



Will Canadian companies be held responsible for their actions abroad?

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Last week the Ontario Superior Court of Justice released a path-breaking decision, *Choc v. Hudbay Minerals*, that might, for the first time, require a Canadian mining company to take legal responsibility for human rights abuses abroad. The case concerns the alleged gang rape of indigenous women and the murder of an indigenous leader. Both are alleged to have occurred in Guatemala in the course of an ongoing dispute over indigenous land rights at the site of a mine owned by HudBay's Guatemalan subsidiary.

HudBay had argued that the legal proceeding should not be heard in Canada because even if all the allegations of rape and murder were true, it would not matter because the Canadian parent company had no responsibility for the actions of its subsidiary.

This is an astonishing position to take. If nothing else, the tragic death of more than 1,000 garment workers in Bangladesh has made us aware that Canadian companies should take some responsibility for the working and living conditions of their workers in any part of the world.

To their credit, mining companies, either individually, or in concert, have developed a variety of policies that attempt to set out appropriate standards of conduct for their actions abroad. While these corporate social responsibility codes could be useful if well implemented, they are all voluntary, and do not have any enforcement mechanisms for addressing breaches of the code. Resource extraction is a highly intrusive, highly dangerous activity. Regulating this activity through voluntary codes is like repealing the Highway Traffic Act and leaving the regulation of Highway 401 to a voluntary code – drafted by truckers.

HudBay Minerals, for example, reports annually on its corporate social responsibility activities in a glossy fifty page report. The 2012 edition says that “strong community relationships are the foundation of our work.” It is odd, then, that HudBay would assure investors of its interest in the welfare of the community, proceed to make profits out of the mine and then wash its hands of any abuses committed to produce those profits.

I do not suggest that all mining companies abuse human rights, but there are clearly situations where allegations of abuses raise serious concerns about the actions of individual companies. Take two recent cases from the same region in Latin America. One Canadian mining company in Mexico admitted to putting money directly into the personal bank account of a local mayor, and their offices in Calgary were raided by the RCMP as part of their investigation under the Corruption of Foreign Public Officials Act. According to newspaper reports, three men with links to the company were charged with the murder of a prominent anti-mining activist. The head of security for another Canadian mining company in Guatemala is now in jail awaiting trial after he and his security personnel allegedly shot and injured six

protesters. In both of these cases, the mining companies deny responsibility. Under the voluntary code system, the story ends there.

But this does not feel right. Perhaps the mining companies are responsible, perhaps they are not, but common decency suggests that there should be an open hearing where a judge can hear evidence from both sides before assigning liability. That is how disputes over dangerous driving on the 401 are resolved. We do not have a voluntary code under which a drunk driver gets off merely by asserting that he was not drunk.

In England, courts will now hear allegations of wrongdoing by parent companies for their subsidiary's operations abroad. The Choc judgment has passed the first hurdle in bringing similar corporate accountability into Canadian law. It will undoubtedly be appealed, so it will be many more years before a judge will actually hear the evidence and determine what happened in Guatemala. However, in the words of former Supreme Court of Canada Justice Ian Binnie, commenting on the idea that courts should start to hear cases of corporate abuse abroad, "there are acts that are so repugnant that they should force us to rethink our law."

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