

Open Letter on the Canadian Bar Association's intervention in *Chevron*

We, the undersigned members of the Canadian Bar Association, and former members who have felt compelled to resign over this issue, are writing to express our deep concerns about the CBA's intervention in the Supreme Court of Canada in the case of *Chevron Corporation v. Yaiguaje*.

This case involves efforts by Indigenous villagers in Ecuador to have Canadian courts enforce, against Chevron's assets in Canada, a multi-billion dollar pollution judgment obtained in a court in Ecuador. The Ontario Court of Appeal unanimously accepted that the villagers can seek enforcement of the judgment in Canadian courts. Chevron is appealing to the Supreme Court. The CBA has decided to intervene in the Supreme Court to oppose enforcement of the judgment, based on arguments regarding jurisdiction and piercing the corporate veil.

When the CBA intervenes in a case, it is taking a position on behalf of the legal profession as a whole. That cannot be done lightly. The process for making such a decision is critical, as it must ensure that a sufficient consensus exists within the profession in support of the CBA's position.

In our view, the process by which the CBA decided to intervene in this case was seriously flawed. The intervention was approved by the Executive against the advice of its own Legislation and Law Reform Committee, the Civil Litigation "section" (the name for a practice-specific group of lawyers), and the unanimous opposition of the National Sections Council Executive. Relevant sections, including Aboriginal Law; Environmental, Energy & Resources Law; and Constitutional & Human Rights were not consulted. The firm selected to conduct the intervention acts for Chevron in other matters. Recently, following complaints, the issue went to a last minute meeting of the National Board but members were denied the right to raise "process concerns". This is not a legitimate way for the CBA to approve an intervention.

This intervention is also contrary to the CBA's own intervention regulation. This regulation requires either that the intervention be consistent with an existing CBA policy (there was none here), that it be a matter of compelling public interest that the CBA formally adopts as policy before authorizing the intervention (the CBA has produced no such policy, despite being asked for one), or that it be a matter of special significance to the legal profession (again, none here). There is no question that the *Chevron* case raises issues of significance. It could clarify the law in this area, and affect how lawyers, particularly corporate counsel, advise their clients. But that is true of almost any case before the Supreme Court. The CBA's intervention regulation requires more than important legal issues to justify an intervention.

The CBA can hardly be oblivious to the broader implications of intervening in a case in which vulnerable people face tremendous odds in their effort to seek redress for the harm caused to their lands and interests by environmental pollution. If it wants to be broadly representative of the profession in Canada, it has not only to limit its interventions to cases where there is a deep consensus. It also has to ensure that its position does not clash so jarringly with the core values of the bar, including our commitments to access to justice and to the public interest. Chevron can quite readily make its arguments on the corporate veil and the application of the judgments of foreign jurisdictions. It has the means to do so and hardly needs what is only a fraction of the Canadian Bar Association to support its arguments.

We want to express our deep disappointment with the CBA's decision to pursue this intervention. In doing so, it purports to speak for all of us; it does not. We ask that the CBA immediately reverse its decision to intervene.