

Short Briefing Memo from the Amazon Defense Coalition of Ecuador (FDA)

Showdown in Toronto Courts: Indigenous Peoples v. Chevron *Chevron attempts to hide Canadian assets in critical hearing*

Media event with Indigenous leaders and lawyers: April 16, 11 a.m., downtown (Location TBD)

Court hearing: April 17-18, 10 a.m., Ontario Court of Appeal, 130 Queen Street West, Toronto

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Background -- Ecuador

Chevron operated in Ecuador under the Texaco brand from 1964 to 1992. During that time, it deliberately dumped billions of gallons of toxic oil waste into waterways that crisscross Indigenous ancestral lands. The company also abandoned roughly 1,000 open-air toxic waste pits that continue to leech toxins into soils and groundwater. Many consider the damage to be the world's worst oil pollution disaster.

Led by the grass roots Amazon Defense Coalition of Ecuador (FDA), the Indigenous peoples and affected farmer communities filed a class action suit against Texaco in New York. Chevron (which bought Texaco in 2001) insisted the trial be held in Ecuador and accepted jurisdiction there. The case was shifted to Ecuador in 2002 and the trial began in 2003.

In 2011, after years of Chevron-orchestrated delays, a trial judge ruled in favour of the Indigenous peoples and ordered the oil company to pay \$9.5b in remediation damages (now \$12b with interest). Chevron threatened the communities with a "lifetime of litigation" if they persisted. Two appellate courts in Ecuador, including the country's Supreme Court, unanimously affirmed the judgment.

Chevron had liquidated its assets in Ecuador, forcing the Indigenous peoples to go to Canada to enforce their judgment. Chevron has an estimated \$15b to \$25b of assets in Canada held by its 7th-tier subsidiary, Chevron Canada. This is more than enough to pay the entirety of the damages.

Rather than pay its liability, Chevron has hired at least 2,000 legal personnel to attack the Indigenous peoples and their lawyers. Largely due to these tactics, the case has lasted 24 years.

Those impacted by Chevron's pollution include Indigenous peoples (Siona, Cofan, Secoya, and Huaorani) and leaders of farmer communities who inhabit Ecuador's Northern Amazon region. Chevron's oil waste polluted traditional lands and waterways, destroyed farms, killed livestock, and continues to cause cancer, birth defects, and numerous other health problems. Those affected are seeking funds to provide health care, a comprehensive clean-up, and support for the restoration of traditional lifestyles.

The Stakes In Canada

In Canada, Chevron's latest judgment-evasion tactic is to claim that Chevron Canada's assets cannot be used to pay the debt of Chevron even though Chevron takes all profits from its wholly-owned subsidiary. Chevron's claim raises hugely important issues for Indigenous peoples in Canada and worldwide; under the company's formulation, all a corporation would have to do to avoid paying a court judgment to those it harmed would be to place its assets in a wholly-owned subsidiary.

Chevron's claim – which is at core a plea for blanket impunity for its environmental abuses – will be tested by a three-judge panel at the Ontario Court of Appeal on April 17 and 18. The same court has already ruled twice in favour of the Ecuadorian plaintiffs on other issues raised by Chevron.

Separately, a Canadian trial court is addressing a motion filed by the Canadian Broadcasting Company and two environmental groups to lift a Chevron confidentiality order that prevents public viewing of large portions of the court filings in the case. The Ecuadorians believe Chevron is abusing the confidentiality order to hide embarrassing information, including evidence that Chevron Canada is being used by Chevron to funnel billions of dollars of payments to foreign governments.

Legal Issues Facing Canada's Appellate Courts

The underlying case, *Aguinda v. ChevronTexaco*, is widely viewed as one of the most important corporate accountability and Indigenous rights litigations in history. The Ecuadorian court decision represents the first time that Indigenous peoples and farmer communities have won a multi-billion dollar judgment against an oil company.

The Ontario Court of Appeal will address several issues with national and global implications, namely:

- Whether private corporations can obtain effective impunity for their human rights violations by blocking Indigenous peoples from collecting court judgments from their wholly-owned subsidiaries, in an era when the rights of Indigenous peoples rights are becoming increasingly central to Canadian and international jurisprudence;
- Whether international human rights instruments, including the U.N. Declaration on the Rights of Indigenous Peoples, can be used to interpret Canadian law and the Canadian Constitution in the context of the judgment enforcement action against Chevron;
- Whether Canadian courts will respect principles of international legal comity by enforcing an Ecuadorian judgment against a large American corporation, when that judgment engages the protection of the rights of Indigenous peoples;
- Whether Canada's *Execution Act* – which allows for a creditor to collect a debt – can be applied to an asset seizure of a Canadian subsidiary of a foreign parent company that has engaged in environmental/corporate wrongdoing in a foreign jurisdiction.

Ecuador's Front for the Defense of the Amazon (FDA)

The Amazon Defense Coalition of Ecuador, or Frente de Defensa de la Amazonia (FDA), is the organizational entity that, along with several named plaintiffs, brought the lawsuit against Chevron. The FDA remains the sole beneficiary of the judgment and is responsible for the recovery of funds in Canada and elsewhere. The FDA's current president, Carmen Cartuche, will be attending the court hearing along with several Indigenous leaders from Ecuador and Canada. For purposes of judgment enforcement, the FDA represents the interests of all 30,000 Indigenous peoples and farmer communities in Ecuador's "Oriente," the region impacted by Chevron's sub-standard operational practices.

Ecuador's national Indigenous federation (CONAIE) recently signed a joint protocol with the FDA and Canada's national Indigenous federation, the Assembly of First Nations, to hold Chevron accountable for environmental harms in both countries. Canada's National Chief Perry Bellegarde, former Canada National Chief Phil Fontaine, and Grand Chief Ed John have all criticized Chevron for its contamination in Ecuador and expressed support for the FDA and all affected Indigenous peoples in their campaign to hold Chevron accountable.

Amazon Defense Coalition of Ecuador/Frente de Defensa de la Amazonia (FDA)/April 2018