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What are we doing about the “Canada Brand”?: Canada’s strides towards corporate accountability in the extractive sector

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Last fall, Osgoode Hall’s Justice and Corporate Accountability Project published a ground-breaking report detailing the egregious violence perpetrated by Canadian mining companies towards communities who both neighbour and have been displaced by their mine sites in Latin America. The report, titled *The “[Canada Brand](#)”* observes that “violence is accepted as a part of doing business.” The facts are astonishing, yet unsurprising. Incidents involving 28 Canadian mining companies that occurred between 2000-2015 led to 44 deaths, 403 injuries, and 709 interactions with law enforcement, including legal complaints, arrests, detentions, and charges. A significant majority of these incidents were classified as targeted, or occurred when the community was protesting the construction or operations of a mine.



Attribution: MISN, MISN Sneaks into the World’s Largest Mining Convention

Unfortunately, individuals and communities who have been injured or killed at the hands of Canadian mining companies and their subsidiaries typically have little to no legal recourse in the jurisdiction where they are harmed. They often have no means to seek justice and hold corporations accountable for their human rights

violations.

Several factors contribute to this access to justice problem. First, there are huge power imbalances between local community members—often Indigenous inhabitants whose land, labour, and bodies are being exploited—and large multi-national corporations. When claims are brought against a corporation, the community is likely to receive [threats and acts of violence](#) against them. Further, in some countries where Canadian mining companies operate, claimants have been repeatedly denied a fair trial due to systemic corruption in the judiciary, procedural inefficiency, and [common interests](#) (mining and political) shared by the multinational company and the state in which they are operating.

In order for the Canadian government to take responsibility for Canada’s “brand,” there must be legal mechanisms in place whereby Canadian companies can be held accountable in Canada for their human rights violations abroad. There have been strides to do from various stakeholders across the country, mostly led by academic advocates, NGOs, and grassroots activists. These strides have taken the form of lawsuits, proposed legislation, electoral promises, and policy campaigns.

To start, there are two ground-breaking cases that are currently ongoing in Canada. In both cases, the plaintiffs were able to overcome the doctrine of [forum non conveniens](#). This doctrine provides courts with the “discretion to dismiss a case in favour of a foreign jurisdiction.” The application of this doctrine has historically protected Canadian companies from being held accountable in Canada for subsequent violence and exploitation related to their operations abroad.

Most recently, on January 27th, 2017, the British Columbia Court of Appeal permitted a [lawsuit](#) to advance against Tahoe Resources Inc., brought by 7 Guatemalan men for the injuries they suffered during a peaceful protest at Tahoe’s Guatemalan mine. This is the first time that a lawsuit against a Canadian company for their human rights violations abroad is being permitted to advance in a Canadian court.

In October, the Supreme Court of British Columbia also permitted a [lawsuit](#) to advance against the Canadian mining company Nevsun Resources. The suit was brought by 3 Eritrean men for Nevsun’s complicity in the use of forced labour (as part of the dictatorship’s conscription program) at their Bisha mine in Eritrea. This is the first time that a mass tort claim for modern slavery will go forward in a Canadian court.



Attribution: MISN, WANTED: Tahoe Resources’ Corporate Criminals action – May 4, 2016

In addition to these lawsuits there have been several private members’ bills proposed by MPs that address issues of access to justice and corporate accountability. John McKay brought forward Bill [C-300](#) in 2009.

Although this bill seemed to be a positive stride towards accountability in the extractive sector, it did not pass. Others have followed, most recently [Bill C-331](#), which was introduced in December and is likely to have a similar fate.

A final approach being advanced to hold Canadian companies accountable involves independent Government bodies. Last fall, the Canadian Network for Corporate Accountability (CNCA) released a [model ombudsperson legislation](#). This was in response to a lack of government action of their electoral promise to create an independent ombudsperson for the extractive industry. It was also in response to the Corporate Social Responsibility (CSR) counsellor and National Contact Point (NCP) positions created by the Harper government that have proven to be both [inefficient and non-independent](#) from the government and mining industry. According to the CNCA, it appears likely that the Liberal government will propose an ombudsperson within the next few months, although the details of the ombudsperson role remain unknown.

It is still unclear whether a solution to corporate accountability will come from the courts, legislation enacted by Parliament, or an independent body, such as the ombudsperson. Regardless, it is evident that domestic and international pressure is increasing and the Canadian government, whether they like it or not, must respond.

Interested in learning more about corporate accountability, access to justice, and the Canadian extractive sector? We suggest these selected articles from our past issues:

6:2 [Access to Justice: The Impact of Injunction, Contempt of Court Proceedings, and Costs Awards on Environmental Protestors and First Nations](#)

8:1 [Exploring the Mining “Money Trail”: Assessing British Columbia’s mining Tax Regime and Unearthing Legal Tools that Foster Greater Returns for Local Communities](#)

9:1 [The Next Stage of CSR for Canada: Transformational Corporate Governance, Hybrid Legal Structures, and the Growth of Social Enterprise](#)

9:1 [Case Comment: Commentaire sur Anvil Mining](#)

These articles are referenced as suggested reading. It should not be taken to imply their authors share the views expressed above.

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