

**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 CANADA FINANCE LIMITED

Defendants

NOTICE OF MOTION

The Defendant, Chevron Corporation (“Chevron”), will make a motion to Justice G. Hainey, the judge appointed to case manage this proceeding, on a date to be set by Justice Hainey, or as soon after that time as the motion can be heard, at the courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order dismissing the action for being vexatious and an abuse of the process of the court pursuant to Rule 21.01(3)(d) of the Ontario *Rules of Civil Procedure*.
2. In the alternative, an Order staying the action pursuant to Rule 21.01(3)(d) of the Ontario *Rules of Civil Procedure* and/or section 106 of the Ontario *Courts of Justice Act*.

3. Further, or in the alternative, an Order dismissing, or alternatively staying, the action for non-payment of costs orders pursuant to Rules 57.03(2) and 60.12 of the Ontario *Rules of Civil Procedure*.
4. Costs of this motion.
5. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiffs' action asks the Ontario court to recognize and enforce a judgment against Chevron that was obtained by corrupt and fraudulent means from the courts of Ecuador (the "Ecuadorian Judgment").
2. Courts and authorities in the United States and other countries, and an international arbitration tribunal, have determined that the Ecuadorian Judgment is fraudulent – the product of fraud, judicial bribery and corruption, and the result of a criminal scheme perpetrated by the Plaintiffs' lawyers and agents in the United States, Ecuador, and elsewhere.
3. It would be an abuse of process for the Plaintiffs to re-litigate the factual issues regarding the fraud, bribery and corruption underlying the Ecuadorian Judgment, which have been adjudicated in favour of Chevron and are fatal to the Plaintiffs' action. Further, the Plaintiffs are bound by issue estoppel to the findings of the US courts.
4. The Plaintiffs' previous attempts to seek recognition and enforcement of the Ecuadorian Judgment in Brazil and Argentina were rejected by the courts of those countries.

5. The current action is an attempt by the Plaintiffs to use the Ontario courts for vexatious, abusive and improper purposes, including:
 - (a) to end-run US court orders that enjoin enforcement proceedings in Chevron's home jurisdiction because the judgment was found to be, among other things, a central part of a criminal scheme to extort Chevron; and
 - (b) to judgment launder, namely, to attempt to bolster the fraudulent Ecuadorian Judgment with a Canadian judgment.
6. This action is directed by many of the same US and Ecuadorian lawyers, agents and representatives of the Plaintiffs who fraudulently procured the Ecuadorian Judgment. This action is a continuation and part of their corrupt and fraudulent scheme.
7. The fundamental premise of the Plaintiffs' proceeding here was to seek enforcement of the Ecuadorian Judgment against the shares and assets of an indirect subsidiary of Chevron, and that attempt has now been rejected by the Court after all appeals.
8. Chevron has no assets in Canada, and there is no reasonable prospect that Chevron will ever have assets in Canada.
9. It would be a waste of Ontario's judicial resources for the action to continue.
10. An international arbitral tribunal (the "BIT Tribunal") held that the issuance and enforcement of the Ecuadorian Judgment violated international law and that the judgment should thus not be recognized or enforced by the courts of other countries. It would be contrary to international comity and international public policy for Canadian courts to recognize or enforce the Ecuadorian Judgment.

11. The Republic of Ecuador has recognized its obligations under the award of the BIT Tribunal, including by complying with orders requiring notification to the Chief Justice of Canada and the federal Minister of Justice of the BIT Tribunal's declarations and orders, including the unenforceability of the Ecuadorian Judgment.
12. By continuing to seek recognition and enforcement of the Ecuadorian Judgment in this proceeding, the plaintiffs are seeking to use the Ontario courts as an unwitting facilitator of Ecuador's internationally wrongful acts, and to have the Ontario courts be in conflict with the conclusions of the BIT Tribunal, which found that international law requires that enforcement of the Ecuadorian Judgment be precluded.
13. Despite demand, the Plaintiffs have failed to pay costs orders made against them in this proceeding in favour of Chevron, Chevron Canada Limited, and Chevron Canada Capital Company.
14. It is in the interests of justice and judicial economy for this Court to dismiss the action or, alternatively, to permanently stay it.
15. Sections 106 and 140(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.
16. Rules 1.04, 1.05, 21.01(3)(d), 37, 57.03(2) and 60.12 of the *Rules of Civil Procedure R.R.O. 1990, Reg. 194*.
17. This Court's inherent jurisdiction to control its own procedure.
18. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit(s), to be delivered.
2. Pleadings and proceedings.
3. Such further and other evidence as counsel may advise and this Court may permit.

May 10, 2019

OSLER, HOSKIN & HARCOURT LLP
Suite 6200, 100 King Street West
P. O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Larry Lowenstein (LSO# 23120C)
(416) 862-6454 (direct line)
llowenstein@osler.com

Laura K. Fric (LSO# 36545Q)
(416) 862-5899 (direct line)
lfric@osler.com

(416) 862-6666 (fax)

Lawyers for the Defendant,
Chevron Corporation

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

Clarke Hunter, Q.C.
(403) 267-8292 (direct line)
Clarke.Hunter@nortonrosefulbright.com

Robert Frank (LSO#35456F)
(416) 202-6741 (direct line)
Robert.Frank@nortonrosefulbright.com

(416) 216-3930 (fax)

Lawyers for the Defendant,
Chevron Corporation

TO: LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

Alan J. Lenczner, Q.C. (LSO#: 11387E)
(416) 865-3090 (direct line)
alenczner@litigate.com

Brendan Morrison (LSO#: 61635B)
(416) 865-2842 (direct line)
bmorrison@litigate.com

416-865-9010 (fax)

Lawyers for the Plaintiffs

AND TO: KOSKIE MINKSY LLP
900-20 Queen Street West
Toronto, ON M5H 3H3

Kirk Baert (LSO# 309420)
(416) 595-2092 (direct line)
kmbaert@kmlaw.ca

Celeste Poltak (LSO #46207A)
(416) 595-2701
cpoltak@kmlaw.ca

(416) 204-2889 (fax)

Lawyers for the Plaintiffs

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and

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

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PROCEEDING COMMENCED AT TORONTO

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**OSLER, HOSKIN &
HARCOURT LLP**

1 First Canadian Place
P.O. Box 50
Toronto ON M5X 1B8

Larry P. Lowenstein (LSO#
23120C)

Laura K. Fric (LSO# 36545Q)

Tel: (416) 862-6454

Fax: (416) 862-6666

lloenstein@osler.com

lfric@osler.com

**NORTON ROSE FULBRIGHT
CANADA LLP**

Royal Bank Plaza
South Tower, Suite 3800
200 Bay Street
Toronto ON M5K 1H1

Clarke Hunter, Q.C.

Robert Frank (LSO# 35456F)

Tel: (403) 267-9564

Fax: (403) 264-5973

clarke.hunter@nortonrosefulbright.com

robert.frank@nortonrosefulbright.com

Lawyers for the Defendant, Chevron Corporation