

# Owner of electrical contracting firm held personally liable for its C\$430,000 regulatory fine

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## Facts

## Decision

## Comment

In what appears to be a novel regulatory decision, an Ontario Court of Justice recently held the owner of an electrical contracting firm personally liable for the company's regulatory fine after he transferred assets out of the company following a fatal incident.<sup>(1)</sup>

### Facts

In 2014 an elderly man died from burns after being found lying on his bathroom floor, which had overheated. The overheating was caused by the negligence of one of the contractor's employees four years earlier when he installed an underfloor heating mat in the bathroom.

The company pleaded guilty to charges under the Electricity Act in respect of the installation. The court fined the company C\$430,000.

### Decision

The Ontario Court of Justice judge found that the owner had transferred assets, including property, out of the company after he learned that it was going to be charged, in order to avoid paying the fine. The judge also found that the owner had been dishonest in his testimony and misleading to the Electrical Safety Authority. As a result, the company was left with no or very few assets to pay the fine.

The judge decided to pierce the corporate veil and require the owner and a related entity, to which he had transferred assets, to pay the fine. In a scathing decision, the judge held that the owner had put his own assets at risk by blurring the lines between himself and the company. Further, the judge held that, although no statute gave him the power to pierce the corporate veil and make the owner personally liable, he should do so where it would be "too flagrantly opposed to justice" not to. The judge stated:

*If Mr Merante had simply shuttered Pro-Teck and left its assets intact and gone on and opened up Master Electric, he could not have been faulted... But he did not simply do that. Two roads diverged before him and Mr Merante took the one marked self-interest and deceit rather than the one that was marked by his duty to respect his obligations as a shareholder and his duty to accept that the protections that came with Pro-Teck's corporate status also created responsibilities.*

The judge held that the owner's acts:

*...deprive him and Master Electric, both beneficiaries in one way or another of the diversion of assets, of their legal separateness from Pro-Teck. He in effect treated all three legal entities as one; as he sowed, so shall he reap. The fines levied against Pro-Teck may be recovered from Mr Merante personally and from Master Electrical Contracting Services Ltd, 2433302*

## AUTHOR

[Adrian Miedema](#)



## Comment

It is unknown whether the decision has been appealed. Although the owner's behaviour was clearly troubling to the judge, it is questionable whether an appeal court would affirm that the judge had the legal authority to pierce the corporate veil and make the owner personally liable for the fine.(2)

*For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by telephone (+1 416 863 4511) or email ([adrian.miedema@dentons.com](mailto:adrian.miedema@dentons.com)). The Dentons Canada LLP website can be accessed at [www.dentons.com](http://www.dentons.com).*

## Endnotes

(1) *R v 1137749 Ontario Ltd (operating as Pro-Teck Electric)*, 2018 ONCJ 502 (CanLII).

(2) For more information please see [www.occupationalhealthandsafetylaw.com](http://www.occupationalhealthandsafetylaw.com).

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