, saying that it was preferable that the judgment be enforced in the U.S. against Chevron U.S.

The Court of Appeal disagreed, saying that Chevron Canada's "economically significant relationship" with Chevron U.S. was a reason to take jurisdiction over Chevron Canada in the enforcement action. It appears, then, that the Court of Appeal's decision to assume jurisdiction over Chevron Canada was partly based on piercing the corporate veil between the foreign judgment debtor and its Canadian subsidiary. It held that the parties were to proceed to a hearing on the merits of the enforceability of the judgment. The decision in *Chevron* is reminiscent of a recent decision of the Ontario Superior Court of Justice in *Choc v. Hudbay Minerals Inc.*, 2013 ONSC 1414, which also signals a greater preparedness of Ontario courts to implicate related entities in wrongdoing abroad. *Chevron* has been appealed to the Supreme Court of Canada, with the decision currently under reserve.

(e) Conclusion

The above cases illustrate that, in Canada, the decision to pierce the corporate veil is subject to judicial discretion and is inherently a contextual exercise. Although the courts have laid down various factors to guide their exercise of discretion, the factors are not conclusive. The courts, although generally reluctant to do so, will occasionally pierce the veil on the basis of alter ego liability where the separate legal personality of a corporation is used to perpetrate a fraud or similar conduct which offends judicial sensibilities. However, mere control over another corporation will not, in and of itself, prompt the court to disregard the generally sacrosanct principle established in *Salomon*.

Although some recent jurisprudence suggests that Canadian courts may be willing to move toward a more liberal application of the test for veil-piercing, the Supreme Court of Canada's imminent decision in the *Chevron* case may determine whether the virtually sacrosanct status of the *Salomon* principle will be reaffirmed or relaxed.[10]

[10] It will also be interesting to see whether the Supreme Court of Canada will refer to recent important English cases on veil-piercing, *Prest v. Petrodel Resources Ltd*, [2013] UKSC 34 and *VTB Capital Plc v. Nutritek International Corp.*, [2013] UKSC 5, which have not yet received much judicial consideration in Canada.

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