CITATION: *R. v. Cordoba,* 2016 ONCJ 13

**IN THE MATTER OF**
**The Compulsory Automobile Insurance Act,**
**R.S.O. 1990, c. C.25**

Between

**Her Majesty The Queen In Right Of Ontario**

prosecutor

and

**Edgardo Cordoba**

defendant

**Ontario Court of Justice**
**Brampton, Ontario**

**Quon J.P.**

## Reasons for Judgment

Charge: s. 2(1)(a) – "owner operate motor vehicle on highway without insurance"

**Ex-parte Trial held:** **October 1, 2015**
**Closing Argument:** **December 4, 2015**

**Judgment released:** **January 8, 2016**

**Counsel:**

**D. Burgess, provincial prosecutor**

**J. Lopez, legal representative for the defendant (who only appeared on December 4, 2015, during the closing argument stage of the proceeding)**

## Cases Considered or Referred To:

642947 Ontario Ltd. v. Fleischer (2001), 56 O.R. (3d) 417 (O.C.A.), per Abella, Laskin, and Rosenberg JJ.A.

Honan v. Gerhold, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582 (S.C.C.).

Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193 (O.C.A.), per Kelly, Arnup, and Howland, JJ.A.

Kosmopoulos v. Constitution Insurance Co. Of Canada (1987), 34 D.L.R. (4th) 208 (S.C.C.).

Macaura v. Northern Assurance Co., [1925] A.C. 619 (H.L.).

Olympia & York Developments Ltd. and City of Toronto (1980), 29 O.R. (2d) 353, 113 D.L.R. (3d) 695 (O.H.C.J. (Div. Ct.)), per Pennell, Robins, and Steele, JJ.

R. v. Alpha Manufacturing Inc., [2005] B.C.J. No. 1185 (B.C.S.C.).

R. v. Bray, [2010] O.J. No. 1310 (O.C.J.), per Dechert J.P.

R. v. Briscoe, [2010] 1 SCR 411 (S.C.C.).

R. v. Isaac, [1984] 1 S.C.R. 75 (S.C.C.).

R. v. Rogo Forming Ltd. (1980), 56 C.C.C. (2d) 31 (Ont. Prov. Ct.), per Vanek J.

R. v. Sherman, [1972] 1 O.R. 503, 5 C.C.C. (2d) 247 (O.C.A.), per Mcgillivray, Jessup, and Brooke, JJ.A.

R. v. Thatcher, [1987] 1 S.C.R. 652 (S.C.C.).

R. v. Varnicolor Chemical Ltd. (1992), 9 C.E.L.R. (N.S.) 176 (Ont. Prov. Div.), per Woodworth J.P.

R. v. Vu, [2012] S.C.J. No. 40 (S.C.C.).

R. v. Zwicker, [1994] O.J. No. 197 (O.C.A.), per Lacourcière, Robins, and Finlayson JJ.A.

Rockwell Developments Ltd. v. Newtonbrook Plaza Ltd. (1972), 27 D.L.R. (3d) 651 (O.C.A.), per Gale, C.J.O., Arnup, J.A., and Hughes, J. (Ad Hoc).

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Salomon v. Salomon & Co. Ltd., [1897] A.C. 22 (H.L.).

Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (c.o.b. Energyshop Consulting Inc./Powerhouse Energy Management Inc.), [2014] O.J. No. 476 (O.C.A.), per Goudge, Watt, and Pepall JJ.A.

Tesco Supermarkets Ltd. v. Nattras (1971), 2 All E.R. 127 (H.L.).

Wynne v. Dalby, [1913] O.J. No. 9 (Supreme Ct. of Ont. (App. Div.)), per Meredith C.J.O., Magee, and Hodgins JJ.A. and Sutherland J.

## Statutes, Regulations and Rules Cited:

Business Corporations Act, R.S.O 1990, c. B.16, ss. 15, 345, 92(1), 108(5), and 243.Canadian

Environmental Protection Act, 1999, S.C. 1999, c. 33, s. 280.

Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25, ss. 1(1), 2(1), 2(1)(a), 2(3), and 2(7).

Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A., ss. 1, 2, 2(1), 2(2), 116(3), 116(5), and 117.

Criminal Code, R.S.C. 1985, c. C-45, s. 21.

Employment Standards Act, 2000, S.O. 2000, c. 41, ss. 136, 137, and 137(1).

Fisheries Act, R.S.C., 1985, c. F-14, s. 78.2.

Insurance Act, R.S.O. 1990, c. I.8, ss. 251 and 265.

Legislation Act, 2006, S.O. 2006, c. 21, Sched. F, ss. 87 and 92(1).

Provincial Offences Act, R.S.O. 1990, c. P.33, s. 77(1) and 77(1)(b).



## Authorities Considered or Referred To:

Archibald, T., Jull, K., and Roach, K. Regulatory And Corporate Liability: From Due Diligence To Risk Management (Aurora, Ontario: Canada Law Book Inc., 2007).

Black, H.C. Black's Law Dictionary, 4th ed. St. Paul, Minn.: West Publishing, 1968, "owner" at pp. 1259 to 1261.

Velasco, J., "Shareholder ownership and primacy", (2010) U. of Illinois Law Rev. 897.

Smyth, J.E., Soberman, D.A., and Easson, A.J. The Law and Business Administration in Canada, 11ed. (Toronto, Ontario: Pearson Canada Inc., 2007).

## Exhibits Entered:

Exhibit #1 - certified Ministry of Transportation document dated 2014/08/22, indicating the registered owner of a commercial white-coloured 2007 Dodge van, with V.I.N. WD0BE745275204098, with attached license plate number AE43830, is registered to CM Corporate Maintenance Ltd. with an address of 302-2100 Sherobee Road, Mississauga, Ontario (2 pages).

Exhibit #2 - certified Ministry of Transportation document dated June 15, 2015, indicating a male person named Edgardo H. Cordoba, with a date of birth of [removed for privacy] and with the latest address of 2100 Sherobee Road, Apt. 302, Mississauga, Ontario, had his driver's license suspended on June 3, 2009, by court order for default of payment of a fine and which suspension was still in effect on May 3, 2014 (2 pages).

# 1. INTRODUCTION

[1] Owners and lessees of motor vehicles are required by law to purchase and maintain sufficient insurance coverage on or for their vehicle, before they can legally operate their vehicle on public roadways or highways in Ontario, or before they can permit someone else to operate their vehicle. This legal requirement is set out in s. 2(1) of the Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25 ("C.A.I.A."). But, if they fail to fulfill this legal obligation to properly insure their vehicle and they operate or permit their vehicle to be operated on an Ontario highway, then they would be liable for a minimum fine of $5000 for a first conviction, and the possibility upon conviction, that their driver's license could be suspended for up to a year or that their vehicle could be impounded for up to three months.

[2] In this particular Part III regulatory proceeding, the defendant, Edgardo Cordoba, had been observed driving a Dodge van on Rutherford Road in the City of Brampton on May 3, 2014, by Officer Nicholson at approximately 12:04 a.m. After the van was stopped and investigated in respect to a police-initiated program for checking drivers' sobriety and for compliance with Ontario's traffic laws, Officer Nicholson charged the defendant with committing two regulatory offences. These two charges were for: (1) unlawfully operating a motor vehicle on a highway when his driver's license was suspended, contrary to s. 53 of the Highway Traffic Act, R.S.O. 1990, c. H.8; and (2) for being the "owner" of a motor vehicle that he had operated on a highway when it was not insured under a contract of automobile insurance, contrary to s. 2(1)(a) of the C.A.I.A.

[3] The trial of the defendant's two charges was subsequently held on an *ex parte* basis, on October 1, 2015, as neither the defendant nor his legal representative had appeared for the trial. After the prosecution completed their case against the defendant, the defendant was then found on the evidence to have committed the offence of driving while under suspension beyond a reasonable doubt, and then sentenced to pay the minimum fine of $1000 for a first conviction. However, closing argument for the "no insurance" charge had been adjourned to December 4, 2015, so that the prosecution could research and prepare their argument on the prosecution's contention that the defendant is the "owner" of the Dodge van for the purposes of s. 2(1) of the C.A.I.A, even though, as established by Exhibit 1, a corporation named, "CM Corporate Maintenance Ltd.", had been the "registered owner" of the motor vehicle that was being driven by the defendant on the date and time in question.

[4] On December 4, 2015, the defendant's legal representative, J. Lopez, then appeared for the defendant. The defendant's legal representative had initially appeared for the defendant's matter on the first appearance date of June 26, 2014, but did not attend on the four subsequent appearances, and had only appeared

again on December 4, 2015. After closing arguments were made on the "no insurance" charge, judgment was reserved and adjourned to January 8, 2016.

[5] In their closing submissions, the prosecution made three arguments for why the defendant should be found guilty of committing the offence of "owner operate motor vehicle on a highway without insurance", as the owner of the Dodge van within the meaning of s. 2(1)(a). They are: (1) that the defendant is the common law owner of the Dodge van because the corporation is simply the alter ego of the defendant; (2) that the defendant had been the human person responsible for the Dodge van and by failing to properly insure the Dodge van, he would be a party to the offence; and (3) that the corporate veil should be lifted to ensure that the defendant cannot evade the financial and legal obligations under s. 2(1)(a) of the C.A.I.A.

[6] For their first argument, the prosecution submits that the "owner" of the Dodge van for the purposes of s. 2(1)(a) is not restricted to only the "registered owner" of that motor vehicle, but that the term "owner" in s. 2(1)(a) also includes the "common law" owner of the vehicle. And, that in this case, the defendant would be the common law owner of the Dodge van, since the corporation is merely the alter ego of the defendant. Moreover, the prosecution submits that the criteria for finding or for interpreting whether someone would be classified as the "common law owner", and therefore, the "owner" of a particular vehicle under s. 2(1) of the C.A.I.A., had been established and recognized by the Court of Appeal for Ontario in R. v. Zwicker, [1994] O.J. No. 197. The Court of Appeal in that particular case had held that someone who is not the registered owner could still be considered or found, within the meaning of s. 2(1) of the C.A.I.A., to be the legal "owner" of the motor vehicle in question under the category of common law ownership.

[7] And, to further support their contention that the defendant is the "common law owner" of the Dodge van, the prosecution argues that because the defendant is a shareholder of the corporation, he would also indirectly own the assets of the corporation, which would include the Dodge van. Especially, considering that if the corporation were to be wound up and its liabilities paid off, then what assets that would remain would be evenly divided among the shareholders, if there is more than one shareholder. Therefore, the prosecution contends that the admission by the defendant to Cst. Nicholson that he was the owner of the corporation named "CM Corporate Maintenance Ltd.", which is the registered owner of the Dodge van, and that because the defendant knew that the van was not properly insured' and that the defendant and the corporation had shared the same municipal address, when considered together would be sufficient evidence or proof that the defendant is the "common law owner" of the Dodge van that Officer Nicholson had observed the defendant driving on May 3, 2014.

[8] As for their second argument, the prosecution submits that since CM Corporate Maintenance Ltd. is really the alter ego of the defendant, the defendant by necessary implication was also a party to the offence, given that the defendant as

the owner of the corporation would be the human person ultimately responsible for the Dodge van. In other words, because a corporation by its very nature is an artificial entity created by statute and which can only act through a human person, then the defendant, who is the owner of the corporation, would in fact be that human person behind the corporate veil who would have to actually purchase or maintain automobile insurance on the Dodge van on behalf of the corporation. And, since the defendant had failed to have the Dodge van properly insured before he drove it on Rutherford Road on May 3, 2014, then this omission by the defendant, as the prosecution contends, would have made the defendant a party to the offence.

[9] And, finally, for their third argument, the prosecution contends that the corporate veil should be lifted in order that the defendant, as the owner of the corporation, would be seen to be the true owner of the Dodge van within the meaning of s. 2(1)(a), since the defendant dominates and controls the corporation and uses the corporation merely as a sham for his alter ego. As such, the prosecution argues that since the corporate identity has no separate will or existence apart from the defendant, then the defendant should be found to be the "common law owner" of the Dodge van, in order that s. 2(1) of the C.A.I.A. would be an enforceable obligation and to ensure that the defendant is unable to avoid this legal and financial obligation by hiding behind a corporate veil.

[10] Ergo, to decide whether the prosecution has established that the defendant is the common law owner of the Dodge van so as to make him the "owner" of the Dodge van for the purposes of s. 2(1)(a), then several questions have to be resolved. First, it has to be determined whether the prosecution has proven that the defendant is the common law owner of the Dodge van beyond a reasonable doubt. Second, it has to be determined whether the defendant, as the owner of the corporation, is indeed the human person who controls the corporation and who had failed to ensure that the Dodge van had been properly insured, so as to make him a party to the offence. And third, it has to be determined whether there are exceptional circumstances in this case which would justify piercing the corporate shield in order to attribute the offence to the defendant, as the owner of the corporation, especially in light of the principle that a corporation is a separate legal entity that is distinct from its shareholders.

## (A) FACTUAL BACKGROUND

[11] On May 3, 2014, at approximately 12:03 a.m., Officer Nicholson, a police officer who is a trained and qualified breath technician for the Peel Regional Police, had observed the white-coloured Dodge van driven by the defendant leave the premises of the restaurant and bar named, "Spot 1 Grill", which is located in the City of Brampton. At that time, Officer Nicholson was scrutinizing the establishment under the "last drink and operation lookout program" due to the history of previous drinking and driving charges being laid against motorists who had been at that establishment. After seeing the van operated by the defendant

leave the Spot 1 Grill premises, Officer Nicholson then observed that van with the Ontario license plate number AE43830 being driven southbound on Rutherford Road in the City of Brampton. At 12:04 a.m., Officer Nicholson then stopped the van on Rutherford Road just north of Steeles Avenue to check on the sobriety of the driver and to investigate the status of the motor vehicle. The defendant had been the lone occupant of the van. Officer Nicholson then made a request to the defendant to provide Nicholson with a driver's license, an ownership permit, and proof of insurance for the van. After Officer Nicholson had made a request for those documents, it then took two to three minutes before the defendant had been able to actually produce any of the three required documents. Of the three requested documents, the defendant had been unable to provide a valid Ontario driver's license or proof of insurance for the van, but had been able to provide the ownership permit for the van. Officer Nicholson had also testified in the trial that the name of the registered owner on the ownership permit provided by the defendant was a company with an address of 302 – 2100 Sherobee Road in Mississauga. In addition, the prosecution entered a certified document from the Ministry of Transportation (Exhibit 1), which indicated that the registered owner of the Dodge van being driven by the defendant is a corporation named, "CM Corporate Maintenance Ltd."

[12] Moreover, in order to identify himself, the defendant had provided Officer Nicholson with an Ontario Health Card in the name of Edgardo Cordoba, which had contained a photograph and a date of birth of [*removed for privacy*]. The defendant had also provided Officer Nicholson with his address of 302 – 2100 Sherobee Road in Mississauga, which had also been the same address for the corporation named CM Corporate Maintenance Ltd." that had been on the ownership permit for the Dodge van. In addition, Officer Nicholson had testified that he had been satisfied with the identity of the driver of the Dodge van as being Edgardo Cordoba, which is the defendant in this proceeding.

[13] Officer Nicholson also said that the defendant had not provided proof of insurance for the van on May 3, 2014, when requested to provide such proof, nor has the defendant provided such proof to Officer Nicholson since the date the defendant had been stopped by Officer Nicholson on May 3, 2014, to the date of the trial.

[14] Furthermore, after a *voir dire* had been held to determine the voluntariness of any statements or utterances made by the defendant to Officer Nicholson during the traffic stop and investigation, it was determined that the statements made by the defendant in respect to the insurance coverage for the van had been voluntarily given to Officer Nicholson beyond a reasonable doubt, and as such, were permitted to be entered as evidence in the trial proper as voluntary statements made by the defendant.

[15] Those voluntary utterances or statements made by the defendant had been responses to questions asked by Officer Nicholson and consist of the following conversation between Officer Nicholson and the defendant:

Officer Nicholson: Are you the owner of the company?

The defendant: Yes.

Officer Nicholson: Is the van insured?

The defendant: Yes.

Officer Nicholson then testified that he had cautioned the defendant about obstructing his investigation and that he could be charged for obstructing his investigation. The defendant then was asked if he understood the caution given by Officer Nicholson, after which the defendant had informed Officer Nicholson that he understood the caution given by Officer Nicholson. Officer Nicholson then asked the defendant another question.

Officer Nicholson: Is the van insured?

The defendant: No.

[16] Ergo, the defendant had admitted to Officer Nicholson that he was the owner of the company, CM Corporate Maintenance Ltd., which was listed as the registered owner of the Dodge van that was being driven by the defendant when Officer Nicholson stopped him on May 3, 2014. Furthermore, Exhibit 1, which is a certified document issued by the Ministry of Transportation, confirms that the corporation named "CM Corporate Maintenance Ltd." is the registered owner of that Dodge van.

[17] However, there is no evidence adduced by the prosecution that the defendant is a director or an officer of CM Corporate Maintenance Ltd. Nor is there any evidence on whether the defendant is the sole shareholder of that corporation or whether the company is a one-person corporation.

[18] In addition, Officer Nicholson had testified that he had obtained the V.I.N. (vehicle identification number) of WD0BE745275204098 for the Dodge van from the front dashboard of that van.

## 2. RELEVANT LAW

[19] Subsection 2(1) of the C.A.I.A., provides that no owner or lessee of a motor vehicle shall operate or cause or permit a motor vehicle to be operated on a highway unless that motor vehicle is insured under a contract of automobile insurance [*emphasis is mine below*]:

***Compulsory automobile insurance***

*2(1) Subject to the regulations, no owner or lessee of a motor vehicle shall,*

*(a) operate the motor vehicle; or*

*(b) cause or permit the motor vehicle to be operated,*

*on a highway unless the motor vehicle is insured under a contract of automobile insurance.*

***Definition***

*(2) For the purposes of subsection (1), where a permit for a motor vehicle has been issued under subsection 7(7) of the Highway Traffic Act,*

*"contract of automobile insurance", with respect to that motor vehicle, means a contract of automobile insurance made with an insurer.*

[20] In addition, under s. 2(3) of the C.A.I.A., where the owner or lessee of a motor vehicle is convicted of contravening s. 2(1)(a), then they are subject to a minimum fine of $5,000 and up to a maximum fine of $25,000; a potential suspension of their driver's license for a period that does not exceed one year; or the possibility of having the motor vehicle that had been driven by the owner or lessee being impounded for a period of not more than three months under s. 2(7):

**Offence**

*2(3) Every owner or lessee of a motor vehicle who,*

*(a) contravenes subsection (1) of this section or subsection 13(11); or*

*(b) surrenders an insurance card for inspection to a police officer, when requested to do so, purporting to show that the motor vehicle is insured under a contract of automobile insurance when the motor vehicle is not so insured,*

*is guilty of an offence and is liable on a first conviction to a fine of not less than $5,000 and not more than $25,000 and on a subsequent conviction to a fine of not less than $10,000 and not more than $50,000 and, in addition, his or her driver's licence may be suspended for a period of not more than one year.*

**...**

**Impounding motor vehicle**

*2(7) In the event of a conviction under subsection (3), the justice may order that the motor vehicle,*

*(a) that was operated in contravention of subsection (1);*

*(b) for which a false statement in respect of insurance was made in contravention of subsection 13 (11); or*

*(c) for which an insurance card was produced in contravention of clause (3) (b),*

*shall be seized, impounded and taken into the custody of the law for a period of not more than three months.*

[21] Furthermore, the word "lessee" is defined in s. 1(1) of the C.A.I.A., and means a person who is leasing or renting the motor vehicle for a period of 30 days or more:

> *"lessee" means, in respect of a motor vehicle, a person who is leasing or renting the motor vehicle for a period of 30 days or more; ("locataire")*

[22] In addition, "automobile insurance" for a motor vehicle is also defined in s. 1(1) of the C.A.I.A., and means insurance against liability arising out of bodily injury to or the death of a person or loss of or damage to property caused by a motor vehicle or the use or operation thereof, and which insures at least to the limit required by s. 251 of the Insurance Act, R.S.O. 1990, c. I.8, and that also provides for the statutory accident benefits set out in the Statutory Accident Benefits Schedule under the Insurance Act and the benefits prescribed under s. 265 of the Insurance Act:

> *"automobile insurance" means insurance against liability arising out of bodily injury to or the death of a person or loss of or damage to property caused by a motor vehicle or the use or operation thereof, and which,*
>
> *(a) insures at least to the limit required by section 251 of the Insurance Act,*
>
> *(b) provides the statutory accident benefits set out in the Statutory Accident Benefits Schedule under the Insurance Act, and*
>
> *(c) provides the benefits prescribed under section 265 of the Insurance Act; ("assurance-automobile")*

## 3. ANALYSIS AND DECISION

### (A) FOR THE PURPOSES OF S. 2(1) OF THE C.A.I.A., WHO IS THE "OWNER" OF THE DODGE VAN THAT WAS BEING DRIVEN BY THE DEFENDANT ON MAY 3, 2014?

[23] Regarding whether the defendant is the "owner" of the Dodge van that he was observed driving on May 3, 2014, for the application of s. 2(1) of the C.A.I.A., the prosecution contends that even though the defendant is not listed as the registered owner of the Dodge van with the Ministry of Transportation, the defendant is nonetheless the "common law" owner of the Dodge van on the basis that he had admitted to being the owner of the company listed as the registered owner, which was the defendant's alter ego; on the basis that the defendant had personally been aware that the Dodge van was not insured; and on the basis that both the defendant and the corporation named "CM Corporate Maintenance Ltd." had the same municipal address.

[24] For the purposes of the C.A.I.A., the registered owner of the motor vehicle in question is generally considered to be the "owner" of that motor vehicle under s. 2(1)(a), unless there is evidence which establishes that someone else should be treated as the owner of that motor vehicle.

[25] In the case at bar, the registered owner of the Dodge van at the time the defendant had been stopped by Officer Nicholson, as proven by Exhibit 1, is a corporation named, "CM Corporate Maintenance Ltd." However, during the traffic stop and conversation between the defendant and Officer Nicholson, the defendant had voluntarily admitted to Officer Nicholson that the defendant was the owner of that company and that the Dodge van was not insured. In addition, both "CM Corporate Maintenance Ltd." and the defendant have the same address of 2100 Sherobee Road, Apt. 302, Mississauga, Ontario. This correlation, the prosecution contends, of the defendant being the owner of "CM Corporate Maintenance Ltd.", of the defendant knowing the Dodge van was not insured, and of the defendant and the corporation sharing the same address, is evidence that "CM Corporate Maintenance Ltd." is really the alter ego of the defendant and sufficient proof that the defendant is the "common law owner" of the Dodge van, which would then make the defendant the "owner" of the van within the meaning of s. 2(1) of the C.A.I.A.

[26] On the surface, this evidence, as the prosecution would suggest, could possibly make the corporation, "CM Corporate Maintenance Ltd.", which is owned by the defendant, a private and small one-person corporation or a private and small closely-held corporation.

[27] However, being mindful of the principle that the shareholder or shareholders of a corporation and the corporation itself are legally distinct and separate entities, then

it will have to be determined whether the defendant's voluntary admission that he is the owner of "CM Corporate Maintenance Ltd.", as well as his knowledge that the Dodge van was not insured and that the defendant and the corporation share the same address, is proof beyond a reasonable doubt that the defendant is the common law owner of the Dodge van.

**(1) Is the word "owner" defined in the C.A.I.A.?**

[28] In considering whether the term "owner" in s. 2(1)(a) of the C.A.I.A., includes the defendant, as the owner of the corporation, which is listed as the registered owner of the Dodge van that was being driven by the defendant on May 3, 2014, the C.A.I.A. and its regulations are not of any assistance in deciding this issue, as the definition section contained in s. 1 of that statute does not contain a definition for the term "owner", nor is the word "owner" defined in any other part of the C.A.I.A. or its regulations.

[29] As well, the term "owner" is not defined in s. 87 of the Legislation Act, 2006, S.O. 2006, c. 21, sched. F, which is a statute that applies to all statutes and regulations enacted by the Ontario Legislature, and which had been enacted as a statutory tool to assist in the interpretation of Ontario statutes and regulations. Similarly, the term "owner" is also not defined in the Provincial Offences Act, R.S.O. 1990, c. P.33, or in its regulations, which is the procedural legislation that governs this regulatory prosecution.

[30] As a result, dictionary definitions and prior judicial consideration of the term "owner" will have to be relied upon in order to resolve the issue of whether the defendant, as the owner of "CM Corporate Maintenance Ltd.", is the "owner" of the Dodge van for the purposes of s. 2(1)(a) of the C.A.I.A.

**(2) Definition of "owner" in Black's Law Dictionary**

[31] In Black's Law Dictionary, 4th ed. (St. Paul, Minn.: West Publishing, 1968), the word "owner", is defined as a general term in which "its meaning is to be gathered from the connection in which it is used and from the subject-matter to which it is applied", and to some extent means, the "proprietor" or the "person in whom is vested the ownership, dominion, or title of property":

> *OWNER. The person in whom is vested the ownership, dominion, or title of property; proprietor.*
>
> *. . . . .*
>
> *The term is, however, a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. ... The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the term also includes one having a possessory right to land or the person occupying or cultivating it.*

**(3) Judicial consideration of the term "owner"**

[32] In Olympia & York Developments Ltd. and City of Toronto (1980), 29 O.R. (2d) 353, 113 D.L.R. (3d) 695, the Divisional Court of Ontario in determining the meaning of the word "owner" used in a statutory provision where that word had not been specifically defined in that statute, had relied on the reasoning used in Wynne v. Dalby (1913), 30 O.L.R. 67 (Supreme Ct. of Ont. (App. Div.)), which had considered the possibility that two persons may at the same time be properly viewed to be the owner of a thing, which included the registered owner of the thing and someone who had been given the rights of ownership to that thing for a limited time [*emphasis is mine below*]:

> *The real issue in dispute is what is the meaning of the word "owner" in s. 35a of the Act? Does it exclude the owner in fee simple of the lands where such owner is not the person undertaking the development? The term "owner" has been considered judicially in many different contexts and referred to by legal authors. In Wynne v. Dalby (1913), 30 O.L.R. 67, 16 D.L.R. 710, reference was made at p. 72 O.L.R., p. 714 D.L.R., as follows:*
>
> > The word "owner" is an elastic term, and the meaning which must be given to it in a statutory enactment depends very much upon the object the enactment is designed to serve.
> >
> > As was said by Lord Herschell in Baumwoll Manufactur von Carl Scheibler v. Furness, [1893] A.C. 8, 17: "There may be two persons at the same time in different senses not improperly spoken of as the owner of a ship. The person who has the absolute right to the ship, who is the registered owner, the owner (to borrow an expression from real property law) in fee simple, may be properly spoken of, no doubt, as the owner; but at the same time he may have so dealt with the vessel as to have given all the rights of ownership for a limited time to some other person, who, during that time, may equally properly be spoken of as the owner."

[33] Moreover, the appeal court at para. 15 in Wynne v. Dalby, [1913] O.J. No. 9, had emphasized that the meaning which must be given to the term "owner" in a statutory enactment would depend on the object the enactment is designed to serve:

> *The word "owner" is an elastic term, and the meaning which must be given to it in a statutory enactment depends very much upon the object the enactment is designed to serve.*

[34] And, even though the term "owner" is not defined in the C.A.I.A., its meaning in respect to that statute had been considered by the Court of Appeal for Ontario in R. v. Zwicker, [1994] O.J. No. 197. In that case, the Court of Appeal had to consider whether someone who had just bought a vehicle, but had not yet registered that vehicle in their own name with the Ministry of Transportation, would in the context of s. 2(1) of the C.A.I.A. be the "owner" of that vehicle. Although the

accused, Zwicker, in that case had bought the motor vehicle from a friend three days earlier and had legally owned that motor vehicle when she was stopped by a police officer, she had not yet registered herself with the Ministry as the owner of that vehicle until three days after she had been stopped and charged. At her trial, Zwicker had argued that since the vehicle had still been registered under the name of her friend who had sold the vehicle to Zwicker, then she should not be convicted under s. 2 of the C.A.I.A. as that vehicle's owner because she had not been the registered owner of the vehicle when she had been stopped.

[35] However, the Court of Appeal did not agree with Zwicker's argument and held at paras. 10 and 11 of their judgment that the application of s. 2(1) cannot be simply limited to only the registered owners of vehicles, since that interpretation would allow the person with all the rights of common law ownership the means and ability to avoid the corresponding responsibilities of ownership. The Court of Appeal had also reasoned that since the buyer of the vehicle, Zwicker, had been the legal owner of the vehicle when the offence had been committed, then Zwicker would be the owner under s. 2(1), since she would be the common law owner of the vehicle at the material time, even though the vehicle had been still registered in the name of the person who had just sold the vehicle to her. Moreover, the Court of Appeal indicated that under Ontario's *Highway Traffic Act*, Zwicker had been legally obligated and required to register her ownership of that vehicle within 6 days of purchasing the vehicle and that the responsibility for ensuring that the motor vehicle is insured under a contract of insurance would rest on the "owner" of that motor vehicle, which would have been on Zwicker and not on the seller of the vehicle, so that the word "owner" in the context of the C.A.I.A. would also include the "common law owner" of the motor vehicle [*emphasis is mine below*]:

> *The Compulsory Automobile Insurance Act is intended to ensure that every car operated in the province is insured. The term "owner" as it appears in s. 2(1) of this Act, in our view, cannot properly be limited solely to the "registered owner". To interpret "owner" in that manner would permit the person with all the rights of common law ownership to avoid corresponding responsibilities of ownership. Under the present Highway Traffic Act the appellant was required to register her ownership within six days of purchase. In direct contravention of this Act, she failed to do so. It would be anomalous indeed if a breach of the Highway Traffic Act could amount to a shield against liability under the Compulsory Automobile Insurance Act.*
>
> *In sum, responsibility for ensuring that a motor vehicle is insured under a contract of insurance rests on the "owner". The "owner" in the context of the Compulsory Automobile Insurance Act includes the "common law owner". …*

[36] Accordingly, whether the defendant is the common law owner of the Dodge van at the material time would depend on the circumstances particular to the defendant.

**(4) What is the object of the C.A.I.A.?**

[37] The Court of Appeal held at para. 10 in R. v. Zwicker that the purpose of the C.A.I.A. is to ensure that every car operated in the province of Ontario is insured:

> *The Compulsory Automobile Insurance Act is intended to ensure that every car operated in the province is insured. …*

**(5) Has the prosecution proven beyond a reasonable doubt that the defendant is the "common law owner" of the Dodge van?**

[38] The prosecution contends that based on the C.A.I.A.'s object of ensuring that every car operated in Ontario is properly insured; the ruling in Zwicker that someone who is not the registered owner of a motor vehicle could still be found to be its common law owner; that the defendant is the owner of the corporation that is the registered owner of the Dodge van; that a corporation can only act through a human person; that the defendant had knowledge of the Dodge van not being insured; and that the defendant and the corporation share the same municipal address, that the defendant should be found in the circumstances to be the common law owner of the Dodge van. Otherwise, the prosecution contends that every motorist in Ontario could registered their motors vehicles under the name of a corporation and then not arrange or obtain proper liability insurance for that vehicle, in order to potentially escape or disregard the legal and financial obligations associated with obtaining or purchasing proper liability insurance for their motor vehicles under the C.A.I.A., as well as avoiding the penalties involved if the corporation, as the registered owner of the motor vehicle, is convicted of operating or permitting the vehicle to be operated on a highway in Ontario without insurance.

[39] Ergo, the prosecution contends that in the circumstances of this case and in order that the defendant be held liable for the corporation's acts or omissions in respect to operating or permitting the Dodge van to be operated on a highway without insurance, either the defendant be found to be the common law owner of the Dodge van based on indicia of common law ownership or that the corporate veil should be pierced in order to find that the defendant is the true or common law owner of the Dodge van; or that the defendant should be found to be a party to the offence under the C.A.I.A. based on the defendant being ultimately the human person responsible for the Dodge van and who had failed to ensure that the Dodge van had been properly insured.

**(a) What are the indicia of common law ownership of a motor vehicle?**

[40] In deciding whether a particular person, who is not the registered owner of a motor vehicle, would be the owner of a motor vehicle in the common law sense, and be

liable under s. 2(1) for the insurance obligations for that vehicle, the Court of Appeal had noted in R. v. Zwicker, at para. 11, that indicia of common law ownership of a motor vehicle could be derived from the reasoning in Honan v. Gerhold, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582 (S.C.C.) and from Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193 (O.C.A.):

> *For the indicia of common law ownership reference may be made to cases such as Honan v. Gerhold, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582, and Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193 (C.A.). The appellant was the owner of her motor vehicle within the meaning of the Compulsory Automobile Insurance Act and was clearly prohibited from operating the vehicle without insurance on the day in question.*

[41] In Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193, at paras. 13 and 14, the Court of Appeal decided that the basis for determining whether someone is the “common law owner” of a motor vehicle would have to be considered on the relevant circumstances particular to each case. In order to decide the issue of common law ownership in that case, the Court of Appeal had reviewed and considered a number of decisions that had dealt with the degree of interest in a motor vehicle or the combination of circumstances in respect to its ownership and control that would be sufficient to render a person vicariously liable under the Highway Traffic Act as an "owner” of that vehicle. After their review, the Court of Appeal surmised that in each of those other decisions the circumstances had varied substantially from case to case, so that there had been no need to set out the precise criteria that had been deduced in those decisions in order to decide the issue of common law ownership for that particular case:

> *There have been a number of cases dealing with what degree of interest in a motor vehicle, or what combination of circumstances with respect to its ownership and control, is sufficient to render a person vicariously liable under the Highway Traffic Act as an "owner". The most recent pronouncement is that of the Supreme Court of Canada in Honan et al. v. Gerhold et al., 50 D.L.R. (3d) 582, 3 N.R. 81, pronounced on October 1, 1974, which reversed the judgment of this Court: [1973] 2 O.R. 341, 33 D.L.R. (3d) 657. Other recent cases are Hawryluk et al. v. Hodgins, [1972] 3 O.R. 741, 29 D.L.R. (3d) 403; Hayduk et al. v. Pidoborozny et al., [1972] S.C.R. 879, 29 D.L.R. (3d) 8, [1972] 4 W.W.R. 522; and May et al. v. Municipality of Metropolitan Toronto, [1969] 1 O.R. 419, 2 D.L.R. (3d) 659.*
>
> *I do not think that the decision of this case requires us to attempt to set out in precise terms the ratio of the various cases to which I have referred, the circumstances of which vary substantially from case to case. …*

[42] Moreover, in Honan v. Gerhold, [1975] 2 S.C.R. 866, 50 D.L.R. (3d) 582, the Supreme Court of Canada had to decide whether the registered owner of the automobile involved in an accident should be held liable for the actions of the driver of the automobile, who had injured an infant, who had the exclusive possession and control of the automobile, and who had been the original owner of

the automobile who had the automobile registered in the name of his friend in order to prevent the automobile from being seized in a judgment rendered against him.

[43] In the circumstances of the Honan v. Gerhold case, Kathleen Honan, an infant, had been injured in an automobile accident in which Chester Doman had been the driver of the automobile that had held to be at fault for the accident. However, the automobile that Doman had been driving had been registered in the name of a person named Raymond Gerhold. The trial judge had concluded that Chester Doman was responsible for the accident and awarded damages to the infant Honan against the estate of Chester Doman, who had died some time later from the injuries he had received in the accident. The infant Honan had also sued Raymond Gerhold as the registered owner of the automobile driven by Chester Doman, but the trial judge had dismissed the action against Gerhold. The matter was eventually appealed to the Supreme Court of Canada, where the Supreme Court did find that Raymond Gerhold did have common law ownership of the automobile that Chester Doman had been driving in the accident where the infant Kathleen Honan had been seriously injured.

[44] Gerhold, as the registered owner, had argued that he was not the real owner of the automobile despite the evidence that the automobile had been registered in his name, but that Gerhold had only registered the automobile in his name so that his friend Chester Doman, the true owner of the automobile, would be able to keep the automobile from being seized in a judgment that had been awarded to Doman's wife. However, despite Raymond Gerhold's argument about not being the true owner, the Supreme Court concluded that Gerhold was nonetheless the owner of the automobile in a common law sense. And, although there had been evidence from Gerhold that Chester Doman had only transferred the automobile to Gerhold to protect the automobile from being seized in execution of a judgment for alimony held by Doman's wife, that Chester Doman still continued to have the exclusive possession of the automobile, and that Doman had the automobile under his dominion and control, the Supreme Court concluded that there had been a legal transfer of the vehicle from Doman to Gerhold, which gave Gerhold legal title to the automobile. More importantly, the Supreme Court had also concluded that Gerhold did manifest his ownership in the automobile through several important actions, namely that Gerhold had first placed the vehicle under his insurance policy and had certified to the insurance company that the automobile was Gerhold's vehicle, and that second, Gerhold had applied for the registration of the automobile in the first place in 1966 and again in 1968 and 1969, and had taken great objection to Chester Doman having done so in Gerhold's name in the year 1967. In addition, the Supreme Court had put significant emphasis on the fact that Raymond Gerhold had also disposed of the wrecked automobile after the accident and had taken all the proceeds for his own use without accounting to the estate of the late Chester Doman, and had also found that this particular action by Gerhold in keeping the proceeds of the sale to be only consistent with an assertion of Raymond Gerhold's ownership of the automobile. Under those circumstances, the

Supreme Court had concluded that Raymond Gerhold was the owner in common law of that automobile, which had been involved in the accident, so that Gerhold would be held jointly liable in the action brought by the Honan infant [*emphasis is mine below*]:

> *With every respect for the learned justice on appeal, I am not so persuaded. What had moved Chester Doman was to protect the vehicle from seizure in execution of the judgment held by his wife. That end could not be accomplished unless he transferred the automobile. He, therefore, did transfer the automobile. The transfer gave Gerhold the legal title and it was intended to have that exact effect. The form of application for register of the transfer does, in my view, contain words which show that there has been a conveyance. Such a form appears in Ex. 19 and it should be noted that the form is signed both by the transferor and the transferee and it contains the words: "I hereby give notice of the change of ownership of the vehicle described hereon and make application for transfer of the permit". Of course, under the circumstances, the late Chester Doman continued to have the exclusive possession of the automobile and have it under his dominion and control. That was part of the transaction. In fact exclusive dominion and control was present in both Haberl v. Richardson and Hayduk v. Pidoborozny. Despite this, however, Gerhold did manifest his ownership in several important actions. Firstly, he placed the vehicle under his insurance policy, and so certified to the insurance company that the vehicle was his. Secondly, he applied for the registration, in the first place in 1966 and again in 1968 and 1969, and he took great objection to Doman having done so in Gerhold's name in the year 1967. Finally, and in my view most important, he disposed of the wrecked car and took the proceeds for his own use with evidently no intention of accounting to the estate of the late Chester Doman. This latter action could only be consistent with an assertion of his ownership of the vehicle.*

[45] Similarly, in Keizer v. Hanna (1975), 10 O.R. (2d) 597, 64 D.L.R. (3d) 193, the Court of Appeal for Ontario had to determine from the circumstances whether John Buch, who was the registered owner of a motor vehicle driven by Herbert Hanna that had been involved in an automobile accident with Marilyn Keizer, should be held jointly liable for Keizer's injuries. In that case, Buch, a car dealer, had sold the automobile involved in the accident to Herbert Hanna, the driver of the motor vehicle that had been held responsible for the accident. However, Buch had decided not to transfer the title for the car to Hanna until such time as Hanna had obtained insurance for the car or until Hanna had paid Buch fully for the car. At para. 14 of their judgment, the Court of Appeal had concluded that Buch intended that the automobile should remain in Buch's name until Hanna had either produced evidence that the automobile was insured under Hanna's policy or had produced $25 so that the transfer could take place or be registered with no evidence of insurance intended to be produced to the issuer of permits. The Court of Appeal had also concluded that it was not an unreasonable inference from the evidence that Buch had not been prepared to transfer the automobile into Hanna's name until he got the balance of $200 owing on the purchase price. Moreover, the Court of Appeal held that these facts, coupled with the certification by Buch that he

was the owner of the automobile and that the automobile had been insured under Buch's own policy, provided ample foundation for the trial judge's finding that John Buch was the owner of the automobile for the purposes of the Highway Traffic Act, even though Buch had sold the automobile to Hanna and Hanna had been driving the car exclusively [*emphasis is mine below*]:

> … *In this case the conclusion is irresistible that Buch intended that the car should remain in his name at least until Hanna had either produced evidence that the car was insured under Hanna's policy or produced $25 so that the transfer could take place with no evidence of insurance produced to the issuer of permits. Indeed, it is not an unreasonable inference from the evidence that Buch was not prepared to transfer the car into Hanna's name until he got the balance of $200 owing on the purchase price. These facts, coupled with the certification by Buch that he was the owner and that the car was insured under his own policy, provided ample foundation for the finding by the trial Judge that Buch was the owner for the purposes of the Highway Traffic Act. Accordingly, I would dismiss the appeal against that finding.*



**(b) In the present proceeding, are there indicia that the defendant is the common law owner of the Dodge van?**

[46] Undoubtedly, the evidence from Officer Nicholson that the defendant had admitted or acknowledged that he is the owner of the company named on the ownership permit, that he had been aware that the Dodge van had not been insured, and that the defendant and the corporation had shared the same municipal address could infer that the defendant is either the sole shareholder of the corporation or just one of the shareholders of the corporation. However, this is not necessarily mean that the defendant is the common law owner of the Dodge van in respect to the application of s. 2(1)(a) of the C.A.I.A.

**(i) Is there evidence that the defendant had exclusive possession, dominion, and control of the Dodge van?**

[47] On whether the defendant had exclusive possession, dominion, and control of the Dodge van to support a finding of common law ownership, there is no evidence that the defendant is the sole driver of the Dodge van or that he is the only person who drives the Dodge van.

[48] Therefore, it cannot be concluded that the defendant had the exclusive possession of the Dodge van or that the van had been under the defendant's exclusive dominion and control, as evidence to prove the defendant is the owner of the Dodge van in the common law sense.

**(ii) Is there evidence that the defendant had registered the Dodge van under the name of the corporation for some ulterior purpose, but remained its true owner?**

[49] On this issue, there has been no evidence adduced by the prosecution that the defendant had the Dodge van registered in the corporation's name for some ulterior purpose, so that the defendant could remain the true owner of the Dodge van.

[50] Accordingly, up this stage of the analysis, the prosecution has not provided sufficient evidence to prove beyond a reasonable doubt that the defendant is the owner of the Dodge van in the common law sense. As such, the prosecution's arguments that the corporate veil should be lifted in order to find that the defendant is the owner of the Dodge van within the meaning of s. 2(1)(a), or that the defendant has participated in or abetted the corporation in the commission of the offence, so as to be a party to the offence, will then have to be considered to determine whether the defendant should be held legally responsible for the corporation's unlawful act or omission pertaining to operating or permitting the Dodge van to be operated on a highway without insurance.



## (B) OTHER APPROACHES OF IMPUTING PENAL LIABILITY TO SHAREHOLDERS, DIRECTORS, OR OFFICERS OF A CORPORATION FOR THE UNLAWFUL ACTS OR OMISSIONS OF THE CORPORATION

[51] Owners of a corporation are either natural persons or artificial persons or entities who own the shares of the corporation. More importantly, the law treats the corporation as an artificial legal person or entity that is distinct from its shareholders. This general rule that a corporation is a legal entity distinct from its shareholders was confirmed by the Supreme Court of Canada in Kosmopoulos v. Constitution Insurance Co. Of Canada (1987), 34 D.L.R. (4th) 208, where they also confirmed at para. 12 that a court may disregard this principle in exceptional circumstances by lifting the corporate veil and consider the corporation to be a mere agent or puppet of its controlling shareholder:

> *As a general rule a corporation is a legal entity distinct from its shareholders: Salomon v. Salomon & Co., [1897] A.C. 22 (H.L.). The law on when a court may disregard this principle by "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.*

[52] This legal distinction, therefore, generally regards the shareholders of the corporation not to be liable for the debts and liabilities of the corporation, unless there is an explicit statutory provision which holds the shareholders of the corporation liable for the corporation's debts and liabilities or in the event that the corporation has been used for fraudulent or improper purposes, which then permits a court to disregard the sacrosanct corporate veil. Similarly, under the common law, the shareholders of a corporation may also be found to be liable for the unlawful acts or omissions of a corporation through the lifting of the corporate veil when there has been fraudulent or improper use of the corporation by its shareholders.

[53] On the other hand, the directors, officers, or agents of the corporation could also be deemed through an explicit statutory provision to be a party to and guilty of an offence committed by the corporation, if they actually direct, authorize, assent to, acquiesce in, or participate in the commission of that offence.

[54] Moreover, in their contention that the defendant should be held liable as a party to the offence, the prosecution submits that since the defendant is a shareholder or owner of the company that is the registered owner of the Dodge van, such that the defendant would indirectly own all of the corporation's assets and undertaking, including its liabilities, and because the defendant had knowledge that the Dodge van was not insured and that the defendant and the corporation had shared the same municipal address, would then make the defendant so centrally connected to the corporation and the human person ultimately responsible for the Dodge van, so that the defendant would have had to have participated in or assisted the corporation in committing the offence of owner operating its Dodge van on a highway without insurance.

[55] Before pondering the merits of the prosecution's argument that the defendant is a party to the offence, a review will have to be made of other statutory or common law approaches for imputing penal liability to the shareholders, directors, or officers of a corporation for the corporation's unlawful acts or omissions. First, in some regulatory statutes, there are provisions that hold them personally liable for the wrongful actions or omissions committed by the corporation by deeming the directors or senior officers of a corporation to be a party to and guilty of the offence or by making them liable for the offence as the principal offender. Second, under the common law approach, the shareholders of a corporation could also face similar penal liability that the directors, officers, or agents of the corporation would face for the unlawful acts or omissions of a corporation, where there are exceptional circumstances which allows a court to lift or pierce the corporate veil and regard the corporation as a mere agent or puppet of the shareholders, whereby the shareholders are held responsible for the offence. Also, where a shareholder had been directly involved or participated in the activities that constituted the offence, then the shareholder could be found to be a party to the offence. Although allowing the corporate veil to be lifted would be rare, the common law does permit a court to find the shareholders liable if the corporation is being used for shielding the shareholders from any culpability for fraudulent or illegal activities.

[56] Additionally, the prosecution's concern about a corporation being used to evade compliance with the C.A.I.A. or other regulatory provisions has been commented on by the authors of the textbook, "The Law and Business Administration in Canada, 11ed." (Toronto, Ontario: Pearson Canada Inc., 2007). The authors, J.E. Smyth, D.A. Soberman, and A.J. Easson, at p. 650, have expressed their concern, as well as the concern of regulators, that a corporation that is convicted of committing a regulatory offence may be merely a "shell" with virtually no assets to pay its fine, so that those who control the enterprise could walk away from it and

start up a similar activity using a new corporation. They also suggest that in the situation where only the corporation is held liable for the offence, that this would not act as an effective deterrence to ensure effective enforcement of regulatory schemes unless the directors and senior officers, who would be responsible for that offence being committed, are also punished. To address this concern about effective deterrence, the authors of the textbook have also noted that regulators have enacted specific statutory provisions that would make directors and senior officers personally liable for the unlawful acts or omissions of their corporation and to also make the grounds for individual liability much broader [*emphasis is mine below*]:

> *The principle of limited liability does not protect directors from liability for torts or breaches of fiduciary duty that they personally commit. In principle, directors, like employees, are liable for their own torts that are committed in the course of performing their duties, even though the corporation may also be vicariously liable.*
>
> *The question we address here is whether directors (and officers) should be held* criminally liable *for offences committed by their corporation under their supervision.*
>
> *Our view is that simply holding corporations liable is not in itself strong enough deterrent to ensure effective enforcement of regulatory schemes. A large corporation with sufficient assets might consider the penalty merely a "licence"; it pays the fine and carries on with its activities. The corporation's manager thus often passes the costs on to the consumer through higher prices or to the corporation's shareholders through lower dividends. At the other extreme, a corporation may be merely a "shell" with virtually no assets to pay its fine; those who control the enterprise walk away from it and start up a similar activity using a new corporation.*
>
> *A strong argument can be made that effective deterrence requires that, as well as the corporation, the individuals responsible for the offence be punished directly. Directors and senior officers should be personally liable for offences committed by their corporation. …*
>
> *However, there are problems in attempting to prosecute individuals. In complex organizations, where responsibility is shared among a number of persons, it is often difficult to identify with any certainty who is "responsible" and who can – and should – be convicted of committing an offence. These two factors — a belief that directors and officers and not just corporations should be made liable and that it may be difficult to obtain convictions – have led legislatures*
>
> - *To enact express provisions making senior officers and directors liable and*
> - *To make the grounds for individual liability much broader.*

[57] Also, a similar comment was made in the textbook, Regulatory And Corporate Liability: From Due Diligence To Risk Management (Aurora, Ontario: Canada Law Book Inc., 2007), where the authors T. Archibald, K., Jull, and K. Roach, at p. 13-2, refer to academic criticism of the corporate structure that insinuates that limited liability narrows the extent to which corporations can be held responsible for criminal or regulatory offences. Especially, as they suggest, in the situation where a large fine is assessed against a corporation that is undercapitalized, which could then put the payment of the fine in jeopardy. And, if the fine is not paid, they note there may be little recourse available to regulators in collecting the fine [*emphasis is mine below*]:

> *If a large fine is assessed against a corporation that is undercapitalized, the payment of the fine may be in jeopardy, and, if not paid, there may be little recourse available. This potential problem is one of the topics in Harry Glasbeek's Wealth by Stealth. A central theme of Glasbeek's book is that the corporate structure of limited liability narrows the extent to which corporations can be responsible for criminal or regulatory offences. Glasbeek ventures to predict, on admittedly limited empirical data, that the largest fines are often not collected:*
>
> > The little evidence (largely anecdotal) that exists on this issue suggests that the largest fines are generally imposed on corporations that have no assets. For example, on February 3, 1992, the *Windsor Star* trumpeted the imposition of what was then the largest fine imposed for an occupational health and safety violation penalty in Ontario under its invigorated sanction regime. It was $400,000. But the guilty corporation, Elan Corporation, was bankrupt by the time the fine was levied.

[58] For a statutory provision that would make directors or officers of a corporation party to an offence and impute penal liability onto them for the unlawful acts or omissions of a corporation, an example is contained in s. 78.2 of the Fisheries Act, R.S.C., 1985, c. F-14. That section provides that where a corporation commits an offence, then any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence, is a party to and guilty of the offence, and is liable upon conviction to the punishment provided for the offence regardless if the corporation had been prosecuted:

> ***Offences by corporate officers, etc.***
>
> *78.2 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.*

[59] Also, under s. 280 of the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, penal liability can be imputed to a director, officer, agent or mandatary of the corporation, for the corporation's unlawful acts or omissions, when one of those individuals had directed, authorized, assented to, acquiesced in, or participated in the commission of the offence. Under that section they would nevertheless be held to be party to and guilty of the offence, even though the corporation had not been prosecuted or convicted for committing the offence:

> ***Liability of directors, officer, etc., of corporation***
>
> ***280****(1) If a corporation commits an offence under this Act, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted or convicted.*

[60] In addition, s. 116(3) of Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A., contains another example of a statutory provision which imputes liability to an officer or director of the corporation for a particular offence committed by the corporation, where that officer or director fails to take reasonable care to prevent the corporation from committing that offence:

> ***Corporation***
>
> *116(3) An officer or director of a corporation is guilty of an offence if he or she fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) or (2).*

[61] And, penal liability can also be imputed to an officer, director, or agent of the corporation, or a person acting or claiming to be acting in that capacity, for an unlawful act or omission committed by the corporation, under ss. 136 and 137 of the Employment Standards Act, 2000, S.O. 2000, c. 41. Specifically, s. 137(1) deems the particular individual who authorizes or permits the contravention or acquiesces in it, to be a party to and liable for the offence committed by the corporation, even though the corporation has not been charged or convicted of committing the offence:

> *Offence re directors' liability*
>
> *136(1) A director of a corporation is guilty of an offence if the director,*
>
> *(a) fails to comply with an order of an employment standards officer under section 106 or 107 and has not applied for a review of that order; or*

*(b) fails to comply with an order issued under section 106 or 107 that has been amended or affirmed by the Board on a review of the order under section 116 or with a new order issued by the Board on such a review.*

*Penalty*

*(2) A director convicted of an offence under subsection (1) is liable to a fine of not more than $50,000.*

*Offence re permitting offence by corporation*

*137(1) If a corporation contravenes this Act or the regulations, an officer, director or agent of the corporation or a person acting or claiming to act in that capacity who authorizes or permits the contravention or acquiesces in it is a party to and guilty of the offence and is liable on conviction to the fine or imprisonment provided for the offence.*

*Same*

*(2) Subsection (1) applies whether or not the corporation has been prosecuted or convicted of the offence.*

*Onus of proof*

*(3) In a trial of an individual who is prosecuted under subsection (1), the onus is on the individual to prove that he or she did not authorize, permit or acquiesce in the contravention.*

*Additional penalty*

*(4) If an individual is convicted under this section, the court may, in addition to any other fine or term of imprisonment that is imposed, assess any amount owing to an employee affected by the contravention and order the individual to pay the amount assessed to the Director.*

…

[62] However, unlike those statutory provisions contained in s. 78.2 of the Fisheries Act, R.S.C., 1985, c. F-14, s. 280 of the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, s. 52 of the Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A., and ss. 136 and 137 of the Employment Standards Act, 2000, S.O. 2000, c. 41, the C.A.I.A. does not contain a provision which imputes penal liability to a shareholder, director, officer, or agent of the corporation, for the unlawful acts or omissions of the corporation committed under that statute, such as the corporation operating or permitting a motor vehicle that it owns to be driven on an Ontario highway without insurance.

[63] Likewise, the shareholders of a corporation could also be made liable for the unlawful acts or omissions of a corporation through a unanimous shareholders agreement or, alternatively, by explicit statutory provisions the shareholders could also be held liable for the payment of fines imposed against the corporation. Then again, there has been no evidence adduced by the prosecution that the defendant as a shareholder of the corporation would be made liable for the wrongful acts or omissions of the corporation through a unanimous shareholders agreement, nor does the C.A.I.A. contain a provision, which makes shareholders of a corporation specifically liable for the fines of the corporation.



**(1) Is The Defendant A Party To The Offence?**

[64] Subsection 77(1) of the Provincial Offences Act, R.S.O. 1990, c. P.33, which is the statute that governs proceedings prosecuted under the C.A.I.A., sets out four circumstances in which an individual can be found to be a party to and guilty of an offence, namely as: (1) a principal offender, (2) as an aider, (3) as an abettor, and (4) as someone who had common intention to commit the offence with the person who actually committed the offence:

> *Parties to offence*
>
> *77(1) Every person is a party to an offence who,*
>
> *(a) actually commits it;*
>
> *(b) does or omits to do anything for the purpose of aiding any person to commit it; or*
>
> *(c) abets any person in committing it.*
>
> *Common purpose*
>
> *(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to the offence.*

[65] In R. v. Vu, [2012] S.C.J. No. 40, at paras. 58 and 59, the Supreme Court of Canada, in considering whether an accused for a criminal charge had been party to an offence, had held that an individual will bear the same responsibility for the offence regardless of whether they are the principal, aider, or abettor of the offence [*emphasis is mine below*]:

> *Under s. 21(1), a person is criminally liable, as a party to an offence, if that person, having the requisite intent, plays one of the three enumerated roles in the offence -- principal, aider or abettor. An individual will bear the same responsibility for the offence regardless of which particular role he or she*

*played: R. v. Thatcher, [1987] 1 S.C.R. 652, at pp. 689-90. As this Court recently explained in R. v. Briscoe, 2010 SCC 13, [2010] 1 S.C.R. 411, a person becomes a party to an offence when that person -- armed with knowledge of the principal's intention to commit the crime and with the intention of assisting the principal in its commission -- does (or, in some circumstances, omits to do) something that assists or encourages the principal in the commission of the offence (paras. 14-18).*

*In my view, the well-established principles of s. 21(1) criminal liability apply with equal force to continuing offences that have been completed in law but not in fact. In particular, where an accused -- with knowledge of the principal's intention to see a continuing offence through to its completion -- does (or omits to do) something, with the intention of aiding or abetting the commission of the ongoing offence, party liability is established.*



[66] Furthermore, in R. v. Thatcher, [1987] 1 S.C.R. 652, at paras. 71 to 73, the Supreme Court of Canada had held that it is no longer necessary to specify in the charge the nature of an accused's participation in the offence, whether as principal, aider, or abettor [*emphasis is mine below*]:

*I should perhaps note that the old common law authorities stand for the proposition that an indictment may charge all who are present and abet the act as principals in the first degree. As Fauteux J. states in Harder, at p. 492:*

> At common law, the actor or actual perpetrator of the fact and those who are, actually or constructively, present at the commission of the offence and aid and abet its commission, are distinguished as being respectively principal in the first degree and principals in the second degree; yet, in all felonies in which the punishment of the principal in the first degree and of the principals in the second degree is the same, the indictment may charge all who are present and abet as principals in the first degree.

*Thus, the common law generally drew no distinction between a principal in the first degree (someone who actually committed the offence) and a principal in the second degree (someone who was actually or constructively present but who only aided and abetted in the commission of the offence) for the purposes of indictment. The upshot of this rule was stated in East, Pleas of the Crown (1803), vol. 1, at p. 350: "the blow of one is, in law, the blow of all". The common law did, however, draw a distinction between principals and accessories. Accessories were those who conspired with the principal in the first degree or who aided and abetted him but were neither actually nor constructively present at the scene of the crime. See R. v. Smith (1876), 38 U.C.Q.B. 218, at pp. 227-28. Thus, if Thatcher aided and abetted, rather than personally committed, I do not think it is contended that he was necessarily physically present at the murder. Therefore, his case might well not fall within the old common law rule permitting one charge but two different possible modes of participation in the offence. But this is precisely the distinction that disappeared when Parliament abolished the common law distinction between principals and accessories. As Fauteux J. states in Harder, at p. 493, in relation to s. 21's predecessor:*

> This Imperial statute [24 & 25 Vict. c. 94], later adopted into Canadian law (R.S.C. 1886, c. 145) practically brought to an end the distinctions between accessories before the fact and principals in the second degree.

> *By the enactment of section 61, the predecessor of section 69, these distinctions in the substantive law entirely disappeared from our criminal laws when codified in 1892. With them, of course, also disappeared, because being made no longer necessary, the relevant adjective rules related to the framing of the indictment of such persons who, not actually committing the offence charged, were then made, by statute, principals and equally party to, guilty of and punishable for the offence as if actually committed by them. It is unthinkable that, getting rid of the difficulties arising out of these prior distinctions, Parliament would, in the same breath, have created new ones by refusing to the Crown the right to indict -- which right it had before, under common and statutory law -- as principal simpliciter, either as a principal in the second degree or an accessory before the fact, and this, under the regime of this new law holding each and all particeps criminis as being nothing less than principals.*
>
> *Thus, s. 21 has been designed to alleviate the necessity for the Crown choosing between two different forms of participation in a criminal offence. The law stipulates that both forms of participation are not only equally culpable, but should be treated as one single mode of incurring criminal liability. The Crown is not under a duty to separate the different forms of participation in a criminal offence into different counts. Obviously, if the charge against Thatcher had been separated into different counts, he might well have been acquitted on each count notwithstanding that each and every juror was certain beyond a reasonable doubt either that Thatcher personally killed his ex-wife or that he aided and abetted someone else who killed his ex-wife. This is precisely what s. 21 is designed to prevent.*
>
> *In sum, this Court has held that it is no longer necessary to specify in the charge the nature of an accused's participation in the offence: Harder. Moreover, if there is evidence before a jury that points to an accused either committing a crime personally or, alternatively, aiding and abetting another to commit the offence, provided the jury is satisfied beyond a reasonable doubt that the accused did one or the other, it is "a matter of indifference" which alternative actually occurred: Chow Bew. It follows, in my view, that s. 21 precludes a requirement of jury unanimity as to the particular nature of the accused's participation in the offence. Why should the juror be compelled to make a choice on a subject which is a matter of legal indifference?*

[67] Moreover, in R. v. Briscoe, [2010] 1 SCR 411, at paras. 13 to 18, the Supreme Court of Canada had held that Canadian criminal law does not distinguish between the principal offender and parties to an offence in determining criminal liability, but that the actus reus and mens rea for aiding or abetting, however, are distinct from those of the principal offence. In addition, the Supreme Court explained that the actus reus of aiding or abetting is doing or omitting to do something that assists or encourages the perpetrator to commit the offence. However, the Court also noted

that the concepts of aiding or abetting are distinct and that liability could flow from either one. They further noted that the concept of aiding under the statutory provision generally means to assist or help the actor who commits the offence, while to abet includes encouraging, instigating, promoting or procuring the crime to be committed [*emphasis is mine below*]:

> *Canadian criminal law does not distinguish between the principal offender and parties to an offence in determining criminal liability. Section 21(1) of the Criminal Code makes perpetrators, aiders, and abettors equally liable:*
>
> > *21. (1) Every one is a party to an offence who*
> >
> > *(a) actually commits it;*
> >
> > *(b) does or omits to do anything for the purpose of aiding any person to commit it; or*
> >
> > *(c) abets any person in committing it.*
>
> *The person who provides the gun, therefore, may be found guilty of the same offence as the one who pulls the trigger. The actus reus and mens rea for aiding or abetting, however, are distinct from those of the principal offence.*
>
> *The actus reus of aiding or abetting is doing (or, in some circumstances, omitting to do) something that assists or encourages the perpetrator to commit the offence. While it is common to speak of aiding and abetting together, the two concepts are distinct, and liability can flow from either one. Broadly speaking, "[t]o aid under s. 21(1)(b) means to assist or help the actor. . . . To abet within the meaning of s. 21(1)(c) includes encouraging, instigating, promoting or procuring the crime to be committed": R. v. Greyeyes, 1997 CanLII 313 (SCC), [1997] 2 S.C.R. 825, at para. 26. The actus reus is not at issue in this appeal. As noted earlier, the Crown argued at trial that Mr. Briscoe was both an aider and an abettor. The trial judge's finding that Mr. Briscoe performed the four acts of assistance described above is not disputed.*
>
> *Of course, doing or omitting to do something that resulted in assisting another in committing a crime is not sufficient to attract criminal liability. As the Court of Appeal for Ontario wrote in R. v. F. W. Woolworth Co. (1974), 1974 CanLII 707 (ON CA), 3 O.R. (2d) 629, "one does not render himself liable by renting or loaning a car for some legitimate business or recreational activity merely because the person to whom it is loaned or rented chooses in the course of his use to transport some stolen goods, or by renting a house for residential purposes to a tenant who surreptitiously uses it to store drugs" (p. 640). The aider or abettor must also have the requisite mental state or mens rea. Specifically, in the words of s. 21(1)(b), the person must have rendered the assistance for the purpose of aiding the principal offender to commit the crime.*
>
> *The mens rea requirement reflected in the word "purpose" under s. 21(1)(b) has two components: intent and knowledge. For the intent component, it was*

*settled in R. v. Hibbert, 1995 CanLII 110 (SCC), [1995] 2 S.C.R. 973, that "purpose" in s. 21(1)(b) should be understood as essentially synonymous with "intention". The Crown must prove that the accused intended to assist the principal in the commission of the offence. The Court emphasized that "purpose" should not be interpreted as incorporating the notion of "desire" into the fault requirement for party liability. It is therefore not required that the accused desired that the offence be successfully committed (Hibbert, at para. 35). The Court held, at para. 32, that the perverse consequences that would flow from a "purpose equals desire" interpretation of s. 21(1)(b) were clearly illustrated by the following hypothetical situation described by Mewett and Manning:*

> If a man is approached by a friend who tells him that he is going to rob a bank and would like to use his car as the getaway vehicle for which he will pay him $100, when that person is . . . charged under s. 21 for doing something for the purpose of aiding his friend to commit the offence, can he say "My purpose was not to aid the robbery but to make $100"? His argument would be that while he knew that he was helping the robbery, his desire was to obtain $100 and he did not care one way or the other whether the robbery was successful or not.
>
> (A. W. Mewett and M. Manning, Criminal Law (2nd ed. 1985), at p. 112)

*The same rationale applies regardless of the principal offence in question. Even in respect of murder, there is no "additional requirement that an aider or abettor subjectively approve of or desire the victim's death" (Hibbert, at para. 37 (emphasis deleted)).*

*As for knowledge, in order to have the intention to assist in the commission of an offence, the aider must know that the perpetrator intends to commit the crime, although he or she need not know precisely how it will be committed. That sufficient knowledge is a prerequisite for intention is simply a matter of common sense. Doherty J.A. in R. v. Maciel, 2007 ONCA 196 (CanLII), 219 C.C.C. (3d) 516, provides the following useful explanation of the knowledge requirement which is entirely apposite to this case (at paras. 88-89):*

> . . . a person who is alleged to have aided in a murder must be shown to have known that the perpetrator had the intent required for murder under s. 229(a): R. v. Kirkness (1990), 1990 CanLII 57 (SCC), 60 C.C.C. (3d) 97 (S.C.C.) at 127.

*The same analysis applies where it is alleged that the accused aided a perpetrator in the commission of a first degree murder that was planned and deliberate. The accused is liable as an aider only if the accused did something to assist the perpetrator in the planned and deliberate murder and if, when the aider rendered the assistance, he did so for the purpose of aiding the perpetrator in the commission of a planned and deliberate murder. Before the aider could be said to have the requisite purpose, the Crown must prove that the aider knew the murder was planned and deliberate. Whether the aider acquired that knowledge through actual involvement in the planning and deliberation or through some other means, is irrelevant to his or her culpability under s. 21(1).*

> *It is important to note that Doherty J.A., in referring to this Court's decision in R. v. Kirkness, 1990 CanLII 57 (SCC), [1990] 3 S.C.R. 74, rightly states that the aider to a murder must "have known that the perpetrator had the intent required for murder". While some of the language in Kirkness may be read as requiring that the aider share the murderer's intention to kill the victim, the case must now be read in the light of the above-noted analysis in Hibbert. The perpetrator's intention to kill the victim must be known to the aider or abettor; it need not be shared. Kirkness should not be interpreted as requiring that the aider and abettor of a murder have the same mens rea as the actual killer. It is sufficient that he or she, armed with knowledge of the perpetrator's intention to commit the crime, acts with the intention of assisting the perpetrator in its commission. It is only in this sense that it can be said that the aider and abettor must intend that the principal offence be committed.*



[68] Also, in deciding whether someone is party to an offence, the Supreme Court of Canada in R. v. Isaac, [1984] 1 S.C.R. 74 (S.C.C.), had held that where an accused is being tried alone and there is evidence that more than one person was involved in the commission of the offence, even though the identity of the other participant or participants is unknown, and even though the precise part played by each participant may be uncertain, the accused could still be considered to be a party to the offence where there is evidence that an offence had been committed and that the accused had participated in some way to the commission of that offence [*emphasis is mine below*]:

> *It is perfectly clear that there was evidence upon which a jury could have found that an offence was committed, an unlawful killing, which could have been murder or manslaughter. There was as well evidence from which a jury could have concluded that both the respondent and Barnaby participated in the assault which caused the death and in doing so assisted each other, Barnaby engaging Lloyd Arsenault while the respondent pummelled the deceased and later joining the attack on the deceased while the respondent "grabbed Lloyd". There was nothing, however, in the evidence of those who participated in the fighting or in the medical evidence to enable the jury to say whose blow or blows caused the death. The inescapable conclusion from the medical evidence, however, would have been that the injuries received by the deceased resulted in his death, all having been suffered before death. It follows then that a properly instructed jury could have found on the evidence that the respondent and Barnaby were parties to the unlawful killing and could therefore have been convicted. It was in these circumstances a fatal error to exclude consideration of s. 21(1) of the Code from the jury.*
>
> *I do not overlook the fact that only the respondent was charged in the indictment and that the record is silent as to charges that may have been brought against the other participants. Nonetheless, where there is evidence that more than one person participated in the commission of a crime, even though only one is charged, a direction under s. 21 of the Criminal Code may be necessary. I note the words of Martin J.A. in R. v. Sparrow (1979), 51*

*C.C.C. (2d) 443, at p. 458, where, speaking for the Ontario Court of Appeal (Martin, Lacourcière and Thorson JJ.A.), he said:*

> I am of the view that it is also appropriate, where an accused is being tried alone and there is evidence that more than one person was involved in the commission of the offence, to direct the jury with respect to the provisions of s. 21 of the Code, even though the identity of the other participant or participants is unknown, and even though the precise part played by each participant may be uncertain.

*I adopt those words as a correct statement of the law.*

[69] Ergo, the defendant could be considered to be a party to an offence under s. 77(1)(b) of the Provincial Offences Act, if the defendant does or omits to do anything for the purpose of aiding the corporation in committing the offence in question. And, since a corporation can only act through human persons, such as through its directors or officers or through its agent, and if there is evidence that the defendant is a director, officer, or agent of the corporation, and evidence that he did or omitted to do anything for the purpose of aiding or abetting the corporation in committing the offence, then the defendant could be held to be a party to the offence.

[70] As for the defendant being a party to the offence, the prosecution contends that the evidence which would prove that the defendant is a party to the offence is found in the defendant's admission that he is the owner of the company, that the corporation is the alter ego of the defendant, that the defendant had knowledge that the Dodge van did not have any insurance coverage, and that the defendant and the corporation had shared the same municipal address. Ergo, if the corporation is the alter ego of the defendant and the corporation is a one-person corporation, then the prosecution's argument would have merit and be logically sound that the corporation is a mere puppet or agent of the defendant, since the defendant would be the true owner of the Dodge van, and that for the circumstances, the defendant would be the only human person who could have ensured that the Dodge van is properly insured. And, by omitting to have the Dodge van insured the defendant would have aided or abetted the corporation, as the registered owner of the Dodge van, in committing the offence in question.

[71] However, even assuming the prosecution would be able prove that the defendant is the true owner of the Dodge van and the corporation is only a mere puppet of the defendant, there had been no evidence put forward that the defendant is a director, officer, or acting as an agent for the corporation, and that he had actually omitted to purchase or arrange for proper liability insurance coverage on the Dodge van, or that he is the only individual associated with the corporation who would have been ultimately responsible for purchasing or arranging for proper liability insurance coverage on the Dodge van.

[72] What's more, there is only evidence from the defendant's statement to Officer Nicholson that he is the owner of the corporation, which would then logically make him a shareholder of the corporation. And, although the defendant could be the directing mind of the corporation, because he admitted to being the owner of the corporation and had known about the Dodge van not being insured, there is no evidence that proves he is the corporation's directing mind. Nor has the prosecution proven that the corporation is a one-person corporation or a closely-held corporation to make a reasonable inference that the defendant is the directing mind of the corporation, or that the corporation is the alter ego of the defendant. Therefore, since there is no evidence that the defendant is a director or officer of the corporation, then it also cannot be concluded that the defendant is the directing mind of the corporation.

[73] As such, it cannot be concluded that the defendant did anything or omitted to do anything to aid or abet the corporation in not having the Dodge van properly insured before the van had been operated or permitted to being driven on an Ontario highway. Accordingly, there is no evidence that would prove the defendant had been a party to the offence committed under s. 2(1)(a).

## (C) A CORPORATION IS A SEPARATE LEGAL PERSON OR ENTITY THAT IS ENTIRELY DISTINCT FROM ITS SHAREHOLDERS

[74] In asserting that the defendant is the common law owner of the Dodge van, the prosecution argues that the corporate veil should be lifted and that the separate existence of the corporation from its shareholders should be disregarded, in order to find that the corporation and the defendant who owns the shares of the corporation were one and the same person and that the corporation is merely an agent or puppet of the defendant. In other words, if it has been established that the corporation is merely the alter ego of the defendant, then the prosecution would be able to prove that the defendant is the common law owner of the Dodge van for the application of s. 2(1)(a).

[75] Nevertheless, before considering whether the corporate veil should be pierced, it should not be overlooked that the law recognizes that corporations are artificial persons who have a separate legal identity or personality which is separate and distinct from its shareholders and that disregarding the corporate veil is to be done in only exceptional circumstances.

[76] By the same token, it should also be kept in mind that a corporation, as an artificial person, can only act only through its human agents or through human persons, such as through its directors and officers. In particular, a person acting for the corporation named "CM Corporate Maintenance Ltd." would have had to arrange and purchase insurance coverage on the Dodge van that is registered in the name of the corporation. And, only a human person associated with the corporation

would know about the legal obligation to properly insure motor vehicles owned by and registered in the name of the corporation.

[77] Consequently, since the seminal case of Salomon v. Salomon & Co. Ltd., [1897] A.C. 22 (H.L.), common law jurisdictions have recognized a corporation as a separate legal person or entity with its own separate legal identity and status comprising of rights and duties that are distinct from its shareholders or from the persons who had formed it, who had invested money in it, and who direct and manage its operations. Furthermore, a corporation is an artificial person created by statute, which can only act through human agents, namely its directors and officers. More important, the House of Lords in Salomon in considering the argument that Salomon had used the corporation as an alias of himself and the corporation was only acting as an agent of Salomon, had held that as long as the one-person or closely-held company had been properly incorporated and created and used for conducting a business or trade, then it was to be viewed as a separate legal personality, and where the corporation had not been used fraudulently or used to deceive, then all transactions where the existence of the corporate entity had been fully disclosed to the parties dealing with Salomon, then the corporation would solely be responsible for its debts. Furthermore, the House of Lords confirmed that the corporation is at law is a separate person and that the statute under which the corporation had come into existence had created a limited liability company as a legal person which is separate and distinct from its shareholders. As such, the House of Lords held that the business belonged to the company and not to Salomon, and that Salomon was only its agent [*emphasis is mine below*]:

> *LORD HALSBURY L.C., at p. 31:*
>
> *…*
>
> *Either the limited company was a legal entity or it was not. If it were, the business belonged to it and not to Mr Salomon. If it was not, there was no person and nothing to be an agent [of] at all; and it is impossible to say at the same time that there is a company and there is not.*
>
> *…*
>
> *LORD MACNAGHTEN, at p. 51:*
>
> *…*
>
> *The company is at law a different person altogether from the subscribers to the memorandum [shareholders]; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers [shareholders] or trustee for them. Nor are the subscribers as members [shareholders] liable, in any shape or form, except to the extent and in the manner provided by the Act. That is, I think, the declared intention of the enactment. If the view of the learned judge were sound, it would follow that no common law partnership could register as a company limited by shares without remaining subject to unlimited liability.*
>
> …

*LORD DAVEY at pp. 56-57:*

*…*

*Vaughan Williams J. held that the company was an "alias" for the appellant, who carried on his business through the company as his agent, and that he was bound to indemnify his own agent; and he arrived at this conclusion on the ground that the other members of the company had no substantial interest in it, and the business in substance was the appellant's. The Court of Appeal thought the relation of the company to the appellant was that of trustee to cestui que trust.*

*The ground on which the learned judges seem to have chiefly relied was that it was an attempt by an individual to carry on his business with limited liability, which was forbidden by the Act and unlawful. I observe, in passing, that nothing turns upon there being only one person interested. The argument would have been just as good if there had been six members holding the bulk of the shares and one member with a very small interest, say, one share. I am at a loss to see how in either view taken in the Courts below the conclusion follows from the premises, or in what way the company became an agent or trustee for the appellant, except in the sense in which every company may loosely and inaccurately be said to be an agent for earning profits for its members, or a trustee of its profits for the members amongst whom they are to be divided. There was certainly no express trust for the appellant; and an implied or constructive trust can only be raised by virtue of some equity. I took the liberty of asking the learned counsel what the equity was, but got no answer. By an "alias" is usually understood a second name for one individual; but here, as one of your Lordships has already observed, we have, ex hypothesi, a duly formed legal persona, with corporate attributes and capable of incurring legal liabilities. Nor do I think it legitimate to inquire whether the interest of any member is substantial when the Act has declared that no member need hold more than one share, and has not prescribed any minimum amount of a share. If, as was said in the Court of Appeal, the company was formed for an unlawful purpose, or in order to achieve an object not permitted by the provisions of the Act, the appropriate remedy (if any) would seem to be to set aside the certificate of incorporation, or to treat the company as a nullity, or, if the appellant has committed a fraud or misdemeanour (which I do not think he has), he may be proceeded against civilly or criminally; but how either of those states of circumstances creates the relation of cestui que trust and trustee, or principal and agent, between the appellant and respondents, is not apparent to my understanding.*

*I am, therefore, of opinion that the order appealed from cannot be supported on the grounds stated by the learned judges.*

[78] Moreover, the treatment of a corporation as a legal person under Ontario statutes is confirmed by several statutory provisions enacted by the Ontario legislature. First of all, under the Ontario Business Corporations Act, R.S.O. 1990, c. B.16, s. 15 states that a corporation has the legal capacity of a natural person:

*15. A corporation has the capacity and the rights, powers and privileges of a natural person.*

[79] Likewise, s. 87 of the Legislation Act, 2006, S.O. 2006, c. 21, sched. F, which is a legislative tool for interpreting Ontario statutes, defines a "person" to include a corporation:

> *87. In every Act and regulation,*
>
> *"individual" means a natural person; ("particulier")*
> *…*
>
> *"person" includes a corporation; ("personne")*
> …

[80] In addition, s. 92(1) of the Legislation Act, 2006 provides that a provision of an Ontario statute which creates a corporation includes the implied power of perpetual succession and that the corporation can sue and be sued by its corporate name and to acquire, hold, and dispose of personal property and exempts the members (or shareholders) of the corporation from personal liability for its debts, acts and obligations if they do not contravene the Act that incorporates the corporation:

> *Corporations, implied provisions*
>
> *92(1) A provision of an Act that creates a corporation,*
>
> *(a) gives it power to have perpetual succession, to sue and be sued and to contract by its corporate name, to have a seal and to change it, and to acquire, hold and dispose of personal property for the purposes for which the corporation is incorporated;*
>
> *(b) gives a majority of the members of the corporation power to bind the others by their acts; and*
>
> *(c) exempts the members of the corporation from personal liability for its debts, acts and obligations, if they do not contravene the Act that incorporates them.*
> *…*

[81] Ergo, the rights and duties of a corporation are not the rights and duties of its directors, officers, or shareholders who are generally obscured and cloaked by a corporate veil surrounding the company. Moreover, as recognized in Salomon, incorporating a company achieves the interposition of a legal person between the human persons who own and control it and the business activity to be undertaken.

**(1) Does the defendant have any beneficial interest in the Dodge van?**

[82] Also, in considering whether the defendant should be found to be the common law owner of the Dodge van, the prosecution has argued that the defendant indirectly owns the Dodge van because the van would be an asset of the corporation, which the defendant had admitted to owning. Therefore, as a matter of law, does a shareholder have any interest in the assets of the corporation?

[83] This question was considered and decided in Macaura v. Northern Assurance Co., [1925] A.C. 619 (H.L.), when the House of Lords had to consider whether the sole shareholder of a corporation, who had insured in his own name the timber which had been on the shareholder's land and then sold that timber to the corporation in which he was the sole shareholder, had any insurable interest in that timber after it had been sold or transferred to the corporation, Irish Canadian Sawmill Company Limited. After the timber had been sold to the corporation, fire had destroyed the timber. The insurance companies, which had issued the insurance policies in respect to the timber, had denied coverage for the destroyed timber contending that the shareholder had no insurable interest in the timber, since the timber was owned by the corporation at the time of the fire and not owned by the shareholder personally. In resolving the dispute, Lord Buckmaster had held that no shareholder would have any right to any item of property owned by the corporation, since the shareholder has no legal or equitable interest in that property, nor does the shareholder have any insurable interest in a particular asset which the corporation holds [*emphasis is mine below*]:

> *Turning now to his position as shareholder, this must be independent of the extent of his share interest. If he were entitled to insure because he held all the shares in the company, each shareholder would be equally entitled, if the shares were all in separate hands. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound-up. If he were at liberty to effect an insurance against loss by fire of any item of the company's property, the extent of his insurable interest could only be measured by determining the extent to which his share in the ultimate distribution would be diminished by the loss of the assets - a calculation almost impossible to make. There is no means by which such an interest can be definitely measured and no standard which can be fixed of the loss against which the contract of insurance could be regarded as an indemnity. This difficulty was realised by counsel for the appellant, who really based his case upon the contention that such a claim was recognised by authority and depended upon the proper application of the definition of insurable interest given by LAWRENCE, J, in Lucena v Craufurd (3) (2 Bos & PNR at p 302). I agree with the comment of ANDREWS, LJ, upon this case. I find equally with him a difficulty in understanding how a moral certainty can be so defined as to render it an essential part of a definite legal proposition. In the present case, though it might be regarded as a moral certainty that the appellant would suffer loss if the timber which constituted the sole asset of the company were destroyed by fire, this moral certainty becomes dissipated and lost if the asset be regarded as only one in an*

> *innumerable number of items in a company's assets and the shareholding interest be spread over a large number of individual shareholders.*
>
> *…*
>
> *… Neither a simple creditor of nor a shareholder in a company has any insurable interest in a particular asset which the company holds.*

[84] Moreover, Lord Summer in Macaura v. Northern Assurance Co. also held that the appellant, Macaura, who owned nearly all the shares in the corporation, did not have an insurable interest in the timber described, since the timber was not the appellant's, but had belonged to the corporation, and that the appellant's relationship had been to the corporation and not to its goods, and that after the fire had destroyed the timber the appellant had been directly prejudiced by the paucity of the company's assets, but not by the fire [*emphasis is mine below*]:

> *This appeal relates to an insurance on goods against loss by fire. It is clear that the appellant had no insurable interest in the timber described. It was not his. It belonged to the Irish Canadian Sawmill Co, Ltd, of Skibbereen, co Cork. He had no lien or security over it, and, though it lay on his land by his permission, he had no responsibility to its owner for its safety, nor was it there under any contract that enabled him to hold it for his debt. He owned almost all the shares in the company, and the company owed him a good deal of money, but, neither as creditor nor as shareholder, could he insure the company's assets. The debt was not exposed to fire nor were the shares, and the fact that he was virtually the company's only creditor, while the timber was its only asset, seems to me to make no difference. He stood in no "legal or equitable relation to" the timber at all. He had no "concern in" the subject insured. His relation was to the company, not to its goods, and after the fire he was directly prejudiced by the paucity of the company's assets, not by the fire.*

[85] In addition, Lord Wrenbury had reasoned in Macaura that the incorporator, even if he held all the shares, is not the corporation, and that neither he nor any creditor of the company had any property, legal or equitable, in the assets of the corporation [*emphasis is mine below*]:

> *This appeal may be disposed of by saying that the corporator, even if he holds all the shares, is not the corporation, and that neither he nor any creditor of the company has any property, legal or equitable, in the assets of the corporation.*

[86] However, the Supreme Court of Canada in Kosmopoulos v. Constitution Insurance Co. Of Canada (1987), 34 D.L.R. (4th) 208, departed from that principle enunciated in Macaura v. Northern Assurance Co. that a shareholder of a corporation had no insurable interest in an asset owned by the corporation, by finding that the shareholder in certain circumstances would indeed have an insurable interest in that asset. In that particular case, after a fire and a claim made under an insurance policy taken out by Kosmopoulos, who was the sole shareholder of the corporation that had actually owned the asset destroyed by the

fire, there had been a dispute between the insurance company and Kosmopoulos, who had taken out the policy in his own name, about who had actually owned the assets destroyed in the fire. Writing for the majority of the court, Wilson J. had reasoned, at paras. 42 and 43, that even though a shareholder who owns all the shares of a corporation does not actually own the assets of the corporation, since it was the corporation who had actually owned the assets in question, while the shareholder of that corporation would have no direct ownership in the assets but only in the corporation itself, but that in appropriate circumstances would have an insurable interest in the corporation's assets, such as when the sole shareholder of the company had benefit from the assets' existence and prejudice from its destruction [*emphasis is mine below*]:

> … *I think Macaura should no longer be followed. Instead, if an insured can demonstrate, in Lawrence J.'s words, "some relation to, or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment, or prejudice to the person insuring", that insured should be held to have a sufficient interest. To "have a moral certainty of advantage or benefit, but for those risks or dangers", or "to be so circumstanced with respect to [the subject matter of the insurance] as to have benefit from its existence, prejudice from its destruction" is to have an insurable interest in it. To the extent that this Court's decisions in Clark v. Scottish Imperial Insurance Co., supra, Guarantee Co. of North America v. Aqua-Land Exploration Ltd., supra, and Wandlyn Motels Ltd. v. Commerce General Insurance Co., supra, are inconsistent with this definition of insurable interest, I respectfully suggest that they should not be followed.*
>
> …
>
> *Mr. Kosmopoulos, as sole shareholder of the company, was so placed with respect to the assets of the business as to have benefit from their existence and prejudice from their destruction. He had a moral certainty of advantage or benefit from those assets but for the fire. He had, therefore, an insurable interest in them capable of supporting the insurance policy and is entitled to recover under it.*

[87] Hence, as a general rule, the law does not recognize that a shareholder of a corporation would actually own the assets of the corporation, since the corporation would own those assets while the shareholder only owns shares in the corporation. Furthermore, the law also does not recognize that a shareholder would have a legal or equitable interest in the property owned by the corporation.

[88] But as a consequence of the Supreme Court's decision in Kosmopoulos v. Constitution Insurance Co. Of Canada, the defendant as the shareholder of the corporation would have an insurable interest in the Dodge van, if he can demonstrate having benefitted from the van's existence and being prejudiced from the van's destruction. However, there is no evidence that the defendant is the sole shareholder of the corporation or any evidence which would demonstrate that the defendant would benefit from the van's existence and prejudice from its

destruction, so that it could be held that the defendant had an insurable interest in the Dodge van to support a finding that the defendant is the common law owner of the van.

**(2) Should CM Corporate Maintenance Ltd.'s Corporate Veil Be Pierced?**

[89] To support their contention that the defendant is the "common law owner" of the Dodge van, the prosecution argues that because a corporation by its very nature is an artificial entity that can only act through a human person, then the defendant, who is the owner of the corporation, would be that human person who would have any interest in actually purchasing or maintaining automobile insurance on the Dodge van on behalf of the corporation, and as such, should be found to be the "common law owner" of the motor vehicle. Moreover, the prosecution argues that reaching this conclusion is logical and necessary, otherwise s. 2(1) would not be an enforceable obligation and that the defendant would be able to personally avoid this legal and financial obligation under the C.A.I.A. by hiding behind a corporate veil.

[90] Again, this concern that the defendant could use a corporation to evade compliance with the C.A.I.A. and to avoid paying fines imposed under that statute was commented upon by the authors of their textbook, Regulatory And Corporate Liability: From Due Diligence To Risk Management (Aurora, Ontario: Canada Law Book Inc., 2007). At p. 13-3, the authors emphasize that corporate legislation generally provides that shareholders are not liable for any default of the corporation in paying its fines, except under very narrow circumstances that have been explicitly set out in legislation, such as contained in s. 92(1) of the Ontario Business Corporations Act, R.S.O 1990, c. B.16, which provides that a shareholder is not liable for the corporation's defaults, obligations, or liabilities, unless there are circumstances which makes the shareholder liable under ss. 34(5) for where the corporation's assets have been reduced so as to be unable to pay its liabilities; or under s. 108(5) where the shareholder is a party to a unanimous shareholders agreement and has been given the rights, powers, duties and liabilities of a director of the corporation; or under s. 243, which makes a shareholder personally liable for criminal actions of the corporation after the dissolution of the corporation. Otherwise, they suggested that the only way to force the shareholders to pay the corporation's fines is to obtain court relief against the shareholders by having the corporate veil pierced [*emphasis is mine below*]:

> *Regulators in Canada have not routinely resorted to attempting to pierce the corporate veil in situations where corporate entities cannot pay a fine. On an anecdotal level, there appears to be very little activity in this regard. We speculate that there are several reasons for this lack of activity. First, individuals within corporate organizations may be charged with offences, and in small closely held corporations these individuals may be the controlling shareholders. As such, prosecutors may feel that these individual charges are a type of veil-piercing, which is not available in the civil parallel. Recent*

*charges in the United States laid against senior officers at Enron and Tyco are examples of this trend. Secondly, prosecutors as an institutional group are not generally accustomed to the civil concepts of piercing the corporate veil. Thirdly, the corporate veil has proven resilient to being pieced in Canadian common law.*

*… some general themes can be identified that may be useful in considering the parallel application to regulatory law. There are two basic scenarios in which an attack on the corporate veil may be considered. First, a small and closely held corporation that goes bankrupt may have shareholders who have significant assets based on profit from the corporation. Generally corporate legislation provides that shareholders are not liable for any default of the corporation except under very narrow circumstances, explicitly set out in the legislation. (see OBCA ss. 92(1), and exceptions in ss. 34(5), 108(5) and 243.) The only way to force such shareholders to contribute to any fine would be to seek court relief in the form of piercing the corporate veil.*



### (a) The test for piercing the corporate veil in Ontario

[91] In Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (c.o.b. Energyshop Consulting Inc./Powerhouse Energy Management Inc.), [2014] O.J. No. 476, Pepall J.A., for the Court of Appeal, held at para. 43 that the appropriate test to apply for piercing the corporate veil in Ontario is expressed in 642947 Ontario Ltd. v. Fleischer (2001), 56 O.R. (3d) 417 (O.C.A.), where Laskin J.A. had held that courts should only disregard the separate legal personality of a corporate entity and go behind the corporate veil in exceptional cases that would result in flagrant injustice, such as where those that completely dominated and are in control of the corporation have expressly directed a wrongful act to be done, or when the company is incorporated for an illegal, fraudulent, or improper purpose, or where it is being used as a shield for fraudulent or improper conduct [*emphasis is mine below*]:

*I agree with Shoppers that the motions judge did not refer to Fleischer. Fleischer is the appropriate test to apply to piercing the corporate veil in Ontario. In Fleischer, Laskin J.A. stated that only exceptional cases that result in flagrant injustice warrant going behind the corporate veil. It can be pierced if those in control expressly direct a wrongful act to be done. At para. 68, he stated:*

> Typically, the corporate veil is pierced when the company is incorporated for an illegal, fraudulent or improper purpose. But it can also be pierced if when incorporated "those in control expressly direct a wrongful thing to be done": Clarkson Co. v. Zhelka, [1967] O.J. No. 1054 at p. 578. Sharpe J. set out a useful statement of the guiding principle in Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co. (1996), 28 O.R. (3d) 423 at pp. 433-34 (Gen. Div.), affd [1997] O.J. No. 3754 (C.A.): "the 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 improper conduct."

**(b) Is there any evidence that the defendant has been or had been previously using a corporate entity to avoid complying with s. 2(1)(a) of the C.A.I.A. or in avoiding the payment of any fines that had been imposed for contravening s. 2(1)(a)?**

[92] On the issue of whether the corporate veil should be lifted due to the defendant using the corporation to elude compliance with s. 2(1)(a) of the C.A.I.A. or to evade the payment of fines in regards to convictions under s. 2(1)(a), the prosecution has not adduced evidence of such conduct or intention by the defendant.

[93] As well, there has been no evidence adduced by the prosecution that the defendant had been in complete domination and control of the corporation, and had expressly directed an unlawful act or omission to be done, or that "CM Corporate Maintenance Ltd." had been incorporated for an illegal, fraudulent, or improper purpose, or that it is being used as a shield for fraudulent or improper conduct. Nor has there been evidence adduced, as an exception to the bad character evidence rule, that the defendant has been using the corporation to avoid paying any fines that had been imposed previously in respect to offences committed under s. 2(1)(a) of the C.A.I.A. by the defendant or a corporation controlled by the defendant.

**(c) Is there evidence that the defendant is the sole shareholder or a director or officer of the corporation that owns the Dodge van?**

[94] More importantly, the prosecution has not adduced any evidence that the defendant is a director, officer, or an agent of "CM Corporate Maintenance Ltd.", or that he was the directing mind of that corporation. And, although the defendant admitted to Officer Nicholson that he was the owner of the company that was registered as the owner of the Dodge van, that he had knowledge that the Dodge van was not insured, and that the defendant and the corporation had shared the same municipal address, there is no evidence that the defendant is the sole shareholder of the corporation or that the corporation is essentially a one-person corporation, to conclude that the defendant completely dominates and is in control of all acts or omissions attributable to the corporation.

**(3) Conclusion**

[95] Although there may be circumstances where the corporate structure is being used to commit fraud or to avoid compliance with s. 2(1) of the C.A.I.A., which could justify lifting or piercing the corporate veil for a small or one-person corporation to determine whether a particular person should be found to be liable for an offence committed by the corporation, or that the individual should be deemed to be a party to the offence, there is no evidence in the present case that the defendant had been using the corporation named "CM Corporate Maintenance Ltd." to avoid

compliance with s. 2(1) or that there is a history of the defendant using a corporation to register a motor vehicle in order avoid the legal and financial obligations under the C.A.I.A. of having motor vehicles that he exclusively operates or drives on a highway being properly insured in Ontario, or for shielding himself from any fines or penalties that could be imposed under that provision.

[96] Consequently, based on the evidence presented by the prosecution, there is no legal basis or exceptional circumstances for disregarding the corporation's separate legal personality and to pierce or lift the corporate veil and regard the corporation as a mere agent or puppet of the defendant, in order to find that the defendant is the common law owner of the Dodge van, which would make him the "owner" of the van for the purposes of s. 2(1)(a) of the C.A.I.A.

## 4. DISPOSITON

[97] Accordingly, on the totality of the evidence, the prosecution has not met its burden in proving beyond a reasonable doubt that the defendant was the owner of the Dodge van motor vehicle on May 3, 2014, for the purposes of s. 2(1)(a). Therefore, an acquittal will be entered for the defendant, Edgardo Cordoba, for the charge of owner operate motor vehicle on a highway without insurance, contrary to s. 2(1)(a) of the Compulsory Automobile Insurance Act, R.S.O. 1990, c. C.25.

**Dated at the City of Brampton on January 8, 2016.**

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QUON J.P.
Ontario Court of Justice