



## Lawyers scramble after HudBay decision

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The landmark decision by the Ontario Supreme Court to hear a lawsuit brought by the victims and family members of alleged violence at a Guatemalan mine owned by Canadian mining company HudBay Minerals Inc. has the legal community scrambling to find out how it changes the game for Canadian companies that operate overseas.

"I got about three e-mails from partners about it on Monday, they had seen it in the paper, saying basically ... 'what do we make of this?'" said David Kent, a partner with law firm McMillan LLP.

Justice Carole Brown on Monday threw out HudBay's motion to dismiss the case. The motion argued the parent company couldn't be held liable for the actions of its subsidiary.

Lawyers for the 13 Guatemalans who brought the case are seeking \$67-million in damages from HudBay, alleging security personnel working for its Guatemalan subsidiary, Compania Guatemalteca de Niquel, raped 11 woman during a forced eviction of a Mayan village in 2007. They also claim that in September, 2009, mine security guards killed a local Mayan activist who opposed the company's Fenix nickel mine in eastern Guatemala and shot another man, leaving him paralyzed from the chest down.

HudBay has denied the allegations, which have not been proven in court.

HudBay hasn't decided if it will appeal the ruling, said Robert Harrison, one of the HudBay's lawyers.

Shin Imai, an associate professor at York University's Osgoode Hall Law School, expects the company to appeal, although he doesn't think it is likely to succeed.

"This idea that a parent company has no responsibility - that's what they say, 'that there's no recognized duty of care owed for what happens with a subsidiary,' I mean the trains left the station on that," said Mr. Imai. "I just can't imagine any court saying, 'yeah that's right, Canadian companies aren't responsible for what happens overseas even though they're making profits from those operations.'"

But the opinion of the legal community is mixed.

Chris Baldwin, a lawyer with Lawson Lundell LLP, doesn't see this latest development as all that extraordinary.

The decision rests on some basic Canadian legal principles, since it's HudBay and not its foreign subsidiary that is being accused in Canada, said Mr. Baldwin.

Having this case go to trial, most legal experts agree, could mean that Canadian mining firms will face more legal challenges from individuals and communities affected by their overseas operations.

It's a proposition that HudBay argued would open the door to "meritless" cases against mining companies.

But that's a spurious argument, said Cory Wanless, one of the lawyers representing the Guatemalans.

"Essentially the Canadian mining industry wants different rules for itself than the rules that apply for everyone else," said Mr. Wanless.

"All our clients have been asking from day one is a chance to bring it to court," he said.

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