

Let courts, mediators decide on mining disputes abroad, says lobby group

Mining Association of Canada exec. says courts will handle penalties, CSR tools work for the rest.

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CEO Pierre Gratton and vice president Ben Chalmers.

The courts, Canada's Corporate Social Responsibility Strategy and CSR Counsellor should be allowed to do their job before they are deemed inadequate, the executives said.

People who say they are victims of violence and wrongdoing in other countries and blame Canadian mining companies are looking to Canadian courts for justice. One case was dismissed by a British Columbia court last year, which ruled it did not have jurisdiction to proceed. Another was allowed to proceed in Ontario in 2013, and a third is currently before the B.C. Supreme Court.

The fact that Canadian courts have ruled both ways on the tricky question of jurisdiction is a sign that Canada's civil legal system is working as it should, said Mr. Chalmers.

The process should be left in the hands of the courts going forward, say the MAC executives.

However, finding justice in Canadian courts is expensive for people who may not have the means, says Shin Imai, a law professor at York University and director of the Justice and Corporate Accountability Project. He focuses on Canada's international obligations to regulate mining companies in Latin America.

Mining companies may spend millions defending themselves against civil actions, while plaintiffs from other countries may have to look for lawyers willing to work for free, he said.

Those who can't afford to battle in court should turn to the dispute resolution tools—which don't assign guilt or levy penalties—provided by the government's CSR Strategy and OECD contact point, said Mr. Chalmers.

Ombudsman promised

Meanwhile, human rights advocates and critics of Canada's mining industry are continuing calls for Canada's government to step in, despite changes to the CSR Strategy and CSR Counsellor's role made in 2014 under the former Conservative government.

Advocacy groups pressed that message once again in an April 25 open letter to Prime Minister Justin Trudeau (Papineau, Que.), which was signed by nearly 200 Latin American organizations and highlighted by Canadian groups MiningWatch and Development and Peace.

The letter calls on the government to "more effectively regulate the operations of Canadian mining companies around the world" and to guarantee that victims of human rights abuses "caused by" Canadian companies abroad have access to Canadian courts.



Latin American social justice groups sent an open letter to Prime Minister Justin Trudeau asking him to do more to regulate Canadian mining companies working overseas. Trade Minister Chrystia Freeland is responsible for overseeing corporate social responsibility for the mining sector. *The Hill Times* photograph by Steve Gerecke

Several Liberal ministers with ties to the file have shied away from the issue, repeating talking points that the government has high expectations of Canadian mining companies.

The Liberal Party promised during the election campaign to bring in an ombudsman for the extractive sector, but the government has not indicated yet when or whether it will live up to that promise.

Mr. Gratton said it was not clear what role an ombudsman could play, given the dispute-resolution roles of Canada's CSR Counsellor and OECD contact point.

Give CSR a chance

The government's CSR Strategy was updated in 2014 to allow it to withdraw diplomatic support to mining companies that don't work with CSR Counsellor Jeffrey Davidson, who is also working with a fresh set of directions after his predecessor, Marketa Evans, was stonewalled by uncooperative mining companies.

"It has to be given a chance to succeed," said Mr. Chalmers.

Mr. Davidson and the OECD contact point practice forms of dispute resolution, whereby companies and aggrieved parties are encouraged to come to the table to work out disputes themselves.

However, Canadians rely on well-enforced regulations—not just courts or mediation—to prevent disputes between mining companies and disaffected communities in Canada, said Mr. Imai, something that is often lacking in the other countries in which mining companies operate.

"It seems like a big task" for Canada to try to compensate for the regulatory shortcomings of other states, he said, but "it doesn't mean that we don't face it."

Mr. Chalmers agreed that regulatory or legal shortcomings in the countries where mines operate can be a part of the problem. He pointed to the work of the Canadian International Resources and Development Institute as part of a solution.

The nonprofit institute was furnished with a five-year funding arrangement by the previous government in 2013 to help other countries build regulatory re-

gimes that will allow their mining sectors to flourish.

The Liberal government has signalled it supports the work of the institute, despite criticisms from advocacy groups that it works first and foremost in the interest of mining companies. The government has also indicated support for the CSR Counsellor, despite criticisms that the office lacks the teeth

to deal with human rights violations once they have occurred.

The CSR Counsellor's office should be expanded, made more transparent and tasked with preventing or resolving conflicts for all industries, not just the mining sector, said Mr. Chalmers.

peter@hilltimes.com
@PJMazereeuw
The Hill Times

Let courts, mediators decide on mining disputes abroad: Lobby group

By PETER MAZEREUW

While human rights groups are pushing for stronger government oversight of mining companies' conduct abroad, executives from a national mining lobby group say Canadian courts and existing mediation bodies should be allowed to do their work.

The court system is one of several tools already in place to deal with conflict or allegations of wrongdoing connected to foreign projects owned by Canadian mining companies, said Mining Association of Canada president and

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Mining companies before the courts

- The B.C. Supreme Court is currently deliberating whether a case can be heard in Canada that was filed against Vancouver's Nevsun Resources over allegations that forced labour has been used at an Eritrean mine operated jointly with the Eritrean government. Nevsun has denied the allegations.
- The B.C. Supreme Court ruled last year that it did not have jurisdiction to hear a case brought against Tahoe Resources Inc., which is headquartered in Nevada, by seven Guatemalans

who say they were shot in 2013 by security personnel for a local mine owned by a subsidiary of the company.

- The Ontario Superior Court ruled in 2013 that it could hear a case against Toronto's HudBay Minerals connected to shootings and rapes the victims say were perpetrated by security personnel working for the company's Guatemalan subsidiary. Hudbay Minerals wrote in an online summary of the case that the allegations are "without merit."