

Rights Action
December 13, 2014
info@rightsaction.org

A Crack In The Door Of Canadian Impunity: Lawsuits Against Hudbay Minerals, Tahoe Resources, Nevsun Resources

The Financial Post reports on three lawsuits in Canadian courts against Canadian mining companies for violence and human rights violations at their mine sites around the world.

"Now we've seen three of [these cases]. There's a crack in the door and somebody's got their foot in there."

Rights Action supports work for locally-controlled development, environmental protection and the rule of law in communities implicated in two of these cases – Hudbay Minerals and Tahoe Resources – in Guatemala. Please share and distribute this article.

- **Year-end Matching Donor:** An anonymous donor will match donations, to a total of \$25,000, until December 31, 2014 ~ See below.

Canadian Mining Companies Face Lawsuits Over Foreign Activities

The Financial Post, By Drew Hasselback, December 10, 2014

http://business.financialpost.com/2014/12/10/canadian-mining-companies-face-lawsuits-over-foreign-activities/#__federated=1

Vancouver-based Nevsun Resources Ltd. joined an interesting club last month when three plaintiffs said they are suing the company in a B.C. trial court, alleging forced labour and other human rights violations at the company's Bisha gold mine in Eritrea.

Nevsun, which describes the allegations as [unfounded](#), is the latest Canadian parent company to be sued over the alleged actions of a foreign subsidiary or contractor. Vancouver-based Tahoe Resources Inc. was [named in a suit last June](#) over an incident at the company's mine in Guatemala. Then there's Toronto-based Hudbay Minerals Inc., [which has been sued](#) in Ontario allegations that security personal assaulted women at its mine in Guatemala.

It was once believed that as separate legal entities, a Canadian parent company was distinct and therefore legally immune from the actions of its foreign subsidiary or contractors. Or so goes the legal reasoning if you believe

the “corporate veil” insulates the parent from any liabilities that attach to its subsidiaries abroad.

But plaintiff lawyers have developed a work around that appears to be putting Canadian parent companies on the hot seat. Lawyers expect more such cases. “This is on the horizon more than ever. Companies traditionally think they were protected from these types of actions because of the corporate veil,” says Luis Sarabia, a partner with Davies Ward Phillips & Vineberg LLP in Toronto. “Mining companies are just coming alive to this being a real risk.”

The law hasn’t gone through a dramatic change. Rather, lawyers are skirting around the corporate veil issue by pointing to public statements that Canadian parent companies have made about their commitments to corporate social responsibility. They’re then suing the Canadian parents for negligence and other traditional torts on the grounds that management hasn’t lived up to the standards outlined in their public pronouncements.

“Realize that when you’re making these statements, you’re creating a situation in which you’d better ensure that your subs and employees are properly trained, and that there are no incidents which could give rise to liability,” Mr. Sarabia says.

The implications are simple. Canadian companies must be prepared to defend themselves in Canadian courts based on Canadian principles, lawyers say. These cases involving the activities of foreign subsidiaries are landing in Canadian courts based on traditional and recognized Canadian legal principles.

“We will see more of this,” says Craig Ferris of Lawson Lundell LLP in Vancouver. “If you’d asked me four years ago, I say there hadn’t been any of them. Now we’ve seen three of them. So there’s a crack in the door and somebody’s got their foot in there.”

Lawyers are following these cases closely. The plaintiffs in all three cases have made allegations that have yet to be proven in court. So far the most important legal ruling to emerge in any of the actions has been a 2013 procedural decision in which [an Ontario judge confirmed](#) that the case against Hudbay raises a proper cause of action that can be tested in court.

“If Hudbay goes to trial and this new duty of care is recognized by a trial judge, then we’ve got major new law and it’s explosive,” says Kelley McKinnon, a litigator with Gowling Lafleur Henderson LLP in Toronto. “If unsuccessful, that will be one decision that shuts down the novel approach of trying to go after the Canadian parent.”

Meanwhile, lawyers have immediate advice for corporate clients: when it comes to CSR, walk the talk. "One of the biggest problems a company can get into is to have all of these fine policies, which are broadcast to investors, the market, and up on the internet, and then not follow through on them," Mr. Ferris says. "It's going to have to pervade the whole business."

Financial Post
dhasselback@nationalpost.com
twitter.com/legalpost

Year-end Matching Donor: An anonymous donor will match donations, to a total of \$25,000, until December 31, 2014

Tax-Deductible Donations (Canada & United States)

To support community organizations working for locally-controlled development, the environment, human rights and the rule of law in Honduras and Guatemala – including in the Hudbay and Tahoe harmed communities, make check payable to "Rights Action" and mail to:

- Canada: (Box 552) 351 Queen St. E, Toronto ON, M5A-1T8
- USA: Box 50887, Washington DC, 20091
- Credit-Card Donations: <http://www.rightsaction.org/tax-deductible-donations>

More information: info@rightsaction.org

To receive our print newsletter: info@rightsaction.org

Get on/off our listserv: www.rightsaction.org

Follow us on facebook: www.facebook.com/RightsAction.org
